

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

FORM 20-F

(Mark One)

- REGISTRATION STATEMENT PURSUANT TO SECTION 12(b) OR 12(g) OF THE SECURITIES EXCHANGE ACT OF 1934  
OR
- ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934  
For the fiscal year ended December 31, 2018.  
OR
- TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934  
For the transition period from \_\_\_\_\_ to \_\_\_\_\_  
OR
- SHELL COMPANY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934  
Date of event requiring this shell company report: .....  
Commission file number: 001-38638

**NIO Inc.**

(Exact Name of Registrant as Specified in Its Charter)

N/A

(Translation of Registrant's Name Into English)

**Cayman Islands**

(Jurisdiction of Incorporation or Organization)

**Building 20, No. 56 AnTuo Road, Anting Town, Jiading District  
Shanghai 201804, People's Republic of China**  
(Address of Principal Executive Offices)

**Louis T. Hsieh, Chief Financial Officer  
Building 20, No. 56 AnTuo Road, Anting Town, Jiading District  
Shanghai 201804, People's Republic of China  
Telephone: +86 21-6908 3306  
E-mail: ir@nio.com**

(Name, Telephone, Email and/or Facsimile number and Address of Company Contact Person)  
Securities registered or to be registered pursuant to Section 12(b) of the Act:

<b>Title of Each Class</b>	<b>Name of Each Exchange On Which Registered</b>
American depositary shares (each representing one Class A ordinary share, par value US\$0.00025 per share) Class A ordinary shares, par value US\$0.00025 per share* *Not for trading, but only in connection with the listing on the New York Stock Exchange of American depositary shares.	New York Stock Exchange

Securities registered or to be registered pursuant to Section 12(g) of the Act:

**None**

(Title of Class)

Securities for which there is a reporting obligation pursuant to Section 15(d) of the Act:

**None**

(Title of Class)

Indicate the number of outstanding shares of each of the issuer's classes of capital or common stock as of the close of the period covered by the annual report:

As of December 31, 2018, there were (i) 770,268,810 Class A ordinary shares outstanding, par value US\$0.00025 per share, (ii) 132,030,222 Class B ordinary shares outstanding, par value US\$0.00025 per share and (iii) 148,500,000 Class C ordinary shares outstanding, par value US\$0.00025 per share.

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.  Yes  No

If this report is an annual or transition report, indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934.  Yes  No

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934

during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.  Yes  No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files).  Yes  No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or an emerging growth company. See the definitions of “large accelerated filer,” “accelerated filer,” and “emerging growth company” in Rule 12b-2 of the Exchange Act.

Large accelerated filer	<input type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input checked="" type="checkbox"/>	Emerging growth company	<input checked="" type="checkbox"/>

If an emerging growth company that prepares its financial statements in accordance with U.S. GAAP, 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.

†The term “new or revised financial accounting standard” refers to any update issued by the Financial Accounting Standards Board to its Accounting Standards Codification after April 5, 2012.

Indicate by check mark which basis of accounting the registrant has used to prepare the financial statements included in this filing:

U.S. GAAP	<input checked="" type="checkbox"/>	International Financial Reporting Standards as issued by the International Accounting Standards Board	<input type="checkbox"/>	Other	<input type="checkbox"/>
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If “Other” has been checked in response to the previous question, indicate by check mark which financial statement item the registrant has elected to follow.  
 Item 17  Item 18

If this is an annual report, indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).  Yes  No

(APPLICABLE ONLY TO ISSUERS INVOLVED IN BANKRUPTCY PROCEEDINGS DURING THE PAST FIVE YEARS)

Indicate by check mark whether the registrant has filed all documents and reports required to be filed by Sections 12, 13 or 15(d) of the Securities Exchange Act of 1934 subsequent to the distribution of securities under a plan confirmed by a court.  Yes  No

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## INTRODUCTION

In this annual report on Form 20-F, or this annual report, except where the context otherwise requires and for purposes of this annual report only:

- “ADAS” refers to advanced driver assistance system;
- “ADRs” refer to the American depositary receipts that evidence the ADSs;
- “ADSs” refer to our American depositary shares, each of which represents one Class A ordinary share;
- “AI” refers to artificial intelligence;
- “BEVs” refer to battery electric passenger vehicles;
- “China” or the “PRC” refers to the People’s Republic of China, excluding, for the purpose of this annual report only, Hong Kong, Macau and Taiwan;
- “Class A ordinary shares” refer to our Class A ordinary shares, par value US\$0.00025 per share;
- “Class B ordinary shares” refer to our Class B ordinary shares, par value US\$0.00025 per share;
- “Class C ordinary shares” refer to our Class C ordinary shares, par value US\$0.00025 per share;
- “EVs” refer to electric passenger vehicles;
- “FOTA” refers to firmware over-the-air;
- “ICE” refers to internal combustion engine;
- “NEVs” refer to new energy passenger vehicles;
- “NIO,” “we,” “us,” “our company,” and “our” refer to NIO Inc., our Cayman Islands holding company and its subsidiaries, its consolidated variable interest entities and the subsidiaries of the consolidated variable interest entities;
- “Ordinary shares” refer to our Class A ordinary shares, Class B ordinary shares and Class C ordinary shares, each of par value US\$0.00025 per share;
- “RMB” or “Renminbi” refers to the legal currency of China; and
- “US\$,” “dollars” or “U.S. dollars” refer to the legal currency of the United States.

Unless otherwise noted, all translations from Renminbi to U.S. dollars and from U.S. dollars to Renminbi in this annual report are made at a rate of RMB6.8755 to US\$1.00, the exchange rate in effect as of December 31, 2018 as set forth in the H.10 statistical release of the Board of Governors of the Federal Reserve System. We make no representation that any Renminbi or U.S. dollar amounts could have been, or could be, converted into U.S. dollars or Renminbi, as the case may be, at any particular rate, or at all.

## FORWARD-LOOKING INFORMATION

This annual report contains forward-looking statements that reflect our current expectations and views of future events. These forward looking statements are made under the “safe-harbor” provisions of the U.S. Private Securities Litigation Reform Act of 1995. Known and unknown risks, uncertainties and other factors, including those listed under “Item 3. Key Information—D. Risk Factors,” may cause our actual results, performance or achievements to be materially different from those expressed or implied by the forward-looking statements. These statements involve known and unknown risks, uncertainties and other factors that may cause our actual results, performance or achievements to be materially different from those expressed or implied by the forward-looking statements.

You can identify these forward-looking statements by words or phrases such as “may,” “will,” “expect,” “anticipate,” “aim,” “estimate,” “intend,” “plan,” “believe,” “likely to,” “potential,” “continue” or other similar expressions. We have based these forward-looking statements largely on our current expectations and projections about future events and financial trends that we believe may affect our financial condition, results of operations, business strategy and financial needs. These forward-looking statements include, but are not limited to, statements about:

- our goals and growth strategies;
- our future business development, financial condition and results of operations;
- the expected growth of the electric vehicles industry in China;
- our expectations regarding demand for and market acceptance of our products and services;
- our expectations regarding our relationships with customers, contract manufacturers, component suppliers, third-party service providers, strategic partners and other stakeholders;
- competition in our industry;
- relevant government policies and regulations relating to our industry; and
- assumptions underlying or related to any of the foregoing.

These forward-looking statements involve various risks and uncertainties. Although we believe that our expectations expressed in these forward-looking statements are reasonable, our expectations may later be found to be incorrect. Our actual results could be materially different from our expectations. Other sections of this annual report include additional factors that could adversely impact our business and financial performance. Moreover, we operate in an evolving environment. New risk factors and uncertainties emerge from time to time and it is not possible for our management to predict all risk factors and uncertainties, nor can we assess the impact of all factors on our business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements. You should read thoroughly this annual report and the documents that we refer to with the understanding that our actual future results may be materially different from, or worse than, what we expect. We qualify all of our forward-looking statements by these cautionary statements.

This annual report contains certain data and information that we obtained from various government and private publications. Statistical data in these publications also include projections based on a number of assumptions. The electric vehicles industry may not grow at the rate projected by market data, or at all. Failure of this market to grow at the projected rate may have a material adverse effect on our business and the market price of our ADSs. In addition, the rapidly evolving nature of the electric vehicles industry results in significant uncertainties for any projections or estimates relating to the growth prospects or future condition of our market. Furthermore, if any one or more of the assumptions underlying the market data are later found to be incorrect, actual results may differ from the projections based on these assumptions. You should not place undue reliance on these forward-looking statements.

The forward-looking statements made in this annual report relate only to events or information as of the date on which the statements are made in this annual report. Except as required by law, we undertake no obligation to update or revise publicly any forward-looking statements, whether as a result of new information, future events or otherwise, after the date on which the statements are made or to reflect the occurrence of unanticipated events. You should read this annual report and the documents that we refer to in this annual report and exhibits to this annual report completely and with the understanding that our actual future results may be materially different from what we expect.

**PART I.**

**ITEM 1. IDENTITY OF DIRECTORS, SENIOR MANAGEMENT AND ADVISERS**

Not applicable.

**ITEM 2. OFFER STATISTICS AND EXPECTED TIMETABLE**

Not applicable.

**ITEM 3. KEY INFORMATION**

**A. Selected Financial Data**

**Selected Consolidated Financial Data**

The following selected consolidated statements of comprehensive loss data for the years ended December 31, 2016, 2017 and 2018, selected consolidated balance sheet data as of December 31, 2017 and 2018 and selected consolidated cash flow data for the years ended December 31, 2016, 2017 and 2018 have been derived from our audited consolidated financial statements included elsewhere in this annual report. The selected consolidated balance sheet data as of December 31, 2016 have been derived from our audited consolidated financial statements that are not included in this annual report. Our historical results do not necessarily indicate results expected for any future periods. The selected consolidated financial data should be read in conjunction with, and are qualified in their entirety by reference to, our audited consolidated financial statements and related notes and “Item 5. Operating and Financial Review and Prospects” below. Our consolidated financial statements are prepared and presented in accordance with accounting principles generally accepted in the United States of America, or U.S. GAAP.

	<b>For the Year Ended December 31,</b>			
	<b>2016</b>	<b>2017</b>	<b>2018</b>	
	<b>RMB</b>	<b>RMB</b>	<b>RMB</b>	<b>US\$</b>
	<b>(in thousands, except for share and per share data)</b>			
<b>Selected Consolidated Statements of Comprehensive Loss:</b>				
<b>Revenues<sup>(1)</sup>:</b>				
Vehicle sales	—	—	4,852,470	705,762
Other sales	—	—	98,701	14,355
<b>Total revenues</b>	<b>—</b>	<b>—</b>	<b>4,951,171</b>	<b>720,117</b>
<b>Cost of sales:<sup>(2)</sup></b>				
Vehicle sales	—	—	(4,930,135)	(717,058)
Other sales	—	—	(276,912)	(40,275)
<b>Total cost of sales</b>	<b>—</b>	<b>—</b>	<b>(5,207,047)</b>	<b>(757,333)</b>
Gross loss	—	—	(255,876)	(37,216)
<b>Operating expenses:</b>				
Research and development <sup>(2)</sup>	(1,465,353)	(2,602,889)	(3,997,942)	(581,477)
Selling, general and administrative <sup>(2)</sup>	(1,137,187)	(2,350,707)	(5,341,790)	(776,931)
<b>Total operating expenses</b>	<b>(2,602,540)</b>	<b>(4,953,596)</b>	<b>(9,339,732)</b>	<b>(1,358,408)</b>
<b>Loss from operations</b>	<b>(2,602,540)</b>	<b>(4,953,596)</b>	<b>(9,595,608)</b>	<b>(1,395,624)</b>
Interest income	27,556	18,970	133,384	19,400
Interest expenses	(55)	(18,084)	(123,643)	(17,983)
Shares of losses of equity investee	—	(5,375)	(9,722)	(1,414)
Investment income	2,670	3,498	—	—
Other income/(loss), net	3,429	(58,681)	(21,346)	(3,105)
<b>Loss before income tax expenses</b>	<b>(2,568,940)</b>	<b>(5,013,268)</b>	<b>(9,616,935)</b>	<b>(1,398,726)</b>
Income tax expenses	(4,314)	(7,906)	(22,044)	(3,206)
<b>Net loss</b>	<b>(2,573,254)</b>	<b>(5,021,174)</b>	<b>(9,638,979)</b>	<b>(1,401,932)</b>
Accretion on convertible redeemable preferred value	(981,233)	(2,576,935)	(13,667,291)	(1,987,825)
Accretion on redeemable non-controlling interests to redemption value	—	—	(63,297)	(9,206)
Net loss attributable to non-controlling interests	36,938	36,440	41,705	6,066
<b>Net loss attributable to ordinary shareholders of NIO Inc.</b>	<b>(3,517,549)</b>	<b>(7,561,669)</b>	<b>(23,327,862)</b>	<b>(3,392,897)</b>
<b>Net loss</b>	<b>(2,573,254)</b>	<b>(5,021,174)</b>	<b>(9,638,979)</b>	<b>(1,401,932)</b>
<b>Other comprehensive Income/ (loss)</b>				
Foreign currency translation adjustments, net of nil tax	55,493	(124,374)	(20,786)	(3,023)
<b>Total other comprehensive income/ (loss)</b>	<b>55,493</b>	<b>(124,374)</b>	<b>(20,786)</b>	<b>(3,023)</b>
<b>Total comprehensive loss</b>	<b>(2,517,761)</b>	<b>(5,145,548)</b>	<b>(9,659,765)</b>	<b>(1,404,955)</b>
Accretion on convertible redeemable preferred shares to redemption value	(981,233)	(2,576,935)	(13,667,291)	(1,987,825)
Accretion on redeemable non-controlling interests to redemption value	—	—	(63,297)	(9,206)
Net loss attributable to non-controlling interests	36,938	36,440	41,705	6,066
<b>Comprehensive loss attributable to ordinary shareholders of NIO Inc.</b>	<b>(3,462,056)</b>	<b>(7,686,043)</b>	<b>(23,348,648)</b>	<b>(3,395,920)</b>
<b>Weighted average number of ordinary shares used in computing net loss per share</b>				
Basic and diluted	16,697,527	21,801,525	332,153,211	332,153,211
<b>Net loss per share attributable to ordinary shareholders</b>				



Basic and diluted	(210.66)	(346.84)	(70.23)	(10.21)
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Notes:

(1) We began generating revenues in June 2018, when we began making deliveries and sales of the ES8. We currently generate revenues from vehicle sales and other sales.

(2) Share-based compensation expenses were allocated in cost of sales and operating expenses as follows:

	For the Year Ended December 31			
	2016	2017	2018	
	RMB	RMB	RMB	US\$
	(in thousands)			
Cost of Sales	—	—	9,289	1,351
Research and development expenses	14,484	23,210	109,124	15,871
Selling, general and administrative expenses	62,200	67,086	561,055	81,603
Total	76,684	90,296	679,468	98,825

The following table presents our selected consolidated balance sheet data as of the dates indicated.

	As of December 31,			
	2016	2017	2018	
	RMB	RMB	RMB	US\$
	(in thousands, except for share data)			
<b>Selected Consolidated Balance Sheet Data:</b>				
Cash and cash equivalents	581,296	7,505,954	3,133,847	455,799
Restricted cash	—	10,606	57,012	8,292
Long-term restricted cash	15,335	14,293	33,528	4,876
Property, plant and equipment, net	833,004	1,911,013	4,853,157	705,862
Total assets	1,770,478	10,468,034	18,842,552	2,740,536
Total liabilities	825,264	2,402,028	10,692,210	1,555,118
Total mezzanine equity	4,861,574	19,657,786	1,329,197	193,324
Ordinary shares	52	60	1,809	263
Total shareholders' (deficit)/equity	(3,916,360)	(11,591,780)	6,821,145	992,094
Total shares outstanding	17,773,459	23,850,343	1,050,799,032	1,050,799,032

The following table presents our selected consolidated cash flow data for the years indicated.

	<b>For the Year ended December 31,</b>			
	<b>2016</b>	<b>2017</b>	<b>2018</b>	
	<b>RMB</b>	<b>RMB</b>	<b>RMB</b>	<b>US\$</b>
	<b>(in thousands)</b>			
<b>Selected Consolidated Cash Flow Data:</b>				
Net cash used in operating activities	(2,201,564)	(4,574,719)	(7,911,768)	(1,150,719)
Net cash provided by/(used in) investing activities	117,843	(1,190,273)	(7,940,843)	(1,154,949)
Net cash provided by financing activities	2,292,704	12,867,334	11,603,092	1,687,601
Effects of exchange rate changes on cash, cash equivalents and restricted cash	40,539	(168,120)	(56,947)	(8,283)
Net increase/(decrease) in cash, cash equivalents and restricted cash	249,522	6,934,222	(4,306,466)	(626,350)
Cash, cash equivalents and restricted cash at beginning of the year	347,109	596,631	7,530,853	1,095,317
Cash, cash equivalents and restricted cash at end of the year	596,631	7,530,853	3,224,387	468,967

**B. Capitalization and Indebtedness**

Not applicable.

**C. Reasons for the Offer and Use of Proceeds**

Not applicable.

**D. Risk Factors**

**Risks Related to Our Business and Industry**

*Our ability to develop and manufacture a car of sufficient quality and appeal to customers on schedule and on a large scale is still evolving.*

Our future business depends in large part on our ability to execute on our plans to develop, manufacture, market and sell our electric vehicles. We plan to manufacture our vehicles in higher volumes than our present production capabilities in strategic collaboration with a Chinese manufacturer.

Our continued development and manufacturing of our manufactured vehicles, the ES8 and the ES6, and our future vehicles are and will be subject to risks, including with respect to:

- our ability to secure necessary funding;
- the equipment we use being able to accurately manufacture the vehicle within specified design tolerances;
- compliance with environmental, workplace safety and similar regulations;
- securing necessary components on acceptable terms and in a timely manner;
- delays in delivery of final component designs to our suppliers;
- our ability to attract, recruit, hire and train skilled employees;
- quality controls;
- delays or disruptions in our supply chain;
- our ability to maintain solid partnership with our manufacturing partners and suppliers; and

- other delays, backlog in manufacturing and research and development of new models, and cost overruns.

We began making deliveries of the seven-seater ES8 in June 2018. We launched our second volume manufactured electric vehicle, the ES6, in December 2018, but we do not expect to deliver the ES6 until June 2019. Our vehicles may not meet customer expectations and our future models may not be commercially viable.

Historically, automobile customers have expected car manufacturers to periodically introduce new and improved vehicle models. In order to meet these expectations, we may be required to introduce new vehicle models and enhanced versions of existing vehicle models. To date we have limited experience designing, testing, manufacturing, marketing and selling our electric vehicles and therefore cannot assure you that we will be able to meet customer expectations.

Any of the foregoing could have a material adverse effect on our results of operations and growth prospects.

***We have negative cash flows from operation, have only recently started to generate revenues and have not been profitable, all of which may continue in the future.***

We have only recently started to generate revenues and have not been profitable since our inception. We incurred net losses of RMB2,573.3 million, RMB5,021.2 million and RMB9,639.0 million (US\$1,401.9 million) in 2016, 2017 and 2018, respectively. In addition, we had negative cash flows from operating activities of RMB2,201.6 million, RMB4,574.7 million and RMB7,911.8 million (US\$1,150.7 million) in 2016, 2017 and 2018, respectively. We have made significant up-front investments in research and development, service network, and sales and marketing to rapidly develop and expand our business. We expect to continue to invest significantly in research and development and sales and marketing, to establish and expand our business, and these investments may not result in an increase in revenue or positive cash flow on a timely basis, or at all.

We may not generate sufficient revenues or we may incur substantial losses for a number of reasons, including lack of demand for our vehicles and services, increasing competition, as well as other risks discussed herein, and we may incur unforeseen expenses, or encounter difficulties, complications and delays in generating revenue or achieving profitability. If we are unable to achieve profitability, we may have to reduce the scale of our operations, which may impact our business growth and adversely affect our financial condition and results of operations.

***We have a limited operating history and face significant challenges as a new entrant into our industry.***

We were formed in 2014 and began making deliveries to the public of our first volume manufactured vehicle, the seven-seater ES8, in June 2018. In December 2018, we launched our second volume manufactured electric vehicle, the ES6, to the public at our NIO Day event and we plan to start initial deliveries in June 2019.

You should consider our business and prospects in light of the risks and challenges we face as a new entrant into our industry, including, among other things, with respect to our ability to:

- design and produce safe, reliable and quality vehicles on an ongoing basis;
- build a well-recognized and respected brand;
- establish and expand our customer base;
- successfully market not just our vehicles but also our other services, including our service package, energy package and other services we provide;
- properly price our services, including our charging solutions and service package and successfully anticipate the take-rate and usage of such services by users;
- improve and maintain our operational efficiency;

- maintain a reliable, secure, high-performance and scalable technology infrastructure;
- attract, retain and motivate talented employees;
- anticipate and adapt to changing market conditions, including technological developments and changes in competitive landscape; and
- navigate an evolving and complex regulatory environment.

If we fail to address any or all of these risks and challenges, our business may be materially and adversely affected.

We have limited experience to date in high volume manufacturing of our electric vehicles. We cannot assure you that we will be able to develop efficient, automated, cost-efficient manufacturing capability and processes, and reliable sources of component supply that will enable us to meet the quality, price, engineering, design and production standards, as well as the production volumes required to successfully mass market the ES8, the ES6 and future vehicles.

Furthermore, our vehicles are highly technical products that will require maintenance and support. If we were to cease or cut back operations, even years from now, buyers of our vehicles from years earlier might encounter difficulties in maintaining their vehicles and obtaining satisfactory support. We also believe that our service offerings, including user confidence in our ability to provide our charging solutions and honor our obligations under our service package will be key factors in marketing our vehicles. As a result, consumers will be less likely to purchase our vehicles now if they are not convinced that our business will succeed or that our operations will continue for many years. Similarly, suppliers and other third parties will be less likely to invest time and resources in developing business relationships with us if they are not convinced that our business will succeed.

***Manufacturing in collaboration with partners is subject to risks.***

We have entered into an arrangement with Jianghuai Automobile Group Co., Ltd., or JAC, for manufacturing the ES8 for five years. The ES8 is manufactured in partnership with JAC at its Hefei manufacturing plant. JAC is a major state-owned automobile manufacturer in China and it constructed such Hefei manufacturing plant for the production of the ES8 (with a modified production line for the ES6) and potentially other future vehicles with us. Pursuant to our arrangement with JAC with respect to the ES8, we pay JAC for each vehicle produced on a per-vehicle basis monthly for the first three years. We are in the process of negotiating with JAC the arrangement for manufacturing the ES6. We aim to enter into similar arrangements for the ES6 soon and may enter into similar arrangements for our other vehicles in the future. Collaboration with third parties for the manufacturing of vehicles is subject to risks with respect to operations that are outside our control. We could experience delays to the extent our partners do not meet agreed upon timelines or experience capacity constraints. There is risk of potential disputes with partners, and we could be affected by adverse publicity related to our partners whether or not such publicity is related to their collaboration with us. Our ability to successfully build a premium brand could also be adversely affected by perceptions about the quality of our partners' vehicles. In addition, although we are involved in each step of the supply chain and manufacturing process, given that we also rely on our partners to meet our quality standards, there can be no assurance that we will successfully maintain quality standards.

In addition, for the first 36 months after the start of production, which commenced on April 10, 2018, to the extent the Hefei manufacturing plant incurs any operating losses, we have agreed to compensate JAC for such operating losses. As of December 31, 2018, we have paid JAC a total of RMB222.9 million, including RMB126.4 million as compensation for losses incurred in 2018 and RMB96.5 million for manufacturing and processing fees. If we are obligated to compensate JAC for any losses, our results of operations and financial condition may be materially and adversely affected, particularly if such losses are incurred as a result of lower than anticipated sales volume.

We may be unable to enter into new agreements or extend existing agreements with third-party manufacturing partners on terms and conditions acceptable to us and therefore may need to contract with other third parties or significantly add to our own production capacity. There can be no assurance that in such event we would be able to partner with other third parties or establish or expand our own production capacity to meet our needs on acceptable terms or at all. The expense and time required to complete any transition, and to assure that vehicles manufactured at facilities of new third-party partners comply with our quality standards and regulatory requirements, may be greater than anticipated. Any of the foregoing could adversely affect our business, results of operations, financial condition and prospects.

***The unavailability, reduction or elimination of government and economic incentives or government policies which are favorable for electric vehicles and domestically produced vehicles could have a material adverse effect on our business, financial condition, operating results and prospects.***

Our growth depends significantly on the availability and amounts of government subsidies, economic incentives and government policies that support the growth of new energy vehicles generally and electric vehicles specifically. For example, each qualified purchaser of the ES8 is entitled to receive subsidies from China's central government. In addition, in certain cities, quotas that limit the number of internal combustion engine, or ICE, vehicles do not apply to electric vehicles, making it easier for customers to purchase electric vehicles.

On April 10, 2018, President Xi Jinping vowed to open China's economy further and lower import tariffs on products, including cars, in a speech during the Boao Forum. Beginning July 1, 2018, the tariff on imported passenger vehicles (other than those originating in the United States of America) was reduced to 15%. As a result, our pricing advantage could be diminished. On June 28, 2018, the National Development and Reform Commission, or NDRC, and the Ministry of Commerce, or the MOFCOM, promulgated the *Special Administrative Measures for Market Access of Foreign Investment*, or the Negative List, which came into effect on July 28, 2018. Pursuant to the Negative List, the limits on foreign ownership of auto manufacturers were lifted in 2018 for NEVs and will be lifted by 2022 for ICE vehicles. As a result, foreign EV competitors could build wholly-owned facilities in China without the need for a domestic joint venture partner. For example, Tesla has started constructing a factory in Shanghai without a joint venture partner. These changes could increase our competition and reduce our pricing advantage.

China's central government provides subsidies for purchasers of certain NEVs until 2020 and reviews and adjusts the subsidy standard on an annual basis. The current subsidy standard is provided for in the Circular on Further Improving the Subsidy Policies for the Promotion and Application of New Energy Vehicles, which was jointly promulgated by the MOF, the MOST, the MIIT and the NDRC on March 26, 2019. The current subsidy standard reduces the amount of national subsidies and cancels local subsidies, resulting in a significant reduction in the total subsidy amount applicable to the ES8 as compared to 2018. Furthermore, China's central government provides certain local governments with funds and subsidies to support the roll-out of a charging infrastructure. See "Item 4. Information on the Company—B. Business Overview—Regulation—Favorable Government Policies Relating to New Energy Vehicles in the PRC." These policies are subject to change and beyond our control. We cannot assure you that any changes would be favorable to our business. Furthermore, any reduction, elimination or discriminatory application of government subsidies and economic incentives because of policy changes, the reduced need for such subsidies and incentives due to the perceived success of electric vehicles, fiscal tightening or other factors may result in the diminished competitiveness of the alternative fuel vehicle industry generally or our electric vehicles in particular. Any of the foregoing could materially and adversely affect our business, results of operations, financial condition and prospects.

***Our vehicles may not perform in line with customer expectations.***

Our vehicles, including the ES8 and the ES6, may not perform in line with customers' expectations. For example, our vehicles may not have the durability or longevity of other vehicles in the market, and may not be as easy and convenient to repair as other vehicles on the market. Any product defects or any other failure of our vehicles to perform as expected could harm our reputation and result in adverse publicity, lost revenue, delivery delays, product recalls, product liability claims, harm to our brand and reputation, and significant warranty and other expenses, and could have a material adverse impact on our business, financial condition, operating results and prospects.

In addition, the range of our vehicles on a single charge declines principally as a function of usage, time and charging patterns as well as other factors. For example, a customer's use of his or her electric vehicle as well as the frequency with which he or she charges the battery can result in additional deterioration of the battery's ability to hold a charge.

Furthermore, our vehicles may contain defects in design and manufacture that may cause them not to perform as expected or that may require repair. We have delivered our vehicles with certain features of our NIO Pilot ADAS system initially disabled, and subsequently turned on some of these features. We plan to activate most features of our NIO Pilot system by the second quarter of 2019. We cannot assure you that our NIO Pilot system will ultimately perform in line with expectations. Our vehicles use a substantial amount of software code to operate and software products are inherently complex and often contain defects and errors when first introduced. While we have performed extensive internal testing on our vehicles' software and hardware systems, we have a limited frame of reference by which to evaluate the long-term performance of our systems and vehicles. There can be no assurance that we will be able to detect and fix any defects in the vehicles prior to their sale to consumers. If any of our vehicles fail to perform as expected, we may need to delay deliveries, initiate product recalls and provide servicing or updates under warranty at our expense, which could adversely affect our brand in our target markets and could adversely affect our business, prospects and results of operations.

***Any delays in the manufacturing and launch of the commercial production vehicles in our pipeline could have a material adverse effect on our business.***

We launched our second volume manufactured electric vehicle, the ES6, to the public at our NIO Day event on December 15, 2018. The ES6 is a five-seater high-performance long-range premium electric SUV. The ES6 is smaller but more affordable than the ES8, allowing us to target a broader market in the premium SUV segment. The ES6 currently offers the Standard, Performance and Premier versions with pre-subsidy starting prices of RMB358,000, RMB398,000 and RMB498,000, respectively. Users can pre-order the ES6 through the NIO App and we expect to begin making deliveries of the ES6 in June 2019. Before making deliveries of the ES6, we will need to enter into an arrangement with JAC for manufacturing the ES6. Also, the ES6 must enter into an Announcement of Vehicle Manufacturers and Products and obtain the China Compulsory Certification, or the CCC certification, prior to mass production. If we encounter delays in any of these matters, we may consequently delay our deliveries of the ES6. We generally target to launch a new model every year in the near future as we ramp up our business. Automobile manufacturers often experience delays in the design, manufacture and commercial release of new vehicle models. We are planning to target a broader market with our future vehicles, and to the extent we need to delay the launch of our vehicles, our growth prospects could be adversely affected as we may fail to grow our market share. We also plan to periodically perform facelifts or refresh existing models, which could also be subject to delays. Furthermore, we rely on third party suppliers for the provision and development of many of the key components and materials used in our vehicles. To the extent our suppliers experience any delays in providing us with or developing necessary components, we could experience delays in delivering on our timelines. Any delay in the manufacture and launch of the ES8, the ES6 or future models (including the ET7 and all other models in our pipeline), including in the build out of the manufacturing facilities in China for these models or due to any other factors, or in refreshing or performing facelifts to existing models, could subject us to customer complaints and materially and adversely affect our reputation, demand for our vehicles, results of operations and growth prospects.

In addition, to the extent the Hefei manufacturing plant incurs any operating losses, we have agreed to compensate JAC for such operating losses. As of December 31, 2018, we have paid JAC a total of RMB222.9 million, including RMB126.4 million as compensation for losses incurred in 2018 and RMB96.5 million for manufacturing and processing fees. If we are obligated to compensate JAC for any losses, our results of operations and financial condition may be materially and adversely affected, particularly if such losses are incurred as a result of lower than anticipated sales volume. We expect that our sales volume and the ability of the Hefei manufacturing plant to achieve profitability will be significantly affected by our ability to timely bring new vehicles to market.

***We may face challenges providing our charging solutions.***

We have marketed our ability to provide our users with comprehensive charging solutions conveniently accessible using our mobile application. We install home chargers for users where practicable, and provide other solutions including battery swapping, charging through publicly accessible charging infrastructure and charging using our fast charging trucks. Our users are able to use our NIO Power one-click valet charging service where their vehicles are picked up, charged and then returned. We have very limited experience in the actual provision of our charging solutions to users and providing these services is subject to challenges, which include the logistics of rolling out our network and teams in appropriate areas, inadequate capacity or over capacity in certain areas, security risks or risk of damage to vehicles during Power Express valet services and the potential for lack of user acceptance of our services. In addition, although the Chinese government has supported the roll-out of a public charging network, the current number of charging infrastructures is generally considered to be insufficient. We face significant challenges as we roll out our charging solutions, including access to sufficient charging infrastructure, obtaining any required permits, land use rights and filings, and, to a certain extent, such roll-out is subject to the risk that government support may discontinue.

In addition, given our limited experience in providing charging solutions, there could be unanticipated challenges which may hinder our ability to provide our solutions or make the provision of our solutions costlier than anticipated. To the extent we are unable to meet user expectations or experience difficulties in providing our charging solutions, our reputation and business may be materially and adversely affected.

***Our services may not be generally accepted by our users. If we are unable to provide good customer service, our business and reputation may be materially and adversely affected.***

We aim to provide users with a good customer service experience, including by providing our users with access to a full suite of services conveniently through our mobile application and vehicle applications. In addition, we seek to engage with our users on an ongoing basis using online and offline channels, in ways which are non-traditional for automakers. We cannot assure you that our services, including our energy package and service package, or our efforts to engage with our users using both our online and offline channels, will be successful, which could impact our revenues as well as our customer satisfaction and marketing.

Our servicing will primarily be carried out through third parties certified by us. Although such servicing partners may have experience in servicing other vehicles, we and such partners have very limited experience in servicing our vehicles. Servicing electric vehicles is different from servicing ICE vehicles and requires specialized skills, including high voltage training and servicing techniques. There can be no assurance that our service arrangements will adequately address the service requirements of our users to their satisfaction, or that we and our partners will have sufficient resources to meet these service requirements in a timely manner as the volume of vehicles we deliver increases.

In addition, if we are unable to roll out and establish a widespread service network, user satisfaction could be adversely affected, which in turn could materially and adversely affect our sales, results of operations and prospects.

***We have received only a limited number of reservations for the ES8 and the ES6, all of which are subject to cancellation.***

Intention orders and reservations for our vehicles are subject to cancellation by the customer until delivery of the vehicle. We have experienced cancellations in the past. Notwithstanding the non-refundable deposits we charge for the reservations, our users may still cancel their reservations for many reasons outside of our control, in certain cases even after they have paid deposits with such reservations. The potentially long wait from the time a reservation is made until the time the vehicle is delivered could also impact user decisions on whether to ultimately make a purchase, due to potential changes in preferences, competitive developments and other factors. If we encounter delays in the introduction of the ES8, ES6 or future vehicles, we believe that a significant number of reservations may be cancelled. As a result, no assurance can be made that reservations will not be cancelled and will ultimately result in the final purchase, delivery, and sale of the vehicle. Such cancellations could harm our financial condition, business, prospects and operating results.



***The automotive market is highly competitive, and we may not be successful in competing in this industry.***

The China automotive market is highly competitive. We have strategically entered into this market in the premium EV segment and we expect this segment will become more competitive in the future as additional players enter into this segment. We compete with international competitors, including Tesla. Our vehicles also compete with ICE vehicles in the premium segment. Many of our current and potential competitors, particularly international competitors, have significantly greater financial, technical, manufacturing, marketing and other resources than we do and may be able to devote greater resources to the design, development, manufacturing, distribution, promotion, sale and support of their products. We expect competition in our industry to intensify in the future in light of increased demand and regulatory push for alternative fuel vehicles, continuing globalization and consolidation in the worldwide automotive industry. Factors affecting competition include, among others, product quality and features, innovation and development time, pricing, reliability, safety, fuel economy, customer service and financing terms. Increased competition may lead to lower vehicle unit sales and increased inventory, which may result in downward price pressure and adversely affect our business, financial condition, operating results and prospects. Our ability to successfully compete in our industry will be fundamental to our future success in existing and new markets and our market share. There can be no assurance that we will be able to compete successfully in our markets. If our competitors introduce new cars or services that successfully compete with or surpass the quality or performance of our cars or services at more competitive prices, we may be unable to satisfy existing customers or attract new customers at the prices and levels that would allow us to generate attractive rates of return on our investment.

Furthermore, as the company with the first-to-market and only premium EV volume-manufactured domestically in China, we believe we have a multi-year lead time in terms of product delivery ahead of our domestic and international competitors in China's premium EV segment. However, if such competitors begin making deliveries earlier than expected, our competitive advantage could be adversely affected.

We may also be affected by the growth of the overall China automotive market. While sales of electric vehicles in China increased in 2018, overall automobile sales in China declined 2.8% during the year. If demand for automobiles in China continues to decrease, our business, results of operations and financial condition could be materially adversely affected.

***Our industry and its technology are rapidly evolving and may be subject to unforeseen changes. Developments in alternative technologies or improvements in the internal combustion engine may materially and adversely affect the demand for our electric vehicles.***

We operate in China's electric vehicle market, which is rapidly evolving and may not develop as we anticipate. The regulatory framework governing the industry is currently uncertain and may remain uncertain for the foreseeable future. As our industry and our business develop, we may need to modify our business model or change our services and solutions. These changes may not achieve expected results, which could have a material adverse effect on our results of operations and prospects.

Furthermore, we may be unable to keep up with changes in electric vehicle technology and, as a result, our competitiveness may suffer. Our research and development efforts may not be sufficient to adapt to changes in electric vehicle technology. As technologies change, we plan to upgrade or adapt our vehicles and introduce new models in order to provide vehicles with the latest technology, in particular battery cell technology, which could involve substantial costs and lower our return on investment for existing vehicles. There can be no assurance that we will be able to compete effectively with alternative vehicles or source and integrate the latest technology into our vehicles, against the backdrop of our rapidly evolving industry. Even if we are able to keep pace with changes in technology and develop new models, our prior models could become obsolete more quickly than expected, potentially reducing our return on investment.

Developments in alternative technologies, such as advanced diesel, ethanol, fuel cells or compressed natural gas, or improvements in the fuel economy of the internal combustion engine, may materially and adversely affect our business and prospects in ways we do not currently anticipate. For example, fuel which is abundant and relatively inexpensive in China, such as compressed natural gas, may emerge as consumers' preferred alternative to petroleum based propulsion. Any failure by us to successfully react to changes in existing technologies could materially harm our competitive position and growth prospects.

***We may be unable to adequately control the costs associated with our operations.***

We have required significant capital to develop and grow our business, including developing our first and second volume manufactured vehicles, the ES8 and the ES6, as well as building our brand. We expect to incur significant costs which will impact our profitability, including research and development expenses as we roll out new models and improve existing models, raw material procurement costs and selling and distribution expenses as we build our brand and market our vehicles. In addition, we may incur significant costs in connection with our services, including providing charging solutions and honoring our commitments under our service package. Our ability to become profitable in the future will not only depend on our ability to successfully market our vehicles and other products and services but also to control our costs. If we are unable to cost efficiently design, manufacture, market, sell and distribute and service our vehicles and services, our margins, profitability and prospects will be materially and adversely affected.

***We could experience cost increases or disruptions in supply of raw materials or other components used in our vehicles.***

We incur significant costs related to procuring raw materials required to manufacture and assemble our vehicles. We use various raw materials in our vehicles including aluminum, steel, carbon fiber, non-ferrous metals such as copper, lithium, nickel as well as cobalt. The prices for these raw materials fluctuate depending on factors beyond our control, including market conditions and global demand for these materials, and could adversely affect our business and operating results. Our business also depends on the continued supply of battery cells for our vehicles. Battery cell manufacturers may refuse to supply electric vehicle manufacturers to the extent they determine that the vehicles are not sufficiently safe. We are exposed to multiple risks relating to availability and pricing of quality lithium-ion battery cells. These risks include:

- the inability or unwillingness of current battery cell manufacturers to build or operate battery cell manufacturing plants to supply the numbers of lithium-ion cells required to support the growth of the electric or plug-in hybrid vehicle industry as demand for such cells increases;
- disruption in the supply of cells due to quality issues or recalls by the battery cell manufacturers; and
- an increase in the cost of raw materials, such as lithium, nickel and cobalt, used in lithium-ion cells.

Furthermore, currency fluctuations, tariffs or shortages in petroleum and other economic or political conditions may result in significant increases in freight charges and raw material costs. Substantial increases in the prices for our raw materials or components would increase our operating costs, and could reduce our margins. In addition, a growth in popularity of electric vehicles without a significant expansion in battery cell production capacity could result in shortages which would result in increased costs in raw materials to us or impact of prospects.

***We are dependent on our suppliers, many of whom are our single source suppliers for the components they supply.***

Both the ES8 and ES6 use over 1,700 purchased parts which we source from over 160 suppliers, many of whom are currently our single source suppliers for these components, and we expect that this will be similar for any future vehicle we may produce. The supply chain exposes us to multiple potential sources of delivery failure or component shortages. While we obtain components from multiple sources whenever possible, similar to other automobile manufacturers, many of the components used in our vehicles are purchased by us from a single source. To date, we have not qualified alternative sources for most of the single sourced components used in our vehicles and we generally do not maintain long-term agreements with our single source suppliers. For example, while several sources of the battery cell we have selected for the ES8 are available, we have fully qualified only one supplier for these cells.

Furthermore, qualifying alternative suppliers or developing our own replacements for certain highly customized components of the ES8 and ES6, such as the air suspension system and the steering system, may be time-consuming and costly. Any disruption in the supply of components, whether or not from a single source supplier, could temporarily disrupt production of our vehicles until an alternative supplier is fully qualified by us or is otherwise able to supply us the required material. There can be no assurance that we would be able to successfully retain alternative suppliers or supplies on a timely basis, on acceptable terms or at all. Changes in business conditions, force majeure, governmental changes and other factors beyond our control or which we do not presently anticipate, could also affect our suppliers' ability to deliver components to us on a timely basis. Any of the foregoing could materially and adversely affect our results of operations, financial condition and prospects.

***Our business and prospects depend significantly on our ability to build our NIO brand. We may not succeed in continuing to establish, maintain and strengthen the NIO brand, and our brand and reputation could be harmed by negative publicity regarding our company or products.***

Our business and prospects are heavily dependent on our ability to develop, maintain and strengthen the “NIO” brand. If we do not continue to establish, maintain and strengthen our brand, we may lose the opportunity to build a critical mass of customers. Promoting and positioning our brand will likely depend significantly on our ability to provide high quality vehicles and services and engage with our customers as intended and we have limited experience in these areas. In addition, we expect that our ability to develop, maintain and strengthen the NIO brand will depend heavily on the success of our user development and branding efforts. Such efforts mainly include building a community of online and offline users engaged with us through our mobile application and NIO Houses as well as other branding initiatives such as our annual NIO Day, NIO Formula E Team, or Formula E team, and other automotive shows and events. Such efforts may be non-traditional and may not achieve the desired results. To promote our brand, we may be required to change our user development and branding practices, which could result in substantially increased expenses, including the need to use traditional media such as television, radio and print. If we do not develop and maintain a strong brand, our business, prospects, financial condition and operating results will be materially and adversely impacted.

In addition, if incidents occur or are perceived to have occurred, whether or not such incidents are our fault, we could be subject to adverse publicity. In particular, given the popularity of social media, including WeChat/Weixin in China, any negative publicity, whether true or not, could quickly proliferate and harm consumer perceptions and confidence in our brand. Furthermore, there is the risk of potential adverse publicity related to our manufacturing or other partners, whether or not such publicity related to their collaboration with us. Our ability to successfully position our brand could also be adversely affected by perceptions about the quality of our partners’ vehicles.

In addition, from time to time, our vehicles are evaluated and reviewed by third parties. Any negative reviews or reviews which compare us unfavorably to competitors could adversely affect consumer perception about our vehicles.

***Our business depends substantially on the continuing efforts of our executive officers, key employees and qualified personnel, and our operations may be severely disrupted if we lose their services.***

Our success depends substantially on the continued efforts of our executive officers and key employees. If one or more of our executive officers or key employees were unable or unwilling to continue their services with us, we might not be able to replace them easily, in a timely manner, or at all. As we build our brand and become more well-known, the risk that competitors or other companies may poach our talent increases. Our industry is characterized by high demand and intense competition for talent and therefore we cannot assure you that we will be able to attract or retain qualified staff or other highly skilled employees. In addition, because our electric vehicles are based on a different technology platform than traditional ICE vehicles, individuals with sufficient training in electric vehicles may not be available to hire, and we will need to expend significant time and expense training the employees we hire. We also require sufficient talent in areas such as software development. Furthermore, as our company is relatively young, our ability to train and integrate new employees into our operations may not meet the growing demands of our business, which may materially and adversely affect our ability to grow our business and our results of operations.

If any of our executive officers and key employees terminates his or her services with us, our business may be severely disrupted, our financial condition and results of operations may be materially and adversely affected and we may incur additional expenses to recruit, train and retain qualified personnel. We have not obtained any “key person” insurance on our key personnel. If any of our executive officers or key employees joins a competitor or forms a competing company, we may lose customers, know-how and key professionals and staff members. Each of our executive officers and key employees has entered into an employment agreement and a non-compete agreement with us. However, if any dispute arises between our executive officers or key employees and us, the non-competition provisions contained in their non-compete agreements may not be enforceable, especially in China, where these executive officers reside, on the ground that we have not provided adequate compensation to them for their non-competition obligations, which is required under relevant PRC laws.

*Our future growth is dependent on the demand for, and upon consumers' willingness to adopt, electric vehicles.*

Demand for automobile sales depends to a large extent on general, economic, political and social conditions in a given market and the introduction of new vehicles and technologies. As our business grows, economic conditions and trends will impact our business, prospects and operating results as well.

Demand for our electric vehicles may also be affected by factors directly impacting automobile prices or the cost of purchasing and operating automobiles, such as sales and financing incentives, prices of raw materials and parts and components, cost of fuel and governmental regulations, including tariffs, import regulation and other taxes. Volatility in demand may lead to lower vehicle unit sales, which may result in further downward price pressure and adversely affect our business, prospects, financial condition and operating results.

In addition, the demand for our vehicles and services will highly depend upon the adoption by consumers of new energy vehicles in general and electric vehicles in particular. The market for new energy vehicles is still rapidly evolving, characterized by rapidly changing technologies, competitive pricing and competitive factors, evolving government regulation and industry standards and changing consumer demands and behaviors.

Other factors that may influence the adoption of alternative fuel vehicles, and specifically electric vehicles, include:

- perceptions about electric vehicle quality, safety, design, performance and cost, especially if adverse events or accidents occur that are linked to the quality or safety of electric vehicles, whether or not such vehicles are produced by us or other manufacturers;
- perceptions about vehicle safety in general, in particular safety issues that may be attributed to the use of advanced technology, including electric vehicle and regenerative braking systems;
- the limited range over which electric vehicles may be driven on a single battery charge and the speed at which batteries can be recharged;
- the decline of an electric vehicle's range resulting from deterioration over time in the battery's ability to hold a charge;
- concerns about electric grid capacity and reliability;
- the availability of new energy vehicles, including plug-in hybrid electric vehicles;
- improvements in the fuel economy of the internal combustion engine;
- the availability of service for electric vehicles;
- the environmental consciousness of consumers;
- access to charging stations, standardization of electric vehicle charging systems and consumers' perceptions about convenience and cost to charge an electric vehicle;
- the availability of tax and other governmental incentives to purchase and operate electric vehicles or future regulation requiring increased use of nonpolluting vehicles;

- perceptions about and the actual cost of alternative fuel; and
- macroeconomic factors.

Any of the factors described above may cause current or potential customers not to purchase our electric vehicles and use our services. If the market for electric vehicles does not develop as we expect or develops more slowly than we expect, our business, prospects, financial condition and operating results will be affected.

***We depend on revenue generated from a single model of vehicle and in the foreseeable future will be significantly dependent on a limited number of models.***

Our business currently depends substantially on the sales and success of a limited number of models that we have launched. Historically, automobile customers have come to expect a variety of vehicle models offered in a manufacturer's fleet and new and improved vehicle models to be introduced frequently. In order to meet these expectations, we plan in the future to introduce on a regular basis new vehicle models as well as enhance versions of existing vehicle models. To the extent our product variety and cycles do not meet consumer expectations, or cannot be produced on our projected timelines and cost and volume targets, our future sales may be adversely affected. Given that for the foreseeable future our business will depend on a single or limited number of models, to the extent a particular model is not well-received by the market, our sales volume could be materially and adversely affected. This could have a material adverse effect on our business, prospects, financial condition and operating results.

***We are subject to risks related to customer credit.***

We currently provide our users with the option of a battery payment arrangement, where users can make battery payments in installments. For the ES8 ordered before January 15, 2019, there is an RMB100,000 reduction in the purchase price and users adopting this arrangement pay RMB1,280 per month, payable over 78 months. For the ES8 and ES6 ordered after January 16, 2019, there is an RMB100,000 reduction in the purchase price and users adopting this arrangement pay RMB1,660 per month, payable over 60 months. We are exposed to the creditworthiness of our users since we expect them to make monthly payments for vehicle batteries under the battery payment arrangement. To the extent our users fail to make payments on-time, our results of operations may be adversely affected.

***We may become subject to product liability claims, which could harm our financial condition and liquidity if we are not able to successfully defend or insure against such claims.***

We may become subject to product liability claims, which could harm our business, prospects, operating results and financial condition. The automotive industry experiences significant product liability claims and we face inherent risk of exposure to claims in the event our vehicles do not perform as expected or malfunction resulting in property damage, personal injury or death. Our risks in this area are particularly pronounced given we have limited field experience of our vehicles. A successful product liability claim against us could require us to pay a substantial monetary award. Moreover, a product liability claim could generate substantial negative publicity about our vehicles and business and inhibit or prevent commercialization of our future vehicle candidates which would have a material adverse effect on our brand, business, prospects and operating results. Any insurance coverage might not be sufficient to cover all potential product liability claims. Any lawsuit seeking significant monetary damages may have a material adverse effect on our reputation, business and financial condition.

***Our vehicles are subject to motor vehicle standards and the failure to satisfy such mandated safety standards would have a material adverse effect on our business and operating results.***

All vehicles sold must comply with various standards of the market where the vehicles were sold. In China vehicles must meet or exceed all mandated safety standards. Rigorous testing and the use of approved materials and equipment are among the requirements for achieving such standards. Vehicles must pass various tests and undergo a certification process and be affixed with the CCC certification, before receiving delivery from the factory, being sold, or being used in any commercial activity, and such certification is also subject to periodic renewal. The seven-seater ES8 and the six-seater ES6 received the CCC certification in December 2017 and January 2019, separately. The ES6 has not yet undergone the CCC certification but must be certified in the future prior to mass production. The process of obtaining the CCC certification typically requires four to five months. We plan to complete this process and obtain the CCC certification for the ES6 in April 2019. Furthermore, the government carries out the supervision and scheduled and unscheduled inspection of certified vehicles on a regular basis. In the event that our certification fails to be renewed upon expiry, a certified vehicle has a defect resulting in quality or safety accidents, or consistent failure of certified vehicles to comply with certification requirements is discovered during follow-up inspections, the CCC may be suspended or even revoked. With effect from the date of revocation or during suspension of the CCC, any vehicle that fails to satisfy the requirements for certification may not continue to be delivered, sold, imported or used in any commercial activity. Failure by us to have the ES8, the ES6 or any future model electric vehicle satisfy motor vehicle standards would have a material adverse effect on our business and operating results.

***We may be subject to risks associated with autonomous driving technology.***

Through NIO Pilot, we will provide enhanced Level 2 autonomous driving functionalities, and through our research and development, we plan to update and improve our autonomous driving technology. Autonomous driving technologies are subject to risks and from time to time there have been accidents associated with such technologies. For example, in March 2018, Tesla indicated that its autopilot system was engaged at the time of a fatal accident and an Uber Technologies Inc. self-driving vehicle struck a pedestrian leading to a fatality. The safety of such technologies depends in part on user interaction and users may not be accustomed to using such technologies. To the extent accidents associated with our autonomous driving systems occur, we could be subject to liability, government scrutiny and further regulation. Any of the foregoing could materially and adversely affect our results of operations, financial condition and growth prospects.

***We may be compelled to undertake product recalls or take other actions, which could adversely affect our brand image and financial performance.***

If our vehicles are subject to recalls in the future, we may be subject to adverse publicity, damage to our brand and liability for costs. In the future, we may at various times, voluntarily or involuntarily, initiate a recall if any of our vehicles, including any systems or parts sourced from our suppliers, prove to be defective or non-compliant with applicable laws and regulations. Such recalls, whether voluntary or involuntary or caused by systems or components engineered or manufactured by us or our suppliers, could involve significant expense and could adversely affect our brand image in our target markets, as well as our business, prospects, financial condition and results of operations.

***Our distribution model is different from the predominant current distribution model for automobile manufacturers, which makes evaluating our business, operating results and future prospects difficult.***

Our distribution model is not common in the automotive industry today, particularly in China. We plan to conduct vehicle sales directly to users rather than through dealerships, primarily through our mobile application and NIO Houses. Furthermore, generally all vehicles are made to order. This model of vehicle distribution is relatively new and unproven, especially in China, and subjects us to substantial risk as it requires, in the aggregate, significant expenditures and provides for slower expansion of our distribution and sales systems than may be possible by utilizing the traditional dealer franchise system. For example, we will not be able to utilize long established sales channels developed through a franchise system to increase our sales volume. Moreover, we will be competing with companies with well established distribution channels. Our success will depend in large part on our ability to effectively develop our own sales channels and marketing strategies. Implementing our business model is subject to numerous significant challenges, including obtaining permits and approvals from government authorities, and we may not be successful in addressing these challenges.

The lead time in fulfilling our orders could lead to cancelled orders. Our aim is in the future to manufacture vehicles within 21-28 days from the order date. If we are unable to achieve these targets, our customer satisfaction could be adversely affected, harming our business and reputation.

***Our financial results may vary significantly from period-to-period due to the seasonality of our business and fluctuations in our operating costs.***

Our operating results may vary significantly from period-to-period due to many factors, including seasonal factors that may have an effect on the demand for our electric vehicles. Demand for new cars in the automotive industry in general typically decline over the winter season, while sales are generally higher during the spring and summer months. Our limited operating history makes it difficult for us to judge the exact nature or extent of the seasonality of our business. Also, any unusually severe weather conditions in some markets may impact demand for our vehicles. Our operating results could also suffer if we do not achieve revenue consistent with our expectations for this seasonal demand because many of our expenses are based on anticipated levels of annual revenue.

We also expect our period-to-period operating results to vary based on our operating costs which we anticipate will increase significantly in future periods as we, among other things, design, develop and manufacture our electric vehicles and electric powertrain components, build and equip new manufacturing facilities to produce such components, open new NIO Houses, increase our sales and marketing activities, and increase our general and administrative functions to support our growing operations.

As a result of these factors, we believe that period-to-period comparisons of our operating results are not necessarily meaningful and that these comparisons cannot be relied upon as indicators of future performance. Moreover, our operating results may not meet expectations of equity research analysts or investors. If this occurs, the trading price of our ADSs could fall substantially either suddenly or over time.

***If our vehicle owners customize our vehicles or change the charging infrastructure with aftermarket products, the vehicle may not operate properly, which may create negative publicity and could harm our business.***

Automobile enthusiasts may seek to “hack” our vehicles to modify their performance which could compromise vehicle safety systems. Also, customers may customize their vehicles with after-market parts that can compromise driver safety. We do not test, nor do we endorse, such changes or products. In addition, the use of improper external cabling or unsafe charging outlets can expose our customers to injury from high voltage electricity. Such unauthorized modifications could reduce the safety of our vehicles and any injuries resulting from such modifications could result in adverse publicity which would negatively affect our brand and harm our business, prospects, financial condition and operating results.

***Our business plans require a significant amount of capital. In addition, our future capital needs may require us to sell additional equity or debt securities that may dilute our shareholders or introduce covenants that may restrict our operations or our ability to pay dividends.***

We will need significant capital to, among other things, conduct research and development and expand our production capacity as well as roll out our charging and servicing network and our NIO Houses. As we ramp up our production capacity and operations we may also require significant capital to maintain our property, plant and equipment and such costs may be greater than anticipated. We currently estimate that our capital expenditures for the next three years, including for research and development and the expansion of our sales and service networks, will be approximately US\$1.7 billion, with approximately US\$600 million incurred over the twelve months starting from January 2019. We expect that our level of capital expenditures will be significantly affected by user demand for our products and services. The fact that we have a limited operating history means we have limited historical data on the demand for our products and services. As a result, our future capital requirements may be uncertain and actual capital requirements may be different from those we currently anticipate. We plan to seek equity or debt financing to finance a portion of our capital expenditures. Such financing might not be available to us in a timely manner or on terms that are acceptable, or at all.

Our ability to obtain the necessary financing to carry out our business plan is subject to a number of factors, including general market conditions and investor acceptance of our business plan. These factors may make the timing, amount, terms and conditions of such financing unattractive or unavailable to us. If we are unable to raise sufficient funds, we will have to significantly reduce our spending, delay or cancel our planned activities or substantially change our corporate structure. We might not be able to obtain any funding, and we might not have sufficient resources to conduct our business as projected, both of which could mean that we would be forced to curtail or discontinue our operations.

In addition, our future capital needs and other business reasons could require us to sell additional equity or debt securities or obtain a credit facility. The sale of additional equity or equity-linked securities could dilute our shareholders. The incurrence of indebtedness would result in increased debt service obligations and could result in operating and financing covenants that would restrict our operations or our ability to pay dividends to our shareholders.

***We retain certain information about our users and may be subject to various privacy and consumer protection laws.***

We use our vehicles' electronic systems to log information about each vehicle's use, such as charge time, battery usage, mileage and driving behavior, in order to aid us in vehicle diagnostics, repair and maintenance, as well as to help us customize and optimize the driving and riding experience. Our users may object to the use of this data, which may harm our business. Possession and use of our user's driving behavior and data in conducting our business may subject us to legislative and regulatory burdens in China and other jurisdictions that could require notification of any data breach, restrict our use of such information and hinder our ability to acquire new customers or market to existing customers. If users allege that we have improperly released or disclosed their personal information, we could face legal claims and reputational damage. We may incur significant expenses to comply with privacy, consumer protection and security standards and protocols imposed by laws, regulations, industry standards or contractual obligations. If third parties improperly obtain and use the personal information of our users, we may be required to expend significant resources to resolve these problems.

***Failure of information security and privacy concerns could subject us to penalties, damage our reputation and brand, and harm our business and results of operations.***

We face significant challenges with respect to information security and privacy, including the storage, transmission and sharing of confidential information. We transmit and store confidential and private information of our car buyers, such as personal information, including names, accounts, user IDs and passwords, and payment or transaction related information.

We are required by PRC law to ensure the confidentiality, integrity, availability and authenticity of the information of our users, customers and distributors, which is also essential to maintaining their confidence in our vehicles and services. We have adopted strict information security policies and deployed advanced measures to implement the policies, including, among others, advanced encryption technologies. However, advances in technology, an increased level of sophistication and diversity of our products and services, an increased level of expertise of hackers, new discoveries in the field of cryptography or others can still result in a compromise or breach of the measures that we use. If we are unable to protect our systems, and hence the information stored in our systems, from unauthorized access, use, disclosure, disruption, modification or destruction, such problems or security breaches could cause a loss, give rise to our liabilities to the owners of confidential information or even subject us to fines and penalties. In addition, complying with various laws and regulations could cause us to incur substantial costs or require us to change our business practices, including our data practices, in a manner adverse to our business.

In addition, we may need to comply with increasingly complex and rigorous regulatory standards enacted to protect business and personal data in the U.S., Europe and elsewhere. For example, the European Union adopted the General Data Protection Regulation, or the GDPR, which became effective on May 25, 2018. The GDPR imposes additional obligations on companies regarding the handling of personal data and provides certain individual privacy rights to persons whose data is stored. Compliance with existing, proposed and recently enacted laws (including implementation of the privacy and process enhancements called for under GDPR) and regulations can be costly; any failure to comply with these regulatory standards could subject us to legal and reputational risks.

We generally comply with industry standards and are subject to the terms of our own privacy policies. Compliance with any additional laws could be expensive, and may place restrictions on the conduct of our business and the manner in which we interact with our customers. Any failure to comply with applicable regulations could also result in regulatory enforcement actions against us, and misuse of or failure to secure personal information could also result in violation of data privacy laws and regulations, proceedings against us by governmental entities or others, damage to our reputation and credibility and could have a negative impact on revenues and profits.



Significant capital and other resources may be required to protect against information security breaches or to alleviate problems caused by such breaches or to comply with our privacy policies or privacy-related legal obligations. The resources required may increase over time as the methods used by hackers and others engaged in online criminal activities are increasingly sophisticated and constantly evolving. Any failure or perceived failure by us to prevent information security breaches or to comply with privacy policies or privacy-related legal obligations, or any compromise of security that results in the unauthorized release or transfer of personally identifiable information or other customer data, could cause our customers to lose trust in us and could expose us to legal claims. Any perception by the public that online transactions or the privacy of user information are becoming increasingly unsafe or vulnerable to attacks could inhibit the growth of online retail and other online services generally, which may reduce the number of orders we receive.

***Our warranty reserves may be insufficient to cover future warranty claims which could adversely affect our financial performance.***

For the initial owner of the ES8 or ES6, we provide an extended warranty, subject to certain conditions. As required under the relevant PRC law, we also provide (i) a bumper to bumper three-year or 120,000 kilometer warranty, (ii) for critical EV components (battery pack, electrical motors, power electrical unit and vehicle control unit) an eight-year or 120,000 kilometer warranty, and (iii) a two-year or 50,000 kilometer warranty covering vehicle repair, replacement and refund. Our warranty program is similar to other vehicle manufacturer's warranty programs intended to cover all parts and labor to repair defects in material or workmanship in the body, chassis, suspension, interior, electric systems, battery, powertrain and brake system. We plan to record and adjust warranty reserves based on changes in estimated costs and actual warranty costs. However, because we did not start making deliveries of the ES8 until June 2018 and have not begun making deliveries of the ES6, we have little experience with warranty claims regarding our vehicles or with estimating warranty reserves. As of February 28, 2019, we had warranty reserves in respect of our vehicles of RMB197.6 million (US\$28.7 million). We cannot assure you that such reserves will be sufficient to cover future claims. We could, in the future, become subject to a significant and unexpected warranty claims, resulting in significant expenses, which would in turn materially and adversely affect our results of operations, financial condition and prospects.

***We may need to defend ourselves against patent or trademark infringement claims, which may be time-consuming and would cause us to incur substantial costs.***

Companies, organizations or individuals, including our competitors, may hold or obtain patents, trademarks or other proprietary rights that would prevent, limit or interfere with our ability to make, use, develop, sell or market our vehicles or components, which could make it more difficult for us to operate our business. From time to time, we may receive communications from holders of patents or trademarks regarding their proprietary rights. Companies holding patents or other intellectual property rights may bring suits alleging infringement of such rights or otherwise assert their rights and urge us to take licenses. Our applications and uses of trademarks relating to our design, software or artificial intelligence technologies could be found to infringe upon existing trademark ownership and rights. In addition, if we are determined to have infringed upon a third party's intellectual property rights, we may be required to do one or more of the following:

- cease selling, incorporating certain components into, or using vehicles or offering goods or services that incorporate or use the challenged intellectual property;
- pay substantial damages;
- seek a license from the holder of the infringed intellectual property right, which license may not be available on reasonable terms or at all;
- redesign our vehicles or other goods or services; or
- establish and maintain alternative branding for our products and services.

In the event of a successful claim of infringement against us and our failure or inability to obtain a license to the infringed technology or other intellectual property right, our business, prospects, operating results and financial condition could be materially and adversely affected. In addition, any litigation or claims, whether or not valid, could result in substantial costs, negative publicity and diversion of resources and management attention.

***We may not be able to prevent others from unauthorized use of our intellectual property, which could harm our business and competitive position.***

We regard our trademarks, service marks, patents, domain names, trade secrets, proprietary technologies and similar intellectual property as critical to our success. We rely on trademark and patent law, trade secret protection and confidentiality and license agreements with our employees and others to protect our proprietary rights.

We have invested significant resources to develop our own intellectual property. Failure to maintain or protect these rights could harm our business. In addition, any unauthorized use of our intellectual property by third parties may adversely affect our current and future revenues and our reputation.

Implementation and enforcement of PRC intellectual property-related laws have historically been deficient and ineffective. Accordingly, protection of intellectual property rights in China may not be as effective as in the United States or other countries with more developed intellectual property laws. Furthermore, policing unauthorized use of proprietary technology is difficult and expensive. We rely on a combination of patent, copyright, trademark and trade secret laws and restrictions on disclosure to protect our intellectual property rights. Despite our efforts to protect our proprietary rights, third parties may attempt to copy or otherwise obtain and use our intellectual property or seek court declarations that they do not infringe upon our intellectual property rights. Monitoring unauthorized use of our intellectual property is difficult and costly, and we cannot assure you that the steps we have taken or will take will prevent misappropriation of our intellectual property. From time to time, we may have to resort to litigation to enforce our intellectual property rights, which could result in substantial costs and diversion of our resources.

***As our patents may expire and may not be extended, our patent applications may not be granted and our patent rights may be contested, circumvented, invalidated or limited in scope, our patent rights may not protect us effectively. In particular, we may not be able to prevent others from developing or exploiting competing technologies, which could have a material and adverse effect on our business operations, financial condition and results of operations.***

As of February 28, 2019, we had 1,535 issued patents and 2,594 patent applications pending. For our pending application, we cannot assure you that we will be granted patents pursuant to our pending applications. Even if our patent applications succeed and we are issued patents in accordance with them, it is still uncertain whether these patents will be contested, circumvented or invalidated in the future. In addition, the rights granted under any issued patents may not provide us with meaningful protection or competitive advantages. The claims under any patents that issue from our patent applications may not be broad enough to prevent others from developing technologies that are similar or that achieve results similar to ours. The intellectual property rights of others could also bar us from licensing and exploiting any patents that issue from our pending applications. Numerous patents and pending patent applications owned by others exist in the fields in which we have developed and are developing our technology. These patents and patent applications might have priority over our patent applications and could subject our patent applications to invalidation. Finally, in addition to those who may claim priority, any of our existing or pending patents may also be challenged by others on the basis that they are otherwise invalid or unenforceable.

***We have limited insurance coverage, which could expose us to significant costs and business disruption.***

We have limited liability insurance coverage for our products and business operations. A successful liability claim against us due to injuries suffered by our users could materially and adversely affect our financial condition, results of operations and reputation. In addition, we do not have any business disruption insurance. Any business disruption event could result in substantial cost to us and diversion of our resources.

***We have a significant amount of debt, including our convertible senior notes, that are senior in capital structure and cash flow, respectively, to our shareholders. Satisfying the obligations relating to our debt could adversely affect the amount or timing of distributions to our shareholders or result in dilution.***

As of February 28, 2019, we had approximately US\$1,080.9 million in total long-term liabilities outstanding, consisting primarily of US\$750.0 million in principal that remains outstanding under our 4.50% convertible senior notes due 2024, or the 2024 Notes, and RMB1,489.1 million (US\$216.6 million) in bank debt.

The 2024 Notes are unsecured debt and are not redeemable by us prior to the maturity date except for certain changes in tax law. In accordance with the indenture governing the 2024 Notes, or the Indenture, holders of the 2024 Notes may require us to purchase all or any portion of their notes on February 1, 2022 at a repurchase price equal to 100% of the principal amount of the 2024 Notes to be repurchased, plus accrued and unpaid interest. Holders of the 2024 Notes may also require us, upon a fundamental change (as defined in the Indenture), to repurchase for cash all or part of their 2024 Notes at a fundamental change repurchase price equal to 100% of the principal amount of the 2024 Notes to be repurchased, plus accrued and unpaid interest. Satisfying the obligations of the 2024 Notes could adversely affect the amount or timing of any distributions to our shareholders. We may choose to satisfy, repurchase, or refinance the 2024 Notes through public or private equity or debt financings if we deem such financings available on favorable terms. If we do not have adequate cash available or cannot obtain additional financing, or our use of cash is restricted by applicable law, regulations or agreements governing our current or future indebtedness, we may not be able to repurchase the 2024 Notes when required under the Indenture, which would constitute an event of default under the Indenture. An event of default under the Indenture could also lead to a default under other agreements governing our current and future indebtedness, and if the repayment of such other indebtedness were accelerated, we may not have sufficient funds to repay the indebtedness and repurchase the 2024 Notes or make cash payments upon conversion of the 2024 Notes.

In addition, the holders of the 2024 Notes may convert their notes to a number of our ADSs at their option at any time prior to the close of business on the second business day immediately preceding the maturity date pursuant to the Indenture. The 2024 Notes that are converted in connection with a make-whole fundamental change (as defined in the Indenture) may be entitled to an increase in the conversion rate for such 2024 Notes. Any conversion will result in immediate dilution to the ownership interests of existing shareholders and such dilution could be material.

***We may seek to obtain future financing through the issuance of debt or equity, which may have an adverse effect on our shareholders or may otherwise adversely affect our business.***

If we raise funds through the issuance of additional equity or debt, including convertible debt or debt secured by some or all of our assets, holders of any debt securities or preferred shares issued will have rights, preferences and privileges senior to those of holders of our ordinary shares in the event of liquidation. The terms of the 2024 Notes do not restrict our ability to issue additional debt. If additional debt is issued, there is a possibility that once all senior claims are settled, there may be no assets remaining to pay out to the holders of ordinary shares. In addition, if we raise funds through the issuance of additional equity, whether through private placements or public offerings, such an issuance would dilute ownership of our current shareholders that do not participate in the issuance. If we are unable to obtain any needed additional funding, we may be required to reduce the scope of, delay, or eliminate some or all of, our planned research, development, manufacturing and marketing activities, any of which could materially harm our business.

Furthermore, the terms of any additional debt securities we may issue in the future may impose restrictions on our operations, which may include limiting our ability to incur additional indebtedness, pay dividends on or repurchase our share capital, or make certain acquisitions or investments. In addition, we may be subject to covenants requiring us to satisfy certain financial tests and ratios, and our ability to satisfy such covenants may be affected by events outside of our control.

***The terms of the 2024 Notes could delay or prevent an attempt to take over our company.***

The terms of the 2024 Notes require us to repurchase the 2024 Notes in the event of a fundamental change. A takeover of our company would constitute a fundamental change. This could have the effect of delaying or preventing a takeover of our company that may otherwise be beneficial to our shareholders.

***We are or may be subject to risks associated with strategic alliances or acquisitions.***

We have entered into and may in the future enter into strategic alliances, including joint ventures or minority equity investments, with various third parties to further our business purpose from time to time. These alliances could subject us to a number of risks, including risks associated with sharing proprietary information, non-performance by the third party and increased expenses in establishing new strategic alliances, any of which may materially and adversely affect our business. We may have limited ability to monitor or control the actions of these third parties and, to the extent any of these strategic third parties suffers negative publicity or harm to their reputation from events relating to their business, we may also suffer negative publicity or harm to our reputation by virtue of our association with any such third party.

In addition, although we have no current acquisition plans, if appropriate opportunities arise, we may acquire additional assets, products, technologies or businesses that are complementary to our existing business. In addition to possible shareholder approval, we may have to obtain approvals and licenses from relevant government authorities for the acquisitions and to comply with any applicable PRC laws and regulations, which could result in increased delay and costs, and may derail our business strategy if we fail to do so. Furthermore, past and future acquisitions and the subsequent integration of new assets and businesses into our own require significant attention from our management and could result in a diversion of resources from our existing business, which in turn could have an adverse effect on our operations. Acquired assets or businesses may not generate the financial results we expect. Acquisitions could result in the use of substantial amounts of cash, potentially dilutive issuances of equity securities, the occurrence of significant goodwill impairment charges, amortization expenses for other intangible assets and exposure to potential unknown liabilities of the acquired business. Moreover, the costs of identifying and consummating acquisitions may be significant.

***If we fail to manage our growth effectively, we may not be able to market and sell our vehicles successfully.***

We have expanded our operations, and as we ramp up our production, further significant expansion will be required, especially in connection with potential increased sales, providing our users with high-quality servicing, providing charging solutions, expansion of our NIO House network and managing different models of vehicles. Our future operating results depend to a large extent on our ability to manage this expansion and growth successfully. Risks that we face in undertaking this expansion include, among others:

- managing a larger organization with a greater number of employees in different divisions;
- controlling expenses and investments in anticipation of expanded operations;
- establishing or expanding design, manufacturing, sales and service facilities;
- implementing and enhancing administrative infrastructure, systems and processes; and
- addressing new markets and potentially unforeseen challenges as they arise.

Any failure to manage our growth effectively could materially and adversely affect our business, prospects, results of operations and financial condition.

***We have granted, and may continue to grant options and other types of awards under our share incentive plan, which may result in increased share-based compensation expenses.***

We adopted share incentive plans in 2015, 2016, 2017 and 2018, which we refer to as the 2015 Plan, the 2016 Plan, the 2017 Plan and the 2018 Plan, respectively, in this annual report, for the purpose of granting share-based compensation awards to employees, directors and consultants to incentivize their performance and align their interests with ours. The 2018 Plan became effective as of January 1, 2019. We recognize expenses in our consolidated statement of income in accordance with U.S. GAAP. Under our share incentive plans, we are authorized to grant options and other types of awards. Under the 2015 Plan, the 2016 Plan and the 2017 Plan, the maximum numbers of Class A ordinary shares which may be issued pursuant to all awards are 46,264,378, 18,000,000 and 33,000,000, respectively. Under the 2018 Plan, a maximum number of 23,000,000 Class A ordinary shares may be issued pursuant to all awards. This amount should automatically increase each year by the number of shares representing 1.5% of the then total issued and outstanding share capital of our company as of the end of each preceding year. As of December 31, 2018, awards to purchase an aggregate amount of 91,074,140 Class A ordinary shares under the 2015 Plan, the 2016 Plan and the 2017 Plan had been granted and were outstanding, excluding awards that were forfeited or cancelled after the relevant grant dates. As of December 31, 2018, our unrecognized share-based compensation expenses amounted to RMB73.0 million (US\$10.6 million).

We believe the granting of share-based awards is of significant importance to our ability to attract and retain key personnel and employees, and we will continue to grant share-based compensation to employees in the future. As a result, our expenses associated with share-based compensation may increase, which may have an adverse effect on our results of operations.

Furthermore, perspective candidates and existing employees often consider the value of the equity awards they receive in connection with their employment. Thus, our ability to attract or retain highly skilled employees may be adversely affected by declines in the perceived value of our equity or equity awards. Furthermore, there are no assurances that the number of shares reserved for issuance under our share incentive plans will be sufficient to grant equity awards adequate to recruit new employees and to compensate existing employees.

***If we fail to maintain an effective system of internal control over financial reporting, we may be unable to accurately report our financial results or prevent fraud, and investor confidence in our company and the market price of our ADSs may be adversely affected.***

Prior to the initial public offering of our ADSs on the New York Stock Exchange in September 2018, we were a private company with limited accounting personnel and other resources with which to address our internal controls and procedures. Effective internal control over financial reporting is necessary for us to provide reliable financial reports and, together with adequate disclosure controls and procedures, are designed to prevent fraud.

Our internal controls relating to financial reporting have not kept pace with the expansion of our business. Our financial reporting function and system of internal controls are less developed in certain respects than those of similar companies that operate in fewer or more developed markets and may not provide our management with as much or as accurate or timely information. The U.S. Public Company Accounting Oversight Board, or the PCAOB, has defined a material weakness as “a deficiency, or a combination of deficiencies in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the annual or interim statements will not be prevented or detected on a timely basis.”

Our independent registered public accounting firm has not conducted an audit of our internal control over financial reporting. However, in connection with the preparation and external audit of our consolidated financial statements as of and for the year ended December 31, 2018, we and our independent registered public accounting firm identified one material weakness in our internal control over financial reporting. The material weakness identified was that we do not have sufficient competent financial reporting and accounting personnel with an appropriate understanding of U.S. GAAP to (i) design and implement formal period-end financial reporting policies and procedures to address complex U.S. GAAP technical accounting issues and (ii) prepare and review our consolidated financial statements and related disclosures in accordance with U.S. GAAP and the financial reporting requirements set forth by the Securities and Exchange Commission, or the SEC. The material weakness resulted in a significant number of adjustments and amendments to our consolidated financial statements and related disclosures under U.S. GAAP.

As a result of the identification of this material weakness, we have been taking measures to remedy this control deficiency. However, we can give no assurance that the implementation of these measures will be sufficient to eliminate such material weakness or that material weaknesses or significant deficiencies in our internal control over financial reporting will not be identified in the future. Our failure to implement and maintain effective internal controls over financial reporting could result in errors in our financial statements that could result in a restatement of our financial statements, cause us to fail to meet our reporting obligations and cause investors to lose confidence in our reported financial information, which may result in volatility in and a decline in the market price of the ADSs.

As a public company, we are subject to the Sarbanes-Oxley Act of 2002. Section 404 of the Sarbanes-Oxley Act, or Section 404, will require that we include a report from management on the effectiveness of our internal control over financial reporting in our annual report on Form 20-F beginning with our annual report for the fiscal year ending December 31, 2019. In addition, once we cease to be an “emerging growth company” as such term is defined in the JOBS Act, our independent registered public accounting firm must attest to and report on the effectiveness of our internal control over financial reporting. Our management may conclude that our internal control over financial reporting is not effective. Moreover, even if our management concludes that our internal control over financial reporting is effective, our independent registered public accounting firm, after conducting its own independent testing, may issue a report that is qualified if it is not satisfied with our internal controls or the level at which our controls are documented, designed, operated or reviewed, or if it interprets the relevant requirements differently from us. In addition, as we have become a public company, our reporting obligations may place a significant strain on our management, operational and financial resources and systems for the foreseeable future. We may be unable to timely complete our evaluation testing and any required remediation.

During the course of documenting and testing our internal control procedures, in order to satisfy the requirements of Section 404, we may identify other weaknesses and deficiencies in our internal control over financial reporting. In addition, if we fail to maintain the adequacy of our internal control over financial reporting, as these standards are modified, supplemented or amended from time to time, we may not be able to conclude on an ongoing basis that we have effective internal control over financial reporting in accordance with Section 404. If we fail to achieve and maintain an effective internal control environment, we could suffer material misstatements in our financial statements and fail to meet our reporting obligations, which would likely cause investors to lose confidence in our reported financial information. This could in turn limit our access to capital markets, harm our results of operations, and lead to a decline in the trading price of our ADSs. Additionally, ineffective internal control over financial reporting could expose us to increased risk of fraud or misuse of corporate assets and subject us to potential delisting from the stock exchange on which we list, regulatory investigations and civil or criminal sanctions. We may also be required to restate our financial statements from prior periods.

***If our suppliers fail to use ethical business practices and comply with applicable laws and regulations, our brand image could be harmed due to negative publicity.***

Our core values, which include developing high quality electric vehicles while operating with integrity, are an important component of our brand image, which makes our reputation sensitive to allegations of unethical business practices. We do not control our independent suppliers or their business practices. Accordingly, we cannot guarantee their compliance with ethical business practices, such as environmental responsibilities, fair wage practices, and compliance with child labor laws, among others. A lack of demonstrated compliance could lead us to seek alternative suppliers, which could increase our costs and result in delayed delivery of our products, product shortages or other disruptions of our operations.

Violation of labor or other laws by our suppliers or the divergence of an independent supplier’s labor or other practices from those generally accepted as ethical in the markets in which we do business could also attract negative publicity for us and our brand. This could diminish the value of our brand image and reduce demand for our electric vehicles if, as a result of such violation, we were to attract negative publicity. If we, or other manufacturers in our industry, encounter similar problems in the future, it could harm our brand image, business, prospects, results of operations and financial condition.

***If we update our manufacturing equipment more quickly than expected, we may have to shorten the useful lives of any equipment to be retired as a result of any such update, and the resulting acceleration in our depreciation could negatively affect our financial results.***

We and JAC have invested and expect to continue to invest significantly in what we believe is state of the art tooling, machinery and other manufacturing equipment for the product lines where the ES8 is manufactured, and we depreciate the cost of such equipment over their expected useful lives. However, manufacturing technology may evolve rapidly, and we or JAC may decide to update our manufacturing process with cutting-edge equipment more quickly than expected. Moreover, as our engineering and manufacturing expertise and efficiency increase, we or JAC may be able to manufacture our products using less of our installed equipment. The useful life of any equipment that would be retired early as a result would be shortened, causing the depreciation on such equipment to be accelerated, and to the extent we own such equipment, our results of operations could be negatively impacted.

***The construction and operation of our manufacturing facilities are subject to regulatory approvals or filings and may be subject to changes, delays, cost overruns or may not produce expected benefits.***

In 2017, we signed a framework agreement with the Shanghai Jiading government and its authorized investment entity to build and develop our own manufacturing facility in Jiading, Shanghai. Recently, we have agreed with the related contractual parties to cease construction of this planned manufacturing facility and terminate this development project, due to newly issued government policies that allow collaborative manufacturing between traditional automotive manufacturers and companies with a focus on research, development and design of new energy vehicles.

In addition, we are building phase two of our manufacturing facilities in Nanjing. Construction projects of this scale are subject to risks and will require significant capital. Any failure to complete these projects on schedule and within budget could adversely impact our financial condition, production capacity and results of operations. Under PRC law, construction projects are subject to broad and strict government supervision and approval procedures, including but not limited to project approvals and filings, construction land and project planning approvals, environment protection approvals, pollution discharge permits, work safety approvals, fire protection approvals, and the completion of inspection and acceptance by relevant authorities. Some of the construction projects being carried out by us are undergoing necessary approval procedures as required by law. As a result, the relevant entities operating such construction projects may be subject to administrative uncertainty, and construction projects in question may be subject to fines or the suspension of use of such projects. Any of the foregoing could have a material adverse impact on our operations, and we may not be able to find commercially reasonable alternatives.

***Our vehicles make use of lithium-ion battery cells, which have been observed to catch fire or vent smoke and flame.***

The battery packs that we produce make use of lithium-ion cells. On rare occasions, lithium-ion cells can rapidly release the energy they contain by venting smoke and flames in a manner that can ignite nearby materials as well as other lithium-ion cells. While we have designed the battery pack to passively contain any single cell's release of energy without spreading to neighboring cells, a field or testing failure of our vehicles or other battery packs that we produce could occur, which could subject us to lawsuits, product recalls, or redesign efforts, all of which would be time-consuming and expensive. Also, negative public perceptions regarding the suitability of lithium-ion cells for automotive applications or any future incident involving lithium-ion cells such as a vehicle or other fire, even if such incident does not involve our vehicles, could seriously harm our business.

In addition, we store a significant number of lithium-ion cells at our facilities. Any mishandling of battery cells may cause disruption to the operation of our facilities. While we have implemented safety procedures related to the handling of the cells, a safety issue or fire related to the cells could disrupt our operations. Such damage or injury could lead to adverse publicity and potentially a safety recall. Moreover, any failure of a competitor's electric vehicle or energy storage product may cause indirect adverse publicity for us and our products. Such adverse publicity could negatively affect our brand and harm our business, prospects, financial condition and operating results.

***Interruption or failure of our information technology and communications systems could impact our ability to effectively provide our services.***

We aim to provide our users with an innovative suite of services through our mobile application. In addition, our in-car services depend, to a certain extent, on connectivity. The availability and effectiveness of our services depend on the continued operation of our information technology and communications systems. Our systems are vulnerable to damage or interruption from, among other adverse effects, fire, terrorist attacks, natural disasters, power loss, telecommunications failures, computer viruses, computer denial of service attacks or other attempts to harm our systems. Our data centers are also subject to break-ins, sabotage, and intentional acts of vandalism, and to potential disruptions. Some of our systems are not fully redundant, and our disaster recovery planning cannot account for all eventualities. Any problems at our data centers could result in lengthy interruptions in our service. In addition, our products and services are highly technical and complex and may contain errors or vulnerabilities, which could result in interruptions in our services or the failure of our systems.

***We are subject to anti-corruption, anti-bribery, anti-money laundering, financial and economic sanctions and similar laws, and non-compliance with such laws can subject us to administrative, civil and criminal fines and penalties, collateral consequences, remedial measures and legal expenses, all of which could adversely affect our business, results of operations, financial condition and reputation.***

We are subject to anti-corruption, anti-bribery, anti-money laundering, financial and economic sanctions and similar laws and regulations in various jurisdictions in which we conduct activities, including the U.S. Foreign Corrupt Practices Act, or FCPA, the U.K. Bribery Act 2010, and other anti-corruption laws and regulations. The FCPA and the U.K. Bribery Act 2010 prohibit us and our officers, directors, employees and business partners acting on our behalf, including agents, from corruptly offering, promising, authorizing or providing anything of value to a “foreign official” for the purposes of influencing official decisions or obtaining or retaining business or otherwise obtaining favorable treatment. The FCPA also requires companies to make and keep books, records and accounts that accurately reflect transactions and dispositions of assets and to maintain a system of adequate internal accounting controls. The U.K. Bribery Act also prohibits non-governmental “commercial” bribery and soliciting or accepting bribes. A violation of these laws or regulations could adversely affect our business, results of operations, financial condition and reputation.

We have direct or indirect interactions with officials and employees of government agencies and state-owned affiliated entities in the ordinary course of business. We have also entered into joint ventures and/or other business partnerships with government agencies and state-owned or affiliated entities. These interactions subject us to an increased level of compliance-related concerns. We are in the process of implementing policies and procedures designed to ensure compliance by us and our directors, officers, employees, representatives, consultants, agents and business partners with applicable anti-corruption, anti-bribery, anti-money laundering, financial and economic sanctions and similar laws and regulations. However, our policies and procedures may not be sufficient and our directors, officers, employees, representatives, consultants, agents, and business partners could engage in improper conduct for which we may be held responsible.

Non-compliance with anti-corruption, anti-bribery, anti-money laundering or financial and economic sanctions laws could subject us to whistleblower complaints, adverse media coverage, investigations, and severe administrative, civil and criminal sanctions, collateral consequences, remedial measures and legal expenses, all of which could materially and adversely affect our business, results of operations, financial condition and reputation. In addition, changes in economic sanctions laws in the future could adversely impact our business and investments in our shares.

***Any unauthorized control or manipulation of our vehicles’ systems could result in loss of confidence in us and our vehicles and harm our business.***

Our vehicles contain complex information technology systems. For example, our vehicles are designed with built-in data connectivity to accept and install periodic remote updates from us to improve or update the functionality of our vehicles. We have designed, implemented and tested security measures intended to prevent unauthorized access to our information technology networks, our vehicles and their systems. However, hackers may attempt in the future, to gain unauthorized access to modify, alter and use such networks, vehicles and systems to gain control of, or to change, our vehicles’ functionality, user interface and performance characteristics, or to gain access to data stored in or generated by the vehicle. Vulnerabilities could be identified in the future and our remediation efforts may not be successful. Any unauthorized access to or control of our vehicles or their systems or any loss of data could result in legal claims or proceedings. In addition, regardless of their veracity, reports of unauthorized access to our vehicles, their systems or data, as well as other factors that may result in the perception that our vehicles, their systems or data are capable of being “hacked”, could negatively affect our brand and harm our business, prospects, financial condition and operating results.



***Any financial or economic crisis, or perceived threat of such a crisis, including a significant decrease in consumer confidence, may materially and adversely affect our business, financial condition and results of operations.***

The global financial markets experienced significant disruptions in 2008 and the United States, European and other economies went into recession. The recovery from the lows of 2008 and 2009 was uneven and the global financial markets are facing new challenges, including the escalation of the European sovereign debt crisis since 2011, the hostilities in the Ukraine, the end of quantitative easing by the U.S. Federal Reserve and the economic slowdown in the Eurozone in 2014. It is unclear whether these challenges will be contained and what effects they each may have. There is considerable uncertainty over the long-term effects of the expansionary monetary and fiscal policies that have been adopted by the central banks and financial authorities of some of the world's leading economies, including China's. Economic conditions in China are sensitive to global economic conditions. Recently there have been signs that the rate of China's economic growth is declining. Any prolonged slowdown in China's economic development might lead to tighter credit markets, increased market volatility, sudden drops in business and consumer confidence and dramatic changes in business and consumer behaviors.

In addition, the global macroeconomic environment is facing challenges. There is considerable uncertainty over the long-term effects of the expansionary monetary and fiscal policies adopted by the central banks and financial authorities of some of the world's leading economies, including the United States and China. There have been concerns over unrest and terrorist threats in the Middle East, Europe and Africa and over the conflicts involving Ukraine, Syria and North Korea. There have also been concerns on the relationship among China and other Asian countries, which may result in or intensify potential conflicts in relation to territorial disputes, and the possibility of a trade war between the United States and China. In addition, the U.K. held a referendum on June 23, 2016 on its membership in the European Union., in which a majority of voters in the U.K. voted to exit the European Union (commonly referred to as "Brexit"). The U.K.'s departure from the European Union is currently scheduled to take place on Friday, March 29, 2019. Brexit could adversely affect European and worldwide economic and market conditions and could contribute to instability in global financial and foreign exchange markets. It is unclear whether these challenges and uncertainties will be contained or resolved, and what effects they may have on the global political and economic conditions in the long term.

Sales of high-end and luxury consumer products, such as our performance electric vehicles, depend in part on discretionary consumer spending and are even more exposed to adverse changes in general economic conditions. In response to their perceived uncertainty in economic conditions, consumers might delay, reduce or cancel purchases of our electric vehicles and our results of operations may be materially and adversely affected.

***Shutdowns of the U.S. federal government could materially impair our business and financial condition.***

Development of our product candidates and/or regulatory approval may be delayed for reasons beyond our control. For example, over the last several years the U.S. government has shut down several times and certain regulatory agencies, such as the SEC, have had to furlough critical SEC and other government employees and stop critical activities. In our operations as a public company, future government shutdowns could impact our ability to access the public markets, such as through delaying the declaration of effectiveness of registration statements, and obtain necessary capital in order to properly capitalize and continue our operations.

***Changes in U.S. and international trade policies, particularly with regard to China, may adversely impact our business and operating results.***

The U.S. government has recently made statements and taken certain actions that may lead to potential changes to U.S. and international trade policies, including imposing several rounds of tariffs affecting certain products manufactured in China. It is unknown whether and to what extent new tariffs (or other new laws or regulations) will be adopted, or the effect that any such actions would have on us or our industry and customers. Although we do not currently export any products to the United States, it is not yet clear what impact these tariffs may have or what actions other governments, including the Chinese government, may take in retaliation. While we intend to sell our vehicles only in China in the near future, tariffs could potentially impact our raw material prices. If any new tariffs, legislation and/or regulations are implemented, or if existing trade agreements are renegotiated or, in particular, if the U.S. government takes retaliatory trade actions due to the recent U.S.-China trade tension, such changes could have an adverse effect on our business, financial condition and results of operations.

***Recent disruptions in the financial markets and economic conditions could affect our ability to raise capital.***

In recent years, the United States and global economies suffered dramatic downturns as the result of a deterioration in the credit markets and related financial crisis as well as a variety of other factors including, among other things, extreme volatility in security prices, severely diminished liquidity and credit availability, ratings downgrades of certain investments and declining valuations of others. The United States and certain foreign governments have taken unprecedented actions in an attempt to address and rectify these extreme market and economic conditions by providing liquidity and stability to the financial markets. If the actions taken by these governments are not successful, the return of adverse economic conditions may cause a significant impact on our ability to raise capital, if needed, on a timely basis and on acceptable terms or at all.

***There are uncertainties relating to our users trust arrangement involving a portion of our chairman's shareholding in our company.***

Mr. Bin Li, our chairman and chief executive officer, has transferred 189,253 Class A ordinary shares and 49,810,747 Class C ordinary shares to a trust after the completion of the initial public offering of our ADSs on the New York Stock Exchange in September 2018. After such share transfer, he continues to retain the voting rights of these shares, but plans to let NIO users discuss and propose how to use the economic interests of these shares at certain points in the future, through certain mechanisms still to be implemented. Mr. Li hopes this trust arrangement will help deepen our relationship with users. However, the mechanisms for letting NIO users discuss the use of the economic interests of the shares have yet to be determined or implemented. There is no assurance that such mechanisms will be adopted to our users' satisfaction, or at all. Furthermore, depending on the proposed use of the economic interests of the shares in the future, there could be accounting implications to us, which implications we cannot presently ascertain.

***We and certain of our directors and officers have been named as defendants in several shareholder class action lawsuits, which could have a material adverse impact on our business, financial condition, results of operation, cash flows and reputation.***

Several putative shareholder class action lawsuits have been filed against us and certain of our directors and officers. See "Item 8. Financial Information—A. Consolidated Statements and Other Financial Information—Legal Proceedings" for more details. Additional complaints related to these claims may be filed in the coming months. We are currently unable to estimate the potential loss, if any, associated with the resolution of such lawsuits, if they proceed. We anticipate that we will continue to be a target for lawsuits in the future, including putative class action lawsuits brought by shareholders. There can be no assurance that we will be able to prevail in our defense or reverse any unfavorable judgment on appeal, and we may decide to settle lawsuits on unfavorable terms. Any adverse outcome of these cases, including any plaintiffs' appeal of the judgment in these cases, could result in payments of substantial monetary damages or fines, or changes to our business practices, and thus have a material adverse effect on our business, financial condition, results of operation, cash flows and reputation. In addition, there can be no assurance that our insurance carriers will cover all or part of the defense costs, or any liabilities that may arise from these matters. The litigation process may utilize a significant portion of our cash resources and divert management's attention from the day-to-day operations of our company, all of which could harm our business. We also may be subject to claims for indemnification related to these matters, and we cannot predict the impact that indemnification claims may have on our business or financial results.

***We face risks related to natural disasters, health epidemics and other outbreaks, which could significantly disrupt our operations.***

Our business could be adversely affected by the effects of epidemics. In recent years, there have been outbreaks of epidemics in China and globally. Our business operations could be disrupted if any of our employees are suspected of having H1N1 flu, avian flu or another epidemic, since it could require our employees to be quarantined and/or our offices to be disinfected. In addition, our results of operations could be adversely affected to the extent that the outbreak harms the Chinese economy in general.

We are also vulnerable to natural disasters and other calamities. Although we have servers that are hosted in an offsite location, our backup system does not capture data on a real-time basis and we may be unable to recover certain data in the event of a server failure. We cannot assure you that any backup systems will be adequate to protect us from the effects of fire, floods, typhoons, earthquakes, power loss, telecommunications failures, break-ins, war, riots, terrorist attacks or similar events. Any of the foregoing events may give rise to interruptions, breakdowns, system failures, technology platform failures or internet failures, which could cause the loss or corruption of data or malfunctions of software or hardware as well as adversely affect our ability to provide services on our platform.

#### **Risks Related to Our Corporate Structure**

***If the PRC government deems that our contractual arrangements with our variable interest entities do not comply with PRC regulatory restrictions on foreign investment in the relevant industries, or if these regulations or the interpretation of existing regulations change in the future, we could be subject to severe penalties or be forced to relinquish our interests in those operations.***

According to the *Guidance Catalogue of Industries for Foreign Investment* promulgated in 2017, or the Catalogue, promulgated by the MOFCOM and the NDRC, foreign ownership of certain areas of businesses is subject to restrictions under current PRC laws and regulations. For example, under the Catalogue, foreign investors are not allowed to own more than 50% of the equity interests in a value-added telecommunication service provider (except e-commerce) or in a vehicle manufacturer which manufactures the whole vehicle. The Catalogue was amended by the Negative List, which came into effect on July 28, 2018, and lifts restrictions on foreign investment in NEVs manufacturers.

We are a Cayman Islands company and our PRC subsidiaries are considered foreign-invested enterprises. To comply with the Catalogue before it is amended by the Negative List, we had planned to conduct certain operations that were then subject to restrictions on foreign investment under the Catalogue in China through Shanghai NIO Energy Automobile Co., Ltd., or NIO New Energy. NIO Co., Ltd. owns 50% equity interests in NIO New Energy. Our founders Bin Li and Lihong Qin, through holding equity interests in Shanghai Anbin Technology Co., Ltd. indirectly own 40% and 10%, respectively, of the equity interests in NIO New Energy. With respect to the 50% equity interests of NIO New Energy indirectly held by the founders, we have entered into a series of contractual arrangements with Shanghai Anbin Technology Co., Ltd., or Shanghai Anbin, and its shareholders, which enable us to (i) ultimately exercise effective control over such 50% equity interests of NIO New Energy, (ii) receive 50% of substantially all of the economic benefits and bear the obligation to absorb 50% of substantially all of the losses of NIO New Energy, and (iii) have an exclusive option to purchase all or part of the equity interests in Shanghai Anbin when and to the extent permitted by PRC laws, as a result of which we will indirectly own all or part of such 50% equity interests in NIO New Energy. Because of the ownership of 50% equity interests of NIO New Energy and these contractual arrangements, we are the primary beneficiary of NIO New Energy and hence consolidate its financial results as our variable interest entity under U.S. GAAP. In addition, to comply with the Catalogue (as amended by the Negative List), we have also entered into a series of contractual arrangements with Beijing NIO Network Technology Co., Ltd., or Beijing NIO, and its shareholders that enable us to hold all the required Internet content provision service, or the ICP, and related licenses in China. For a detailed description of these contractual arrangements, see “Item 4. Information on the Company—C. Organizational Structure—Contractual Agreements with the VIEs and their respective shareholders.”

In the opinion of Han Kun Law Offices, our PRC legal counsel, (i) the ownership structures of NIO Co., Ltd. and our variable interest entities in China do not result in any violation of PRC laws and regulations currently in effect; and (ii) the contractual arrangements between our wholly-owned subsidiary NIO Co., Ltd., our variable interest entities and their respective shareholders governed by PRC laws will not result in any violation of PRC laws or regulations currently in effect. However, we have been advised by our PRC legal counsel that there are substantial uncertainties regarding the interpretation and application of current and future PRC laws, regulations and rules, and there can be no assurance that the PRC regulatory authorities will take a view that is consistent with the opinion of our PRC legal counsel. See “Item 4. Information on the Company—B. Business Overview—Regulation—PRC Regulations—Foreign Investment Law” and “—Regulation—Regulations on Foreign Investment in China” and “Item 3. Key Information—D. Risk Factors—Risks Related to Doing Business in China—Our business may be significantly affected by the Foreign Investment Law.” It is uncertain whether any new PRC laws or regulations relating to variable interest entity structures will be adopted or if adopted, what they would provide.

If the ownership structure, contractual arrangements and businesses of our PRC subsidiaries or our variable interest entities are found to be in violation of any existing or future PRC laws or regulations, or our PRC subsidiaries or our variable interest entities fail to obtain or maintain any of the required permits or approvals, the relevant PRC regulatory authorities would have broad discretion to take action in dealing with such violations or failures, including:

- revoking the business licenses and/or operating licenses of such entities;
- shutting down our servers or blocking our website, or discontinuing or placing restrictions or onerous conditions on our operation through any transactions between our PRC subsidiaries and variable interest entities;
- imposing fines, confiscating the income from our PRC subsidiaries or our variable interest entities, or imposing other requirements with which we or our variable interest entities may not be able to comply;
- requiring us to restructure our ownership structure or operations, including terminating the contractual arrangements with our variable interest entities and deregistering the equity pledge of our variable interest entities, which in turn would affect our ability to consolidate, derive economic interests from, or exert effective control over our variable interest entities; or
- restricting or prohibiting our use of the proceeds of any financing outside China to finance our business and operations in China, and taking other regulatory or enforcement actions that could be harmful to our business.

Any of these actions could cause significant disruption to our business operations and severely damage our reputation, which would in turn materially and adversely affect our business, financial condition and results of operations. If any of these occurrences results in our inability to direct the activities of our variable interest entities that most significantly impact their economic performance, and/or our failure to receive the economic benefits from our variable interest entities, we may not be able to consolidate the entities in our consolidated financial statements in accordance with U.S. GAAP.

***We rely on contractual arrangements with our variable interest entities and their shareholders to exercise control over our business, which may not be as effective as direct ownership in providing operational control.***

We have relied and expect to continue to rely on contractual arrangements with Shanghai Anbin and Beijing NIO and their respective shareholders to conduct a portion of our operations in China. For a description of these contractual arrangements, see “Item 4. Information on the Company—C. Organizational Structure—Contractual Agreements with the VIEs and their respective shareholders.” The respective shareholders of Shanghai Anbin and Beijing NIO may not act in the best interests of our company or may not perform their obligations under these contracts. If we had direct ownership of our variable interest entities, or VIEs, we would be able to exercise our rights as a shareholder to control our VIEs to exercise rights of shareholders to effect changes in the board of directors of our VIEs, which in turn could implement changes, subject to any applicable fiduciary obligations, at the management and operational level. However, under the contractual arrangements, we would rely on legal remedies under PRC law for breach of contract in the event that Shanghai Anbin and Beijing NIO and their respective shareholders did not perform their obligations under the contracts. These legal remedies may not be as effective as direct ownership in providing us with control over Shanghai Anbin and Beijing NIO.

If Shanghai Anbin or Beijing NIO or their respective shareholders fail to perform their obligations under the contractual arrangements, we may have to incur substantial costs and expend additional resources to enforce such arrangements, and rely on legal remedies under PRC laws, including contractual remedies, which may not be sufficient or effective. All of the agreements under our contractual arrangements are governed by and interpreted in accordance with PRC laws, and disputes arising from these contractual arrangements will be resolved through arbitration in China. However, the legal framework and system in China, in particularly those relating to arbitration proceedings, are not as developed as in some other jurisdictions, such as the United States. As a result, uncertainties in the PRC legal system could limit our ability to enforce these contractual arrangements. Meanwhile, there are very few precedents and little formal guidance as to how contractual arrangements in the context of a variable interest entity should be interpreted or enforced under PRC law. There remain significant uncertainties regarding the ultimate outcome of such arbitration should legal action become necessary. In addition, under PRC laws, rulings by arbitrators are final, parties cannot appeal the arbitration results in courts, and if the losing parties fail to carry out the arbitration awards within a prescribed time limit, the prevailing parties may only enforce the arbitration awards in the PRC courts through arbitration award recognition proceedings, which would require additional expenses and delay. If we are unable to enforce these contractual arrangements, or if we suffer significant delay or face other obstacles in the process of enforcing these contractual arrangements, we may not be able to exert effective control over our variable interest entities, and our ability to conduct our business may be negatively affected. See “Item 3. Key Information—D. Risk Factors—Risks Related to Doing Business in China—Uncertainties in the interpretation and enforcement of PRC laws and regulations could limit the legal protections available to you and us.”

***Our ability to enforce the equity pledge agreements between us and our PRC variable interest entities’ shareholders may be subject to limitations based on PRC laws and regulations.***

Pursuant to the equity interest pledge agreements between Shanghai Anbin and Beijing NIO, our variable interest entities, and NIO Co., Ltd., our wholly-owned PRC subsidiary, and the respective shareholders of Shanghai Anbin and Beijing NIO, each shareholder of Shanghai Anbin and Beijing NIO agrees to pledge its equity interests in Shanghai Anbin and Beijing NIO to our subsidiary to secure Shanghai Anbin and Beijing NIO’s performance of its obligations under the relevant contractual arrangements. The equity interest pledges of shareholders of each of Beijing NIO and Shanghai Anbin under its equity interests pledge agreement have been registered with the relevant local branch of State Administration for Market Regulation, or the SAMR. In addition, in the registration forms of the local branch of the SAMR for the pledges over the equity interests under the equity interest pledge agreements, the aggregate amount of registered equity interests pledged to NIO Co., Ltd. represents 100% of the registered capital of Shanghai Anbin and Beijing NIO. The equity interest pledge agreements with our variable interest entities’ shareholders provide that the pledged equity interests shall constitute continuing security for any and all of the indebtedness, obligations and liabilities under all of the principal service agreements and the scope of pledge shall not be limited by the amount of the registered capital of that variable interest entity. However, a PRC court may take the position that the amount listed on the equity pledge registration forms represents the full amount of the collateral that has been registered and perfected. If this is the case, the obligations that are supposed to be secured in the equity interest pledge agreements in excess of the amount listed on the equity pledge registration forms could be determined by the PRC court as unsecured debt, which typically takes last priority among creditors.

***The shareholders of our variable interest entities may have potential conflicts of interest with us, which may materially and adversely affect our business and financial condition.***

Our founders, Bin Li and Lihong Qin, own 80% and 20%, respectively, of the equity interests in our variable interest entities, Shanghai Anbin and Beijing NIO. As shareholders of Shanghai Anbin and Beijing NIO, they may have potential conflicts of interest with us. These shareholders may breach, or cause our variable interest entities to breach, or refuse to renew, the existing contractual arrangements we have with them and our variable interest entities, which would have a material and adverse effect on our ability to effectively control our variable interest entities and receive economic benefits from them. For example, the shareholders may be able to cause our agreements with Shanghai Anbin and Beijing NIO to be performed in a manner adverse to us by, among other things, failing to remit payments due under the contractual arrangements to us on a timely basis. We cannot assure you that when conflicts of interest arise, any or all of these shareholders will act in the best interests of our company or such conflicts will be resolved in our favor.

Currently, we do not have any arrangements to address potential conflicts of interest between these shareholders and our company. Each of Bin Li and Lihong Qin is also a director and executive officer of our company. We rely on Bin Li and Lihong Qin to abide by the laws of the Cayman Islands and China, which provide that directors owe a fiduciary duty to the company that requires them to act in good faith and in what they believe to be the best interests of the company and not to use their position for personal gain. There is currently no specific and clear guidance under PRC laws that addresses any conflict between PRC laws and the laws of Cayman Islands in respect of any conflict relating to corporate governance. If we cannot resolve any conflict of interest or dispute between us and the shareholders of Shanghai Anbin and Beijing NIO, we would have to rely on legal proceedings, which could result in disruption of our business and subject us to substantial uncertainty as to the outcome of any such legal proceedings.

***Our contractual arrangements with our variable interest entities may be subject to scrutiny by the PRC tax authorities and they may determine that we or our variable interest entities owe additional taxes, which could negatively affect our financial condition.***

Under applicable PRC laws and regulations, arrangements and transactions among related parties may be subject to audit or challenge by the PRC tax authorities within ten years after the taxable year when the transactions are conducted. The PRC Enterprise Income Tax Law requires every enterprise in China to submit its annual enterprise income tax return together with a report on transactions with its related parties to the relevant tax authorities. The tax authorities may impose reasonable adjustments on taxation if they have identified any related party transactions that are inconsistent with arm's length principles. We may face material and adverse tax consequences if the PRC tax authorities determine that the contractual arrangements between NIO Co., Ltd., our wholly-owned subsidiary in China, Shanghai Anbin and Beijing NIO, our variable interest entities in China, and Shanghai Anbin and Beijing NIO's shareholders were not entered into on an arm's length basis in such a way as to result in an impermissible reduction in taxes under applicable PRC laws, rules and regulations, and adjust Shanghai Anbin and Beijing NIO's income in the form of a transfer pricing adjustment. A transfer pricing adjustment could, among other things, result in a reduction of expense deductions recorded by Shanghai Anbin and Beijing NIO for PRC tax purposes, which could in turn increase their tax liabilities without reducing NIO Co., Ltd.'s tax expenses. In addition, if NIO Co., Ltd. requests the shareholders of Shanghai Anbin and Beijing NIO to transfer their equity interests in NIO Co., Ltd. at nominal or no value pursuant to the contractual agreements, such transfer could be viewed as a gift and subject NIO Co., Ltd. to PRC income tax. Furthermore, the PRC tax authorities may impose late payment fees and other penalties on Shanghai Anbin and Beijing NIO for the adjusted but unpaid taxes according to the applicable regulations. Our financial position could be materially and adversely affected if either of our variable interest entities' tax liabilities increase or if either is required to pay late payment fees and other penalties.

***We may lose the ability to use and benefit from assets held by our variable interest entities that are material to the operation of our business if either of our variable interest entities goes bankrupt or becomes subject to dissolution or liquidation proceedings.***

As part of our contractual arrangements with our variable interest entities, these entities may in the future hold certain assets that are material to the operation of our business. If either of our variable interest entities goes bankrupt and all or part of their assets become subject to liens or rights of third-party creditors, we may be unable to continue some or all of our business activities, which could materially and adversely affect our business, financial condition and results of operations. Under the contractual arrangements, our variable interest entities may not, in any manner, sell, transfer, mortgage or dispose of their assets or legal or beneficial interests in the business without our prior consent. If either of our variable interest entities undergoes voluntary or involuntary liquidation proceedings, unrelated third-party creditors may claim rights to some or all of these assets, thereby hindering our ability to operate our business, which could materially and adversely affect our business, financial condition and results of operations.

## Risks Related to Doing Business in China

***Changes in China's political or social conditions or government policies could have a material and adverse effect on our business and results of operations.***

Substantially all of our revenues are expected to be derived in China in the near future and most of our operations, including all of our manufacturing, is conducted in China. Accordingly, our results of operations, financial condition and prospects are influenced by economic, political and legal developments in China. China's economy differs from the economies of most developed countries in many respects, including with respect to the amount of government involvement, level of development, growth rate, control of foreign exchange and allocation of resources. The PRC government exercises significant control over China's economic growth through strategically allocating resources, controlling the payment of foreign currency-denominated obligations, setting monetary policy and providing preferential treatment to particular industries or companies. While the PRC economy has experienced significant growth over the past decades, that growth has been uneven across different regions and between economic sectors and may not continue, as evidenced by the slowing of the growth of the Chinese economy since 2012. Any adverse changes in economic conditions in China, in the policies of the Chinese government or in the laws and regulations in China could have a material adverse effect on the overall economic growth of China. Such developments could adversely affect our business and operating results, leading to reduction in demand for our services and solutions and adversely affect our competitive position.

***Uncertainties in the interpretation and enforcement of PRC laws and regulations could limit the legal protections available to you and us.***

The PRC legal system is a civil law system based on written statutes. Unlike the common law system, prior court decisions may be cited for reference but have limited precedential value.

Our PRC subsidiaries are foreign-invested enterprises and are subject to laws and regulations applicable to foreign-invested enterprises as well as various Chinese laws and regulations generally applicable to companies incorporated in China. However, since these laws and regulations are relatively new and the PRC legal system continues to rapidly evolve, the interpretations of many laws, regulations and rules are not always uniform and enforcement of these laws, regulations and rules involves uncertainties.

From time to time, we may have to resort to administrative and court proceedings to enforce our legal rights. However, since PRC administrative and court authorities have significant discretion in interpreting and implementing statutory and contractual terms, it may be more difficult to evaluate the outcome of administrative and court proceedings and the level of protection we enjoy than in more developed legal systems. Furthermore, the PRC legal system is based in part on government policies and internal rules, some of which are not published on a timely basis or at all, and which may have a retroactive effect. As a result, we may not be aware of our violation of any of these policies and rules until sometime after the violation. Such uncertainties, including uncertainty over the scope and effect of our contractual, property (including intellectual property) and procedural rights, and any failure to respond to changes in the regulatory environment in China could materially and adversely affect our business and impede our ability to continue our operations.

***Our business may be significantly affected by the newly enacted Foreign Investment Law.***

On March 15, 2019, the National People's Congress promulgated the Foreign Investment Law, which will take effect on January 1, 2020 and replace the trio of existing laws regulating foreign investment in China, namely, the PRC Equity Joint Venture Law, the PRC Cooperative Joint Venture Law and the Wholly Foreign-owned Enterprise Law, together with their implementation rules and ancillary regulations. Since the Foreign Investment Law is newly enacted, uncertainties still exist in relation to its interpretation and implementation. The Foreign Investment Law does not explicitly classify whether variable interest entities that are controlled via contractual arrangements would be deemed as foreign invested enterprises if they are ultimately "controlled" by foreign investors. However, it has a catch-all provision under definition of "foreign investment" to include investments made by foreign investors in China through means stipulated by laws or administrative regulations or other methods prescribed by the State Council. Therefore, it still leaves leeway for future laws, administrative regulations or provisions to provide for contractual arrangements as a form of foreign investment. There can be no assurance that our contractual arrangements will not be deemed to be in violation of the market access requirements for foreign investment under the PRC laws and regulations.

The Foreign Investment Law grants national treatment to foreign invested entities, except for those foreign invested entities that operate in industries deemed to be either “restricted” or “prohibited” in the “negative list” to be published. Because the “negative list” has yet to be published, it is unclear as to whether it will differ from the Negative List currently in effect. The Foreign Investment Law provides that only foreign invested entities operating in foreign restricted or prohibited industries will require entry clearance and other approvals that are not required by PRC domestic entities or foreign invested entities operating in other industries. In the event that our variable interest entities through which we operate our business are not treated as domestic investment and our operations carried out through such variable interest entities are classified in the “restricted” or “prohibited” industry in the “negative list” under the Foreign Investment Law, such contractual arrangements may be deemed as invalid and illegal, and we may be required to unwind such contractual arrangements and/or dispose of such business.

Furthermore, if future laws, administrative regulations or provisions mandate further actions to be taken by companies with respect to existing contractual arrangements, we may face substantial uncertainties as to whether we can complete such actions in a timely manner, or at all. In addition, the Foreign Investment Law provides that existing foreign invested enterprises established according to the existing laws regulating foreign investment may maintain their structure and corporate governance within five years after the implementation of the Foreign Investment Law, which means that we may be required to adjust the structure and corporate governance of certain of our PRC entities then. Failure to take timely and appropriate measures to cope with any of these or similar regulatory compliance challenges could materially and adversely affect our current corporate structure, corporate governance and business operations.

***We may be adversely affected by the complexity, uncertainties and changes in PRC regulations on internet-related business, automotive businesses and other business carried out by our PRC subsidiaries.***

We operate in THE automotive and internet industry, both of which are extensively regulated by the PRC government. For example, the PRC government imposes foreign ownership restrictions and licensing and permit requirements for companies in the internet industry. See “Item 4. Information on the Company—B. Business Overview—Regulation—Regulations on Foreign Investment in China” and “Item 4. Information on the Company—B. Business Overview—Regulation—Regulations on Value-added Telecommunications Services.” Recently, the MOFCOM and the NDRC promulgated the Negative List, which lifts restrictions on foreign investment on the production of new energy vehicles, effective on July 28, 2018; and the NDRC promulgated the *Provisions on Administration of Investment in Automobile Industry*, which became effective on January 10, 2019, to set certain requisite criteria for newly-established pure electric vehicle automakers. See “Item 4. Information on the Company—B. Business Overview—Regulation—Regulations and Approvals Covering the Manufacturing of Pure Electric Passenger Vehicles.” These laws and regulations are relatively new and evolving, and their interpretation and enforcement involve significant uncertainties. As a result, in certain circumstances it may be difficult to determine what actions or omissions may be deemed to be in violation of applicable laws and regulations and furthermore, we cannot assure you that we have complied or will be able to comply with all applicable laws at all times. Consequently, we could face the risks of being subject to governmental investigations, orders by the competent authorities for rectification, administrative penalties or other legal proceedings.

Currently we rely on the contractual arrangements with Beijing NIO, one of our variable interest entities, to hold an ICP license, and separately own the relevant domain names and trademarks in connection with our internet services and operate our website and mobile application through NIO Co., Ltd. Our internet services may be treated as a value-added telecommunications business. If so, we may be required to transfer the domain names, trademark and the operations of the internet services from NIO Co., Ltd. to Beijing NIO, and we may also be subject to administrative penalties. Further, any challenge to the validity of these arrangements may significantly disrupt our business, subject us to sanctions, compromise enforceability of our contractual arrangements, or have other harmful effects on us. It is uncertain if Beijing NIO or NIO Co., Ltd. will be required to obtain a separate operating license for certain services carried out by us through our mobile application in addition to the valued-added telecommunications business operating licenses for internet content provision services, and if Beijing NIO will be required to supplement our current ICP license in the future.



In addition, our mobile applications are also regulated by the *Administrative Provisions on Mobile Internet Applications Information Services*, or the APP Provisions, promulgated by the Cyberspace Administration of China, or the CAC, on June 28, 2016 and effective on August 1, 2016. According to the APP Provisions, the providers of mobile applications shall not create, copy, publish or distribute information and content that is prohibited by laws and regulations. However, we cannot assure that all the information or content displayed on, retrieved from or linked to our mobile applications complies with the requirements of the APP Provisions at all times. If our mobile applications were found to be violating the APP Provisions, we may be subject to administrative penalties, including warning, service suspension or removal of our mobile applications from the relevant mobile application store, which may materially and adversely affect our business and operating results.

The interpretation and application of existing PRC laws, regulations and policies and possible new laws, regulations or policies relating to the internet industry, particularly the policies relating to value-added telecommunications services, have created substantial uncertainties regarding the legality of existing and future foreign investments in the businesses and activities of internet businesses in China, including our business.

Several PRC regulatory authorities, such as the SAMR, the NDRC, the Ministry of Industry and Information Technology, or the MIIT, and the MOFCOM, oversee different aspects of our operations, and we are required to obtain a wide range of government approvals, licenses, permits and registrations in connection with our operations. For example, certain filings must be made by automobile dealers through the information system for the national automobile circulation operated by the relevant commerce department within 90 days after the receipt of a business license. Furthermore, the NEV industry is relatively new in China, and the PRC government has not adopted a clear regulatory framework to regulate the industry. As some of the laws, rules and regulations that we may be subject to were primarily enacted with a view toward application to ICE vehicles, or are relatively new, there is significant uncertainty regarding their interpretation and application with respect to our business. For example, it remains unclear under PRC laws whether our charging trucks need to be registered with related local traffic management authorities or obtain transportation operation licenses for their services, and whether we would be required to obtain any particular permit or license to be qualified to provide our charging services in cooperation with third party charging stations. In addition, the PRC government may enact new laws and regulations that require additional licenses, permits, approvals and/or registrations for the operation of any of our existing or future business. As a result, we cannot assure you that we have all the permits, licenses, registrations, approvals and/or business license covering the sufficient scope of business required for our business or that we will be able to obtain, maintain or renew permits, licenses, registrations, approvals and/or business license covering sufficient scope of business in a timely manner or at all.

***We may rely on dividends and other distributions on equity paid by our PRC subsidiaries to fund any cash and financing requirements we may have, and any limitation on the ability of our PRC subsidiaries to make payments to us could have a material and adverse effect on our ability to conduct our business.***

We are a holding company, and we may rely on dividends and other distributions on equity paid by our PRC subsidiaries for our cash and financing requirements, including the funds necessary to pay dividends and other cash distributions to our shareholders and service any debt we may incur. Current PRC regulations permit our PRC subsidiaries to pay dividends to us only out of their accumulated after-tax profits upon satisfaction of relevant statutory conditions and procedures, if any, determined in accordance with Chinese accounting standards and regulations. In addition, each of our PRC subsidiaries is required to set aside at least 10% of its after-tax profits each year, if any, to fund certain reserve funds until the total amount set aside reaches 50% of its registered capital. As of December 31, 2018, our variable interest entities had not made appropriations to statutory reserves as our PRC subsidiaries and our variable interest entities reported accumulated loss. For a detailed discussion of applicable PRC regulations governing distribution of dividends, see “Item 4. Information on the Company—B. Business Overview—Regulation—Regulations on Dividend Distribution.” Additionally, if our PRC subsidiaries incur debt on their own behalf in the future, the instruments governing their debt may restrict their ability to pay dividends or make other distributions to us. Furthermore, the PRC tax authorities may require our subsidiaries to adjust their taxable income under the contractual arrangements they currently have in place with our variable interest entities in a manner that would materially and adversely affect their ability to pay dividends and other distributions to us. See “—Risks Related to Our Corporate Structure—Our contractual arrangements with our variable interest entities may be subject to scrutiny by the PRC tax authorities and they may determine that we or our variable interest entities owe additional taxes, which could negatively affect our financial condition.” In addition, the incurrence of indebtedness by our PRC subsidiaries could result in operating and financing covenants and undertakings to creditors that would restrict the ability of our PRC subsidiaries to pay dividends to us.

Any limitation on the ability of our PRC subsidiaries to pay dividends or make other distributions to us could materially and adversely limit our ability to grow, make investments or acquisitions that could be beneficial to our business, pay dividends, or otherwise fund and conduct our business. See “—If we are classified as a PRC resident enterprise for PRC income tax purposes, such classification could result in unfavorable tax consequences to us and our non-PRC shareholders or ADS holders.”

***Increases in labor costs and enforcement of stricter labor laws and regulations in the PRC may adversely affect our business and our profitability.***

China’s overall economy and the average wage in China have increased in recent years and are expected to grow. The average wage level for our employees has also increased in recent years. We expect that our labor costs, including wages and employee benefits, will increase. Unless we are able to pass on these increased labor costs to those who pay for our services, our profitability and results of operations may be materially and adversely affected.

In addition, we have been subject to stricter regulatory requirements in terms of entering into labor contracts with our employees, limitation with respect to utilization of labor dispatching, applying for foreigner work permits, labor protection and labor condition and paying various statutory employee benefits, including pensions, housing fund, medical insurance, work-related injury insurance, unemployment insurance and maternity insurance to designated government agencies for the benefit of our employees. Pursuant to the PRC Labor Contract Law and its implementation rules, employers are subject to stricter requirements in terms of signing labor contracts, minimum wages, paying remuneration, determining the term of employee’s probation and unilaterally terminating labor contracts. In the event that we decide to terminate some of our employees or otherwise change our employment or labor practices, the PRC Labor Contract Law and its implementation rules may limit our ability to effect those changes in a desirable or cost-effective manner, which could adversely affect our business and results of operations.

In October 2010, the Standing Committee of the National People’s Congress promulgated the PRC Social Insurance Law, which came into effect on July 1, 2011. On April 3, 1999, the State Council promulgated the Regulations on the Administration of Housing Funds, which was amended on March 24, 2002. Companies registered and operating in China are required under the Social Insurance Law and the Regulations on the Administration of Housing Funds to, apply for social insurance registration and housing fund deposit registration within 30 days of their establishment, and to pay for their employees different social insurance including pension insurance, medical insurance, work-related injury insurance, unemployment insurance and maternity insurance to the extent required by law. However, certain of our PRC subsidiaries and VIEs that do not hire any employees and are not a party to any employment agreement, have not applied for and obtained such registration, and instead of paying the social insurance payment on their own for their employees, certain of our PRC subsidiaries and VIEs use third-party agencies to pay in the name of such agency. We could be subject to orders by the competent labor authorities for rectification and failure to comply with the orders may further subject us to administrative fines.

As the interpretation and implementation of labor-related laws and regulations are still evolving, our employment practices may violate labor-related laws and regulations in China, which may subject us to labor disputes or government investigations. We cannot assure you that we have complied or will be able to comply with all labor-related law and regulations including those relating to obligations to make social insurance payments and contribute to the housing provident funds. If we are deemed to have violated relevant labor laws and regulations, we could be required to provide additional compensation to our employees and our business, financial condition and results of operations will be adversely affected.

***Fluctuations in exchange rates could have a material and adverse effect on our results of operations.***

The value of Renminbi against the U.S. dollar and other currencies is affected by changes in China’s political and economic conditions and by China’s foreign exchange policies, among other things. In July 2005, the PRC government changed its decades-old policy of pegging the value of the Renminbi to the U.S. dollar, and the Renminbi appreciated more than 20% against the U.S. dollar over the following three years. Between July 2008 and June 2010, this appreciation halted and the exchange rate between the Renminbi and the U.S. dollar remained within a narrow band. Since June 2010, the Renminbi has fluctuated against the U.S. dollar, at times significantly and unpredictably. While appreciating approximately by 7% against the U.S. dollar in 2017, the Renminbi in 2018 depreciated approximately by 5% against the U.S. dollar. Since October 1, 2016, the Renminbi has joined the International Monetary Fund (IMF)’s basket of currencies that make up the Special Drawing Right (SDR), along with the U.S. dollar, the Euro, the Japanese yen and the British pound. With the development of the foreign exchange market and progress towards interest rate liberalization and Renminbi internationalization, the PRC government may in the future announce further changes to the exchange rate system and there is no guarantee that the Renminbi will not appreciate or depreciate significantly in value against the U.S. dollar in the future. It is difficult to predict how market forces or PRC or U.S. government policy may impact the exchange rate between the Renminbi and the U.S. dollar in the future.

There remains significant international pressure on the PRC government to adopt a more flexible currency policy. Any significant appreciation or depreciation of Renminbi may materially and adversely affect our revenues, earnings and financial position, and the value of, and any dividends payable on, our ADSs in U.S. dollars. For example, to the extent that we need to convert U.S. dollars we receive from any financing outside China into Renminbi to pay our operating expenses, appreciation of Renminbi against the U.S. dollar would have an adverse effect on the RMB amount we would receive from the conversion. Conversely, a significant depreciation of Renminbi against the U.S. dollar may significantly reduce the U.S. dollar equivalent of our earnings, which in turn could adversely affect the price of our ADSs.

Very limited hedging options are available in China to reduce our exposure to exchange rate fluctuations. To date, we have not entered into any hedging transactions in an effort to reduce our exposure to foreign currency exchange risk. While we may decide to enter into hedging transactions in the future, the availability and effectiveness of these hedges may be limited and we may not be able to adequately hedge our exposure or at all. In addition, our currency exchange losses may be magnified by PRC exchange control regulations that restrict our ability to convert Renminbi into a foreign currency. As a result, fluctuations in exchange rates may have a material adverse effect on our results of operations.

***PRC regulation of loans to and direct investment in PRC entities by offshore holding companies and governmental control of currency conversion may delay or prevent us from using the proceeds of our offshore equity offerings to make loans to or make additional capital contributions to our PRC subsidiaries, which could materially and adversely affect our liquidity and our ability to fund and expand our business.***

Under PRC laws and regulations, we are permitted to utilize the proceeds of any financing outside China to fund our PRC subsidiaries by making loans to or additional capital contributions to our PRC subsidiaries, subject to applicable government registration, statutory limitations on amount and approval requirements. For more details, see “Item 4. Information on the Company—B. Business Overview—Regulation—Regulations on Foreign Exchange.” These PRC laws and regulations may significantly limit our ability to use Renminbi converted from the net proceeds of any financing outside China to fund the establishment of new entities in China by our PRC subsidiaries, to invest in or acquire any other PRC companies through our PRC subsidiaries, or to establish new variable interest entities in China. Moreover, we cannot assure you that we will be able to complete the necessary registrations or obtain the necessary government approvals on a timely basis, if at all, with respect to future loans to our PRC subsidiaries or future capital contributions by us to our PRC subsidiaries. If we fail to complete such registrations or obtain such approvals, our ability to use the proceeds we received or expect to receive from our offshore offerings and to capitalize or otherwise fund our PRC operations may be negatively affected, which could materially and adversely affect our liquidity and our ability to fund and expand our business.

On December 26, 2017, the NDRC issued the *Management Rules for Overseas Investment by Enterprises*, or Order 11. On February 11, 2018, the *Catalog on Overseas Investment in Sensitive Industries (2018 Edition)*, or the Sensitive Industries List was promulgated. Overseas investment governed by Order 11 refers to the investment activities conducted by an enterprise located in the territory of China either directly or via an overseas enterprise under its control through making investment with assets and equities or providing financing or guarantees in order to obtain overseas ownership, control, management rights and other related interests, and overseas investment by a PRC individual through overseas enterprises under his/her control is also subject to Order 11. According to Order 11, before being conducted, any overseas investment in a sensitive industry or any direct investment by a Chinese enterprise in a non-sensitive industry but with an investment amount over US\$300 million requires approval from, or filing with, the NDRC, and for those non-sensitive investments indirectly by Chinese investors (including PRC individuals) with investment amounts over US\$300 million need to be reported. However uncertainties remain with respect to the interpretation and application of Order 11, we are not sure whether our using of proceeds will be subject to Order 11. If we fail to obtain the approval, complete the filing or report our overseas investment with our proceeds (as the case may be) in a timely manner provided that Order 11 is applicable, we may be forced to suspend or cease our investment, or be subject to penalties or other liabilities, which could materially and adversely affect our business, financial condition and prospects.

***Governmental control of currency conversion may limit our ability to utilize our revenues effectively.***

The PRC government imposes controls on the convertibility of Renminbi into foreign currencies and, in certain cases, the remittance of currency out of China. Under existing PRC foreign exchange regulations, payments of current account items, such as profit distributions and trade and service-related foreign exchange transactions, can be made in foreign currencies without prior approval from the State Administration of Foreign Exchange, or SAFE, by complying with certain procedural requirements. However, approval from or registration with appropriate governmental authorities is required where Renminbi is to be converted into a foreign currency and remitted out of China to pay capital expenses, such as the repayment of loans denominated in foreign currencies. See “Item 4. Information on the Company—B. Business Overview—Regulation—Regulations on Foreign Exchange.”

Since 2016, the PRC government has tightened its foreign exchange policies again and stepped up scrutiny of major outbound capital movement. More restrictions and a substantial vetting process have been put in place by SAFE to regulate cross-border transactions falling under the capital account. The PRC government may also restrict access in the future to foreign currencies for current account transactions, at its discretion. We receive substantially all of our revenues in RMB. If the foreign exchange control system prevents us from obtaining sufficient foreign currencies to satisfy our foreign currency demands, we may not be able to pay dividends in foreign currencies to our shareholders, including holders of our ADSs.

***PRC regulations relating to offshore investment activities by PRC residents may limit our PRC subsidiaries’ ability to increase their registered capital or distribute profits to us or otherwise expose us or our PRC resident beneficial owners to liability and penalties under PRC law.***

SAFE requires PRC residents or entities to register with SAFE or its local branch in connection with their establishment or control of an offshore entity established for the purpose of overseas investment or financing. In addition, such PRC residents or entities must update their SAFE registrations when the offshore special purpose vehicle undergoes certain material events. See “Item 4. Information on the Company—B. Business Overview—Regulation—Regulations on Foreign Exchange—Offshore Investment.”

If our shareholders who are PRC residents or entities do not complete their registration with the local SAFE branches, our PRC subsidiaries may be prohibited from distributing their profits and any proceeds from any reduction in capital, share transfer or liquidation to us, and we may be restricted in our ability to contribute additional capital to our PRC subsidiaries. Moreover, failure to comply with SAFE registration requirements could result in liability under PRC laws for evasion of applicable foreign exchange restrictions.

However, we may not be informed of the identities of all the PRC residents or entities holding direct or indirect interests in our company, nor can we compel our beneficial owners to comply with SAFE registration requirements. As a result, we cannot assure you that all of our shareholders or beneficial owners who are PRC residents or entities have complied with, and will in the future make or obtain any applicable registrations or approvals required by, SAFE regulations. Failure by such shareholders or beneficial owners to comply with SAFE regulations, or failure by us to amend the foreign exchange registrations of our PRC subsidiaries, could subject us to fines or legal sanctions, restrict our overseas or cross-border investment activities, limit our PRC subsidiaries’ ability to make distributions or pay dividends to us or affect our ownership structure, which could adversely affect our business and prospects.

***China's M&A Rules and certain other PRC regulations establish complex procedures for certain acquisitions of PRC companies by foreign investors, which could make it more difficult for us to pursue growth through acquisitions in China.***

A number of PRC laws and regulations have established procedures and requirements that could make merger and acquisition activities in China by foreign investors more time-consuming and complex. In addition to the Anti-Monopoly Law itself, these include the Rules on Acquisition of Domestic Enterprises by Foreign Investors, or the M&A Rules, adopted by six PRC governmental and regulatory agencies in 2006, and the Rules of the Ministry of Commerce on Implementation of Security Review System of Mergers and Acquisitions of Domestic Enterprises by Foreign Investors, or the Security Review Rules, promulgated in 2011. These laws and regulations impose requirements in some instances that the MOFCOM be notified in advance of any change-of-control transaction in which a foreign investor takes control of a PRC domestic enterprise. In addition, the Anti-Monopoly Law requires that the MOFCOM be notified in advance of any concentration of undertaking if certain thresholds are triggered. Moreover, the Security Review Rules specify that mergers and acquisitions by foreign investors that raise "national defense and security" concerns and mergers and acquisitions through which foreign investors may acquire de facto control over domestic enterprises that raise "national security" concerns are subject to strict review by the MOFCOM, and prohibit any attempt to bypass a security review, including by structuring the transaction through a proxy or contractual control arrangement. In the future, we may grow our business by acquiring complementary businesses. Complying with the requirements of the relevant regulations to complete such transactions could be time-consuming, and any required approval processes, including approval from the MOFCOM, may delay or inhibit our ability to complete such transactions, which could affect our ability to expand our business or maintain our market share.

***Any failure to comply with PRC regulations regarding the registration requirements for employee stock incentive plans may subject the PRC plan participants or us to fines and other legal or administrative sanctions.***

Under SAFE regulations, PRC residents who participate in a stock incentive plan in an overseas publicly listed company are required to register with SAFE or its local branches and complete certain other procedures. See "Item 4. Information on the Company—B. Business Overview—Regulation—Regulations on Employment and Social Welfare—Employee Stock Incentive Plan." We and our PRC resident employees who participate in our share incentive plans are subject to these regulations since we became a public company listed in the United States. If we or any of these PRC resident employees fail to comply with these regulations, we or such employees may be subject to fines and other legal or administrative sanctions. We also face regulatory uncertainties that could restrict our ability to adopt additional incentive plans for our directors, executive officers and employees under PRC law.

***Discontinuation of any of the preferential tax treatments and government subsidies or imposition of any additional taxes and surcharges could adversely affect our financial condition and results of operations.***

Our PRC subsidiaries currently benefit from a number of preferential tax treatments. For example, our subsidiary, NIO Co., Ltd., is entitled to enjoy, after completing certain application formalities, a 15% preferential enterprise income tax from 2018 as it has been qualified as a "High New Technology Enterprise" under the PRC Enterprise Income Tax Law and related regulations. The discontinuation of any of the preferential income tax treatment that we currently enjoy could have a material and adverse effect on our result of operations and financial condition. We cannot assure you that we will be able to maintain or lower our current effective tax rate in the future.

In addition, our PRC subsidiaries have received various financial subsidies from PRC local government authorities. The financial subsidies result from discretionary incentives and policies adopted by PRC local government authorities. For example, our subsidiary, XPT (Nanjing) E-Powertrain Technology Co., Ltd., has received subsidies of an aggregate of RMB33.1 million for the phase I construction of the Nanjing Advanced Manufacturing Engineering Center. Local governments may decide to change or discontinue such financial subsidies at any time. The discontinuation of such financial subsidies or imposition of any additional taxes could adversely affect our financial condition and results of operations.

***If we are classified as a PRC resident enterprise for PRC income tax purposes, such classification could result in unfavorable tax consequences to us and our non-PRC shareholders or ADS holders.***

Under the PRC Enterprise Income Tax Law and its implementation rules, an enterprise established outside of the PRC with a “de facto management body” within the PRC is considered a PRC resident enterprise. The implementation rules define the term “de facto management body” as the body that exercises full and substantial control over and overall management of the business, productions, personnel, accounts and properties of an enterprise. In 2009, the State Administration of Taxation issued a circular, known as Circular 82, which provides certain specific criteria for determining whether the “de facto management body” of a PRC-controlled enterprise that is incorporated offshore is located in China. Although Circular 82 only applies to offshore enterprises controlled by PRC enterprises or PRC enterprise groups, not those controlled by PRC individuals or foreigners like us, the criteria set forth in the circular may reflect the State Administration of Taxation’s general position on how the “de facto management body” test should be applied in determining the tax resident status of all offshore enterprises. According to Circular 82, an offshore incorporated enterprise controlled by a PRC enterprise or a PRC enterprise group will be regarded as a PRC tax resident by virtue of having its “de facto management body” in China and will be subject to PRC enterprise income tax on its global income only if all of the following conditions are met: (i) the primary location of the day-to-day operational management is in the PRC; (ii) decisions relating to the enterprise’s financial and human resource matters are made or are subject to approval by organizations or personnel in the PRC; (iii) the enterprise’s primary assets, accounting books and records, company seals, and board and shareholder resolutions, are located or maintained in the PRC; and (iv) at least 50% of voting board members or senior executives habitually reside in the PRC.

We believe that none of our entities outside of China is a PRC resident enterprise for PRC tax purposes. However, the tax resident status of an enterprise is subject to determination by the PRC tax authorities and uncertainties remain with respect to the interpretation of the term “de facto management body.” If the PRC tax authorities determine that we are a PRC resident enterprise for enterprise income tax purposes, we will be subject to the enterprise income tax on our global income at the rate of 25% and we will be required to comply with PRC enterprise income tax reporting obligations. In addition, we may be required to withhold a 10% withholding tax from interest or dividends we pay to our shareholders that are non-resident enterprises, including the holders of our ADSs. In addition, non-resident enterprise shareholders (including our ADS holders) may be subject to PRC tax at a rate of 10% on gains realized on the sale or other disposition of our ADSs or ordinary shares, if such income is treated as sourced from within the PRC. Furthermore, if PRC tax authorities determine that we are a PRC resident enterprise for enterprise income tax purposes, interest or dividends paid to our non-PRC individual shareholders (including our ADS holders) and any gain realized on the transfer of the ADSs or ordinary shares by such holders may be subject to PRC tax at a rate of 20% (which, in the case of interest or dividends, may be withheld at source by us), if such gains are deemed to be from PRC sources. These rates may be reduced by an applicable tax treaty, but it is unclear whether our non-PRC shareholders would be able to claim the benefits of any tax treaties between their country of tax residence and the PRC in the event that we are treated as a PRC resident enterprise.

***We may not be able to obtain certain benefits under relevant tax treaty on dividends paid by our PRC subsidiaries to us through our Hong Kong subsidiary.***

We are a holding company incorporated under the laws of the Cayman Islands and as such rely on dividends and other distributions on equity from our PRC subsidiaries to satisfy part of our liquidity requirements. Pursuant to the PRC Enterprise Income Tax Law, a withholding tax rate of 10% currently applies to dividends paid by a PRC “resident enterprise” to a foreign enterprise investor, unless any such foreign investor’s jurisdiction of incorporation has a tax treaty with China that provides for preferential tax treatment. Pursuant to the *Arrangement between Mainland China and the Hong Kong Special Administrative Region for the Avoidance of Double Taxation and Tax Evasion on Income*, such withholding tax rate may be lowered to 5% if a Hong Kong resident enterprise owns no less than 25% of a PRC enterprise. Furthermore, the Administrative Measures for Non-Resident Enterprises to Enjoy Treatments under Tax Treaties, which became effective in August 2015, require non-resident enterprises to determine whether they are qualified to enjoy the preferential tax treatment under the tax treaties and file relevant report and materials with the tax authorities. There are also other conditions for enjoying the reduced withholding tax rate according to other relevant tax rules and regulations. See “Item 10. Additional Information—E. Taxation—People’s Republic of China Taxation.” As of December 31, 2018, our subsidiaries and variable interest entities located in the PRC reported accumulated loss and therefore they had no retained earnings for offshore distribution. In the future, we intend to re-invest all earnings, if any, generated from our PRC subsidiaries for the operation and expansion of our business in China. Should our tax policy change to allow for offshore distribution of our earnings, we would be subject to a significant withholding tax. Our determination regarding our qualification to enjoy the preferential tax treatment could be challenged by the relevant tax authority and we may not be able to complete the necessary filings with the relevant tax authority and enjoy the preferential withholding tax rate of 5% under the arrangement with respect to dividends to be paid by our PRC subsidiaries to our Hong Kong subsidiary.

***We face uncertainty with respect to indirect transfers of equity interests in PRC resident enterprises by their non-PRC holding companies.***

In February 2015, the State Administration of Taxation, or the SAT, issued the *Circular on Issues of Enterprise Income Tax on Indirect Transfers of Assets by Non-PRC Resident Enterprises*, or Circular 7. Circular 7 extends its tax jurisdiction to not only indirect transfers but also transactions involving transfer of other taxable assets, through the offshore transfer of a foreign intermediate holding company. In addition, Circular 7 provides certain criteria on how to assess reasonable commercial purposes and has introduced safe harbors for internal group restructurings and the purchase and sale of equity through a public securities market. Circular 7 also brings challenges to both the foreign transferor and transferee (or other person who is obligated to pay for the transfer) of the taxable assets. Where a non-resident enterprise conducts an “indirect transfer” by transferring the taxable assets indirectly by disposing of the equity interests of an overseas holding company, the non-resident enterprise being the transferor, or the transferee, or the PRC entity which directly owned the taxable assets may report to the relevant tax authority such indirect transfer. Using a “substance over form” principle, the PRC tax authority may disregard the existence of the overseas holding company if it lacks a reasonable commercial purpose and was established for the purpose of reducing, avoiding or deferring PRC tax. As a result, gains derived from such indirect transfer may be subject to PRC enterprise income tax, and the transferee or other person who is obligated to pay for the transfer is obligated to withhold the applicable taxes, currently at a rate of 10% for the transfer of equity interests in a PRC resident enterprise. On October 17, 2017, the SAT issued *Circular on Issues of Tax Withholding regarding Non-PRC Resident Enterprise Income Tax*, or Circular 37, which came into effect on December 1, 2017. Circular 37 further clarifies the practice and procedure of the withholding of nonresident enterprise income tax.

We face uncertainties on the reporting and consequences of future private equity financing transactions, share exchanges or other transactions involving the transfer of shares in our company by investors that are non-PRC resident enterprises. The PRC tax authorities may pursue such non-resident enterprises with respect to a filing or the transferees with respect to withholding obligations, and request our PRC subsidiaries to assist in the filing. As a result, we and non-resident enterprises in such transactions may become at risk of being subject to filing obligations or being taxed under Circular 7 and Circular 37, and may be required to expend valuable resources to comply with them or to establish that we and our non-resident enterprises should not be taxed under these regulations, which may have a material adverse effect on our financial condition and results of operations.

***If the custodians or authorized users of controlling non-tangible assets of our company, including our corporate chops and seals, fail to fulfill their responsibilities, or misappropriate or misuse these assets, our business and operations could be materially and adversely affected.***

Under PRC law, legal documents for corporate transactions are executed using the chops or seal of the signing entity or with the signature of a legal representative whose designation is registered and filed with the relevant branch of the SAMR.

Although we usually utilize chops to enter into contracts, the designated legal representatives of each of our PRC subsidiaries, variable interest entities and their subsidiaries have the apparent authority to enter into contracts on behalf of such entities without chops and bind such entities. All designated legal representatives of our PRC subsidiaries, variable interest entities and their subsidiaries are members of our senior management team who have signed employment agreements with us or our PRC subsidiaries, variable interest entities and their subsidiaries under which they agree to abide by various duties they owe to us. In order to maintain the physical security of our chops and chops of our PRC entities, we generally store these items in secured locations accessible only by the authorized personnel in the legal or finance department of each of our subsidiaries, variable interest entities and their subsidiaries. Although we monitor such authorized personnel, there is no assurance such procedures will prevent all instances of abuse or negligence. Accordingly, if any of our authorized personnel misuse or misappropriate our corporate chops or seals, we could encounter difficulties in maintaining control over the relevant entities and experience significant disruption to our operations. If a designated legal representative obtains control of the chops in an effort to obtain control over any of our PRC subsidiaries, variable interest entities or their subsidiaries, we or our PRC subsidiaries, variable interest entities and their subsidiaries would need to pass a new shareholders or board resolution to designate a new legal representative and we would need to take legal action to seek the return of the chops, apply for new chops with the relevant authorities, or otherwise seek legal redress for the violation of the representative’s fiduciary duties to us, which could involve significant time and resources and divert management attention away from our regular business. In addition, the affected entity may not be able to recover corporate assets that are sold or transferred out of our control in the event of such a misappropriation if a transferee relies on the apparent authority of the representative and acts in good faith.

***Our leased property interest or entitlement to other facilities or assets may be defective or subject to lien and our right to lease, own or use the properties affected by such defects or lien challenged, which could cause significant disruption to our business.***

Under PRC laws, all lease agreements are required to be registered with the local housing authorities. We presently lease several premises in China, some of which have not completed the registration of the ownership rights or the registration of our leases with the relevant authorities. Failure to complete these required registrations may expose our landlords, lessors and us to potential monetary fines. If these registrations are not obtained in a timely manner or at all, we may be subject to monetary fines or may have to relocate our offices and incur the associated losses.

Some of the ownership certificates or other similar proof of certain leased properties have not been provided to us by the relevant lessors. Therefore, we cannot assure you that such lessors are entitled to lease the relevant real properties to us. If the lessors are not entitled to lease the real properties to us and the owners of such real properties decline to ratify the lease agreements between us and the respective lessors, we may not be able to enforce our rights to lease such properties under the respective lease agreements against the owners. If our lease agreements are claimed as null and void by third parties who are the real owners of such leased real properties, we could be required to vacate the properties, in the event of which we could only initiate the claim against the lessors under relevant lease agreements for indemnities for their breach of the relevant leasing agreements. We cannot assure you that suitable alternative locations are readily available on commercially reasonable terms, or at all, and if we are unable to relocate our operations in a timely manner, our operations may be adversely affected.

Some of our PRC subsidiaries have incurred or will incur indebtedness and may, in connection therewith, create mortgage, pledge or other lien over substantive operating assets, facilities or equity interests of certain PRC subsidiaries as guarantee to their repayment of indebtedness or as counter guarantee to third-party guarantors which provide guarantee to our PRC subsidiaries' repayment of indebtedness. In the event that the relevant PRC subsidiaries fail to perform their repayment obligations or such guarantors perform their guarantee obligations, claims may be raised to our substantive operating assets, facilities or equity interests of the PRC subsidiaries in question. If we cannot continue to own or use such assets, facilities or equity interests, our operation may be adversely affected.

***The audit report included in this annual report is prepared by an auditor who is not inspected by the Public Company Accounting Oversight Board and, as such, our investors are deprived of the benefits of such inspection.***

Our independent registered public accounting firm that issues the audit report included in this annual report, as auditors of companies that are traded publicly in the United States and a firm registered with the PCAOB, is subject to laws in the United States to pursuant to which the PCAOB conducts regular inspections to assess its compliance with professional standards. Because our auditors are located in China, a jurisdiction where the PCAOB is currently unable to conduct inspections without the approval of the PRC authorities, our auditors are not currently inspected by the PCAOB.

Inspections of other firms that the PCAOB has conducted outside China have identified deficiencies in those firms' audit procedures and quality control procedures, which may be addressed as part of the inspection process to improve future audit quality. This lack of PCAOB inspections in China prevents the PCAOB from regularly evaluating our auditor's audits and its quality control procedures. As a result, investors may be deprived of the benefits of PCAOB inspections. On December 7, 2018, the SEC and the PCAOB issued a joint statement highlighting continued challenges faced by the U.S. regulators in their oversight of financial statement audits of U.S.-listed companies with significant operations in China. However, it remains unclear what further actions the SEC and the PCAOB will take to address the problem.



The inability of the PCAOB to conduct inspections of auditors in China makes it more difficult to evaluate the effectiveness of our auditor's audit procedures or quality control procedures as compared to auditors outside of China that are subject to PCAOB inspections. Investors may lose confidence in our reported financial information and procedures and the quality of our financial statements.

***Proceedings instituted by the SEC against the "big four" PRC-based accounting firms, including our independent registered public accounting firm, could result in financial statements being determined to not be in compliance with the requirements of the Exchange Act.***

In late 2012, the SEC commenced administrative proceedings under Rule 102(e) of its Rules of Practice and also under the Sarbanes-Oxley Act against the Chinese affiliates of the "big four" accounting firms (including our auditors). The Rule 102(e) proceedings initiated by the SEC relate to these firms' inability to produce documents, including audit work papers, in response to the request of the SEC pursuant to Section 106 of the Sarbanes-Oxley Act, as the auditors located in the PRC are not in a position lawfully to produce documents directly to the SEC because of restrictions under PRC law and specific directives issued by the China Securities Regulatory Commission, or the CSRC. The issues raised by the proceedings are not specific to our auditors or to us, but affect equally all audit firms based in China and all China-based businesses with securities listed in the United States.

In January 2014, the administrative judge reached an initial decision, or the Initial Decision, that the Chinese affiliates of "big four" accounting firms should be barred from practicing before the SEC for six months. Thereafter, the accounting firms filed a petition for review of the Initial Decision, prompting the SEC commissioners to review the Initial Decision, determine whether there had been any violation and, if so, determine the appropriate remedy to be placed on these audit firms.

In February 2015, the Chinese affiliates of the "big four" accounting firms (including our auditors) each agreed to censure and pay a fine to the SEC to settle the dispute and avoid suspension of their ability to practice before the SEC and audit U.S. listed companies. The settlement requires the firms to follow detailed procedures and to seek to provide the SEC with access to the Chinese firms' audit documents via the CSRC. If they failed to meet the specified criteria during a period of four years starting from the settlement date, the SEC retained authority to impose a variety of additional remedial measures on the firms depending on the nature of the failure. Under the terms of the settlement, the underlying proceeding against the four China-based accounting firms was deemed dismissed with prejudice four years after entry of the settlement. The four-year mark occurred on February 6, 2019. While we cannot predict if the SEC will further challenge the four China-based accounting firms' compliance with U.S. law in connection with U.S. regulatory requests for audit work papers or if the results of such a challenge would result in the SEC imposing penalties such as suspensions. If additional remedial measures are imposed on the Chinese affiliates of the "big four" accounting firms, we could be unable to timely file future financial statements in compliance with the requirements of the Exchange Act.

In the event the Chinese affiliates of the "big four" become subject to additional legal challenges by the SEC or PCAOB, depending upon the final outcome, listed companies in the United States with major PRC operations may find it difficult or impossible to retain auditors in respect of their operations in the PRC, which could result in financial statements being determined to not be in compliance with the requirements of the Securities Exchange Act of 1934, as amended, or the Securities Exchange Act, and could result in delisting. Moreover, any negative news about the proceedings against these audit firms may cause investor uncertainty regarding China-based, United States-listed companies and the market price of our shares may be adversely affected. If our independent registered public accounting firm was denied, temporarily, the ability to practice before the SEC and we were unable to timely find another registered public accounting firm to audit and issue an opinion on our financial statements, our financial statements could be determined to not be in compliance with the requirements of the Exchange Act.

## Risks Related to Our ADSs and Trading Market

*The trading prices of our ADSs have fluctuated and may be volatile, which could result in substantial losses to investors.*

The trading price of our ADSs has been volatile and has ranged from a low of US\$4.90 to a high of US\$13.80 since our ADSs started to trade on the New York Stock Exchange on September 12, 2018. The market price for our ADSs may continue to be volatile and subject to wide fluctuations in response to factors including, but not limited to, the following:

- actual or anticipated fluctuations in our quarterly results of operations;
- changes in financial estimates by securities research analysts;
- conditions in automotive markets;
- changes in the operating performance or market valuations of other automotive companies;
- announcements by us or our competitors of new products, acquisitions, strategic partnerships, joint ventures or capital commitments;
- addition or departure of key personnel;
- fluctuations of exchange rates between RMB and the U.S. dollar;
- litigation, government investigation or other legal or regulatory proceeding;
- release of lock-up and other transfer restrictions on our ADSs or any ordinary shares or sales of additional ADSs;
- any actual or alleged illegal acts of our shareholders or management;
- any share repurchase program; and
- general economic or political conditions in China or elsewhere in the world.

Any of these factors may result in large and sudden changes in the volume and price at which our ADSs will trade.

In addition, the stock market in general, and the market prices for companies with operations in China in particular, have experienced volatility that often has been unrelated to the operating performance of such companies. The securities of some China-based companies that have listed their securities in the United States have experienced significant volatility since their initial public offerings in recent years, including, in some cases, substantial declines in the trading prices of their securities. The trading performances of these companies' securities after their offerings may affect the attitudes of investors towards Chinese companies listed in the United States in general, which consequently may impact the trading performance of our ADSs, regardless of our actual operating performance. In addition, any negative news or perceptions about inadequate corporate governance practices or fraudulent accounting, corporate structure or other matters of other Chinese companies may also negatively affect the attitudes of investors towards Chinese companies in general, including us, regardless of whether we have engaged in any inappropriate activities. In particular, the global financial crisis and the ensuing economic recessions in many countries have contributed and may continue to contribute to extreme volatility in the global stock markets. These broad market and industry fluctuations may adversely affect the market price of our ADSs. Volatility or a lack of positive performance in our ADS price may also adversely affect our ability to retain key employees, most of whom have been granted options or other equity incentives.

***If securities or industry analysts do not publish research or reports about our business, or if they adversely change their recommendations regarding our ADSs, the market price for our ADSs and trading volume could decline.***

The trading market for our ADSs will be influenced by research or reports that industry or securities analysts publish about our business. If one or more analysts who cover us downgrade our ADSs, the market price for our ADSs would likely decline. If one or more of these analysts cease to cover us or fail to regularly publish reports on us, we could lose visibility in the financial markets, which in turn could cause the market price or trading volume for our ADSs to decline.

***Our triple-class voting structure will limit the holders of our Class A ordinary shares and ADSs to influence corporate matters, provide certain shareholders of ours with substantial influence and could discourage others from pursuing any change of control transactions that holders of our Class A ordinary shares and ADSs may view as beneficial.***

We have adopted a triple-class voting structure such that our ordinary shares consist of Class A ordinary shares, Class B ordinary shares and Class C ordinary shares. Holders of Class A ordinary shares, Class B ordinary shares and Class C ordinary shares have the same rights other than voting and conversion rights. Each holder of our Class A ordinary shares is entitled to one vote per share, each holder of our Class B ordinary shares is entitled to four votes per share and each holder of our Class C ordinary shares is entitled to eight votes per share on all matters submitted to them for a vote. Our Class A ordinary shares, Class B ordinary shares and Class C ordinary shares vote together as a single class on all matters submitted to a vote of our shareholders, except as may otherwise be required by law. Each Class B ordinary share or Class C ordinary share is convertible into one Class A ordinary share, whereas Class A ordinary shares are not convertible into Class B ordinary shares or Class C ordinary shares under any circumstances. Upon any transfer of Class B ordinary shares or Class C ordinary shares by a holder thereof to any person or entity which is not an affiliate of such holder, such Class B ordinary shares or Class C ordinary shares are automatically and immediately converted into the equal number of Class A ordinary shares.

As of the date of this annual report, Mr. Bin Li, our chairman and chief executive officer, together with his affiliates, beneficially own all of our issued Class C ordinary shares. The Tencent entities beneficially owned all of our issued Class B ordinary shares. Due to the disparate voting powers associated with our triple classes of ordinary shares, Mr. Li has considerable influence over important corporate matters. As of February 28, 2019, Mr. Li beneficially owns 48.0% of the aggregate voting power of our company through mobike Global Ltd. and Originalwish Limited, companies wholly owned by Mr. Li, and through NIO Users Limited, a holding company ultimately controlled by Mr. Li, whereas Tencent entities beneficially own 21.6% of the aggregate voting power of our company through Mount Putuo Investment Limited, Image Frame Investment (HK) Limited and TPP Follow-on I Holding D Limited. Mr. Li has considerable influence over matters requiring shareholder approval, including electing directors and approving material mergers, acquisitions or other business combination transactions. This concentrated control will limit the ability of the holders of our Class A ordinary shares and ADSs to influence corporate matters and could also discourage others from pursuing any potential merger, takeover or other change of control transaction, which could have the effect of depriving the holders of our Class A ordinary shares and our ADSs of the opportunity to sell their shares at a premium over the prevailing market price. Moreover, Mr. Li may increase the concentration of his voting power and/or share ownership in the future, which may, among other consequences, decrease the liquidity in our ADSs.

***The sale or availability for sale of substantial amounts of our ADSs could adversely affect their market price.***

Sales of substantial amounts of our ADSs in the public market, or the perception that these sales could occur, could adversely affect the market price of our ADSs and could materially impair our ability to raise capital through equity offerings in the future. We cannot predict what effect, if any, market sales of securities held by our significant shareholders or any other shareholder or the availability of these securities for future sale will have on the market price of our ADSs. In addition, certain holders of our existing shares are entitled to certain registration rights, including demand registration rights, piggyback registration rights, and Form F-3 or Form S-3 registration rights. Registration of these shares under the Securities Act of 1933, or the Securities Act, would result in these shares becoming freely tradable without restriction under the Securities Act immediately upon the effectiveness of the registration. Sales of these registered shares in the public market, or the perception that such sales could occur, could cause the price of our ADSs to decline.

***Because we do not expect to pay dividends in the foreseeable future, the holders of our ADSs must rely on price appreciation of our ADSs for return on their investment.***

We currently intend to retain most, if not all, of our available funds and any future earnings to fund the development and growth of our business. As a result, we do not expect to pay any cash dividends in the foreseeable future. Therefore, you should not rely on an investment in our ADSs as a source for any future dividend income.

Our board of directors has complete discretion as to whether to distribute dividends. Even if our board of directors decides to declare and pay dividends, the timing, amount and form of future dividends, if any, will depend on our future results of operations and cash flow, our capital requirements and surplus, the amount of distributions, if any, received by us from our subsidiaries, our financial condition, contractual restrictions and other factors deemed relevant by our board of directors. Accordingly, the return to ADS holders will likely depend entirely upon any future price appreciation of our ADSs. There is no guarantee that our ADSs will appreciate in value or even maintain the price at which ADS holders purchased the ADSs. Our ADS holders may not realize a return on their investment in our ADSs and they may even lose their entire investment in our ADSs.

***There can be no assurance that we will not be classified as a passive foreign investment company, or PFIC, for U.S. federal income tax purposes for any taxable year, which could result in adverse U.S. federal income tax consequences to U.S. holders of our ADSs or Class A ordinary shares.***

A non-U.S. corporation will be classified as a passive foreign investment company, or PFIC, for any taxable year if either (1) at least 75% of its gross income for such year consists of certain types of “passive” income; or (2) at least 50% of the value of its assets (based on an average of the quarterly values of the assets) during such year is attributable to assets that produce passive income or are held for the production of passive income (the “asset test”). Based on our current and expected income and assets (taking into account our current market capitalization), we do not believe that we were a PFIC for our taxable year ended December 31, 2018 and we do not expect to be a PFIC for the current taxable year or the foreseeable future. However, no assurance can be given in this regard because the determination of whether we are or will become a PFIC is a fact-intensive inquiry made on an annual basis that depends, in part, upon the nature and composition of our income and assets. Fluctuations in the market price of our ADSs may cause us to become a PFIC for the current or subsequent taxable years because the value of our assets for the purpose of the asset test may be determined by reference to the market price of our ADSs, which may be volatile. The nature and composition of our income and assets may also be affected by how, and how quickly, we use our liquid assets.

Although the law in this regard is not entirely clear, we treat our consolidated VIEs as being owned by us for U.S. federal income tax purposes because we control their management decisions and are entitled to substantially all of the economic benefits associated with these entities. As a result, we consolidated their results of operations in our consolidated U.S. GAAP financial statements. If it were determined, however, that we are not the owner of the consolidated VIEs for U.S. federal income tax purposes, we may be treated as a PFIC for the current taxable year and any subsequent taxable year.

If we were to be or become a PFIC for any taxable year during which a U.S. Holder (as defined in “Item 10—Additional Information—E. Taxation—United States Federal Income Taxation”) holds our ADSs or Class A ordinary shares, certain adverse U.S. federal income tax consequences could apply to such U.S. Holder. See “Item 10—Additional Information—E. Taxation—United States Federal Income Taxation.”

***Our memorandum and articles of association contain anti-takeover provisions that could have a material adverse effect on the rights of holders of our Class A ordinary shares and ADSs.***

Our eleventh amended and restated memorandum and articles of association contain provisions that have the potential to limit the ability of others to acquire control of our company or cause us to engage in change-of-control transactions. These provisions could have the effect of depriving our shareholders of an opportunity to sell their shares at a premium over prevailing market prices by discouraging third parties from seeking to obtain control of our company in a tender offer or similar transaction. Our board of directors has the authority, without further action by our shareholders, to issue preferred shares in one or more series and to fix their designations, powers, preferences, privileges, and relative participating, optional or special rights and the qualifications, limitations or restrictions, including dividend rights, conversion rights, voting rights, rights and terms of redemption and liquidation preferences, any or all of which may be greater than the rights associated with our ordinary shares, in the form of ADS or otherwise. Preferred shares could be issued quickly with terms calculated to delay or prevent a change in control of our company or make removal of management more difficult. If our board of directors decides to issue preferred shares, the price of our ADSs may fall and the voting and other rights of the holders of our Class A ordinary shares and ADSs may be materially and adversely affected.

***The capped call and zero-strike call transactions may affect the value of our ADSs.***

On January 30, 2019, in connection with the pricing of the 2024 Notes, we entered into capped call transactions with one or more of the initial purchasers and/or their respective affiliates and/or other financial institutions, or the Capped Call Option Counterparties. We entered into additional capped call transactions with the Capped Call Option Counterparties on February 15, 2019 and February 26, 2019, respectively. We used a portion of the net proceeds of the 2024 Notes to pay the cost of such transactions. The cap price of these capped call transactions is initially US\$14.92 per ADS, representing a premium of approximately 100% to the closing price on the New York Stock Exchange, or NYSE, of the Company's ADSs on January 30, 2019, which was US\$7.46 per ADS, and is subject to adjustment under the terms of the capped call transactions. As part of establishing their initial hedges of the capped call transactions, the Capped Call Option Counterparties or their respective affiliates expect to trade the ADSs and/or enter into various derivative transactions with respect to our ADSs concurrently with, or shortly after, the pricing of the 2024 Notes. This activity could increase (or reduce the size of any decrease in) the market price of the ADSs or the 2024 Notes at that time. However, if any such capped call transactions fail to become effective, the Capped Call Option Counterparties may unwind their hedge positions with respect to the ADSs, which could adversely affect the market price of the ADSs. In addition, the Capped Call Option Counterparties or their respective affiliates may modify their hedge positions by entering into or unwinding various derivative transactions with respect to the ADSs, the 2024 Notes or our other securities and/or by purchasing or selling the ADSs, the 2024 Notes or our other securities in secondary market transactions following the pricing of the 2024 Notes and prior to the maturity of the 2024 Notes (and are likely to do so following any conversion of the 2024 Notes, if we exercise the relevant election under the capped call transactions, or repurchase of the 2024 Notes by us). This activity could also cause or avoid an increase or a decrease in the market price of our ADSs.

On January 30, 2019, in connection with the pricing of the 2024 Notes, NIO also entered into privately negotiated zero-strike call option transactions with one or more of the initial purchasers or their respective affiliates, or the Zero-Strike Call Option Counterparties, and used a portion of the net proceeds of the 2024 Notes to pay the aggregate premium under such transactions. Pursuant to the zero-strike call option transactions, we purchased, in the aggregate, approximately 26.8 million ADSs, with delivery thereof (subject to adjustment) by the respective Zero-Strike Call Option Counterparties at settlement shortly after the scheduled maturity date of the 2024 Notes, subject to the ability of each Zero-Strike Call Option Counterparty to elect to settle all or a portion of the respective zero-strike option transaction early. Facilitating investors' hedge positions by entering into the zero-strike call option transactions, particularly if investors purchase the ADSs on or around the day of the pricing of the 2024 Notes, could increase (or reduce the size of any decrease in) the market price of the ADSs. However, if any zero-strike call option transactions fail to become effective, the respective Zero-Strike Call Option Counterparties may unwind their hedge positions with respect to the ADSs, which could adversely affect the market price of the ADSs. In addition, the Zero-Strike Call Option Counterparties or their respective affiliates may modify their respective hedge positions by entering into or unwinding one or more derivative transactions with respect to the ADSs, the 2024 Notes or our other securities and/or by purchasing or selling the ADSs, the 2024 Notes or our other securities in secondary market transactions at any time, including following the pricing of the 2024 Notes and prior to the maturity of the 2024 Notes. This activity could also cause or avoid an increase or a decrease in the market price of the ADSs.

***Our shareholders may face difficulties in protecting their interests, and ability to protect their rights through U.S. courts may be limited, because we are incorporated under Cayman Islands law.***

We are an exempted company incorporated under the laws of the Cayman Islands. Our corporate affairs are governed by our eleventh amended and restated memorandum and articles of association, the Companies Law (2018 Revision) of the Cayman Islands and the common law of the Cayman Islands. The rights of shareholders to take action against the directors, actions by minority shareholders and the fiduciary responsibilities of our directors to us under Cayman Islands law are to a large extent governed by the common law of the Cayman Islands. The common law of the Cayman Islands is derived in part from comparatively limited judicial precedent in the Cayman Islands as well as from the common law of England, the decisions of whose courts are of persuasive authority, but are not binding, on a court in the Cayman Islands. The rights of our shareholders and the fiduciary responsibilities of our directors under Cayman Islands law are not as clearly established as they would be under statutes or judicial precedent in some jurisdictions in the United States. In particular, the Cayman Islands has a less developed body of securities laws than the United States. Some U.S. states, such as Delaware, have more fully developed and judicially interpreted bodies of corporate law than the Cayman Islands. In addition, Cayman Islands companies may not have standing to initiate a shareholder derivative action in a federal court of the United States.

Shareholders of Cayman Islands exempted companies like us have no general rights under Cayman Islands law to inspect corporate records or to obtain copies of lists of shareholders of these companies. Our directors have discretion under our articles of association to determine whether or not, and under what conditions, our corporate records may be inspected by our shareholders, but are not obliged to make them available to our shareholders. This may make it more difficult for our shareholders to obtain the information needed to establish any facts necessary for a shareholder motion or to solicit proxies from other shareholders in connection with a proxy contest.

As a Cayman Islands company listed on the New York Stock Exchange, we are subject to the NYSE corporate governance listing standards. However, the NYSE corporate governance listing standards permit a foreign private issuer like us to follow the corporate governance practices of its home country. Certain corporate governance practices in the Cayman Islands, which is our home country, may differ significantly from the NYSE corporate governance listing standards. Currently, we do not plan to rely on home country exemption for corporate governance matters. However, if we choose to follow home country practice in the future, our shareholders may be afforded less protection than they otherwise would under the NYSE corporate governance listing standards applicable to U.S. domestic issuers.

As a result of all of the above, our public shareholders may have more difficulty in protecting their interests in the face of actions taken by management, members of the board of directors or controlling shareholders than they would as public shareholders of a company incorporated in the United States.

***ADS holders may not be entitled to a jury trial with respect to claims arising under the deposit agreements, which could result in less favorable outcomes to the plaintiff(s) in any such action.***

The deposit agreement and the deposit agreement for restricted securities governing the ADSs representing our Class A ordinary shares provide that, subject to the depository's right to require a claim to be submitted to arbitration, the federal or state courts in the City of New York have exclusive jurisdiction to hear and determine claims arising under the deposit agreements and in that regard, to the fullest extent permitted by law, ADS holders waive the right to a jury trial of any claim they may have against us or the depository arising out of or relating to our Class A ordinary shares, the ADSs or the deposit agreements, including any claim under the U.S. federal securities laws.

If we or the depositary opposed a jury trial demand based on the waiver, the court would determine whether the waiver was enforceable based on the facts and circumstances of that case in accordance with the applicable state and federal law. To our knowledge, the enforceability of a contractual pre-dispute jury trial waiver in connection with claims arising under the federal securities laws has not been finally adjudicated by the United States Supreme Court. However, we believe that a contractual pre-dispute jury trial waiver provision is generally enforceable, including under the laws of the State of New York, which govern the deposit agreements. In determining whether to enforce a contractual pre-dispute jury trial waiver provision, courts will generally consider whether a party knowingly, intelligently and voluntarily waived the right to a jury trial. We believe that this is the case with respect to the deposit agreements and the ADSs. It is advisable that you consult legal counsel regarding the jury waiver provision before investing in the ADSs.

If any of the holders or beneficial owners of ADSs bring a claim against us or the depositary in connection with matters arising under the deposit agreements or the ADSs, including claims under federal securities laws, such holder or beneficial owner may not be entitled to a jury trial with respect to such claims, which may have the effect of limiting and discouraging lawsuits against us and/or the depositary. If a lawsuit is brought against us and/or the depositary under the deposit agreements, it may be heard only by a judge or justice of the applicable trial court, which would be conducted according to different civil procedures and may result in different outcomes than a trial by jury would have had, including results that could be less favorable to the plaintiff(s) in any such action.

Nevertheless, if this jury trial waiver provision is not enforced, to the extent a court action proceeds, it would proceed under the terms of the deposit agreements with a jury trial. No condition, stipulation or provision of the deposit agreements or ADSs serves as a waiver by any holder or beneficial owner of ADSs or by us or the depositary of compliance with any substantive provision of the U.S. federal securities laws and the rules and regulations promulgated thereunder.

***Certain judgments obtained against us by our shareholders may not be enforceable.***

We are a Cayman Islands company and the majority of our assets are located outside of the United States. The most significant portion of our operations are conducted in China. In addition, a majority of our current directors and officers are nationals and residents of countries other than the United States. Substantially all of the assets of these persons may be located outside the United States. As a result, it may be difficult or impossible for our shareholders to bring an action against us or against these individuals in the United States in the event that such shareholders believe that their rights have been infringed under the U.S. federal securities laws or otherwise. Even if such shareholders are successful in bringing an action of this kind, the laws of the Cayman Islands and of China may render them unable to enforce a judgment against our assets or the assets of our directors and officers.

***We are an emerging growth company within the meaning of the Securities Act and may take advantage of certain reduced reporting requirements.***

We are an “emerging growth company,” as defined in the JOBS Act, and we may take advantage of certain exemptions from requirements applicable to other public companies that are not emerging growth companies including, most significantly, not being required to comply with the auditor attestation requirements of Section 404 for so long as we are an emerging growth company until the fifth anniversary from the date of the initial public offering of our ADSs.

The JOBS Act also provides that an emerging growth company does not need to comply with any new or revised financial accounting standards until such date that a private company is otherwise required to comply with such new or revised accounting standards. However, we have elected to “opt out” of this provision and, as a result, we will comply with new or revised accounting standards as required when they are adopted for public companies. This decision to opt out of the extended transition period under the JOBS Act is irrevocable.

***We are a foreign private issuer within the meaning of the rules under the Exchange Act, and as such we are exempt from certain provisions applicable to United States domestic public companies.***

Because we are a foreign private issuer under the Exchange Act, we are exempt from certain provisions of the securities rules and regulations in the United States that are applicable to U.S. domestic issuers, including:

- the rules under the Exchange Act requiring the filing of quarterly reports on Form 10-Q or current reports on Form 8-K with the SEC;
- the sections of the Exchange Act regulating the solicitation of proxies, consents, or authorizations in respect of a security registered under the Exchange Act;
- the sections of the Exchange Act requiring insiders to file public reports of their stock ownership and trading activities and liability for insiders who profit from trades made in a short period of time; and
- the selective disclosure rules by issuers of material nonpublic information under Regulation FD.

We are required to file an annual report on Form 20-F within four months of the end of each fiscal year. In addition, we intend to publish our results on a quarterly basis through press releases, distributed pursuant to the rules and regulations of the New York Stock Exchange. Press releases relating to financial results and material events will also be furnished to the SEC on Form 6-K. However, the information we are required to file with or furnish to the SEC will be less extensive and less timely than that required to be filed with the SEC by U.S. domestic issuers. As a result, you may not be afforded the same protections or information that would be made available to you were you investing in a U.S. domestic issuer.

***The voting rights of holders of ADSs are limited by the terms of the deposit agreement, and they may not be able to exercise their right to vote their Class A ordinary shares.***

Holders of our ADSs will only be able to exercise the voting rights with respect to the underlying Class A ordinary shares in accordance with the provisions of the deposit agreements. Under the deposit agreement, ADS holders must vote by giving voting instructions to the depository. If we ask for instructions of ADS holders, then upon receipt of such voting instructions, the depository will try to vote the underlying Class A ordinary shares in accordance with these instructions. If we do not instruct the depository to ask for instructions of ADS holders, the depository may still vote in accordance with instructions given by holders of ADSs, but it is not required to do so. ADS holders will not be able to directly exercise their right to vote with respect to the underlying shares unless they withdraw the shares. When a general meeting is convened, an ADS holder may not receive sufficient advance notice to withdraw the shares underlying his or her ADSs to allow such holder to vote with respect to any specific matter. If we ask for instructions of holders of ADSs, the depository will notify ADS holders of the upcoming vote and will arrange to deliver our voting materials to ADS holders. We have agreed to give the depository at least 30 days' prior notice of shareholders' meetings. Nevertheless, we cannot assure you that ADS holders will receive the voting materials in time to ensure that ADS holders can instruct the depository to vote their shares. In addition, the depository and its agents are not responsible for failing to carry out voting instructions or for their manner of carrying out ADS holders' voting instructions. This means that an ADS holder may not be able to exercise the right to vote and may have no legal remedy if the shares underlying his or her ADSs are not voted as such holder requested.



***The depositary for our ADSs will give us a discretionary proxy to vote our Class A ordinary shares underlying the ADSs if the holders of such ADSs do not vote at shareholders' meetings, except in limited circumstances, which could adversely affect the interests of our ADS holders.***

Under the deposit agreements for the ADSs, if any holder of the ADSs does not vote, the depositary will give us a discretionary proxy to vote our Class A ordinary shares underlying such ADSs at shareholders' meetings unless:

- we have failed to timely provide the depositary with notice of meeting and related voting materials;
- we have instructed the depositary that we do not wish a discretionary proxy to be given;
- we have informed the depositary that there is substantial opposition as to a matter to be voted on at the meeting;
- a matter to be voted on at the meeting would have a material adverse impact on shareholders; or
- the voting at the meeting is to be made on a show of hands.

The effect of this discretionary proxy is that if any such holder of the ADSs does not vote at shareholders' meetings, such holder cannot prevent our Class A ordinary shares underlying such ADSs from being voted, except under the circumstances described above. This may make it more difficult for shareholders to influence the management of our company. Holders of our Class A ordinary shares are not subject to this discretionary proxy.

***An ADS holder's right to pursue claims against the depositary are limited by the terms of the deposit agreements.***

Under the deposit agreements, any action or proceeding against or involving the depositary, arising out of or based upon the deposit agreements or the transactions contemplated thereby or by virtue of owning the ADSs may only be instituted in a state or federal court in New York, New York, and a holder of our ADSs, will have irrevocably waived any objection which such holder may have to the laying of venue of any such proceeding, and irrevocably submitted to the exclusive jurisdiction of such courts in any such action or proceeding.

The depositary may, in its sole discretion, require that any dispute or difference arising from the relationship created by the deposit agreements be referred to and finally settled by an arbitration conducted under the terms described in the deposit agreements, although the arbitration provisions do not preclude a ADS holder from pursuing claims under federal securities laws in federal courts. Furthermore, if a ADS holder is unsuccessful in such arbitration, such holder may be responsible for the fees of the arbitrator and other costs incurred by the parties in connection with such arbitration pursuant to the deposit agreements. Also, we may amend or terminate the deposit agreements without the consent of any ADS holder. If a ADS holder continues to hold its ADSs after an amendment to the deposit agreements, such holder agrees to be bound by the deposit agreements as amended.

***Our ADS holders may not receive dividends or other distributions on our Class A ordinary shares and the ADS holders may not receive any value for them, if it is illegal or impractical to make them available to the ADS holders.***

The depositary of our ADSs has agreed to pay the ADS holders the cash dividends or other distributions it or the custodian receives on Class A ordinary shares or other deposited securities underlying our ADSs, after deducting its fees and expenses. Our ADS holders will receive these distributions in proportion to the number of Class A ordinary shares the underlying ADSs represent. However, the depositary is not responsible if it decides that it is unlawful or impractical to make a distribution available to any holders of ADSs. For example, it would be unlawful to make a distribution to a holder of ADSs if it consists of securities that require registration under the Securities Act but that are not properly registered or distributed under an applicable exemption from registration. The depositary may also determine that it is not feasible to distribute certain property through the mail. Additionally, the value of certain distributions may be less than the cost of mailing them. In these cases, the depositary may determine not to distribute such property. We have no obligation to register under U.S. securities laws any ADSs, Class A ordinary shares, rights or other securities received through such distributions. We also have no obligation to take any other action to permit the distribution of ADSs, Class A ordinary shares, rights or anything else to holders of ADSs. This means that our ADS holders may not receive distributions we make on our Class A ordinary shares or any value for them if it is illegal or impractical for us to make them available to the ADS holders. These restrictions may cause a material decline in the value of our ADSs.

***Our ADS holders may experience dilution of their holdings due to inability to participate in rights offerings.***

We may, from time to time, distribute rights to our shareholders, including rights to acquire securities. Under the deposit agreements, the depository will not distribute rights to holders of ADSs unless the distribution and sale of rights and the securities to which these rights relate are either exempt from registration under the Securities Act with respect to all holders of ADSs or are registered under the provisions of the Securities Act. The depository may, but is not required to, attempt to sell these undistributed rights to third parties, and may allow the rights to lapse. We may be unable to establish an exemption from registration under the Securities Act, and we are under no obligation to file a registration statement with respect to these rights or underlying securities or to endeavor to have a registration statement declared effective. Accordingly, holders of ADSs may be unable to participate in our rights offerings and may experience dilution of their holdings as a result.

***We may need additional capital, and the sale of additional ADSs or other equity securities could result in additional dilution to our shareholders, and the incurrence of additional indebtedness could increase our debt service obligations.***

We may require additional cash resources due to changed business conditions, strategic acquisitions or other future developments. If these resources are insufficient to satisfy our cash requirements, we may seek to sell additional equity or debt securities or obtain additional credit facilities. The sale of additional equity and equity-linked securities could result in additional dilution to our shareholders. The sale of substantial amounts of our ADSs (including upon conversion of the notes) could dilute the interests of our shareholders and ADS holders and adversely impact the market price of our ADSs. The incurrence of indebtedness would result in increased debt service obligations and could result in operating and financing covenants that would restrict our operations. We cannot assure you that financing will be available in amounts or on terms acceptable to us, if at all.

***Future sales or issuances, or perceived future sales or issuances, of substantial amounts of our ordinary shares or ADSs could adversely affect the price of our ADS.***

If our existing shareholders sell, or are perceived as intending to sell, substantial amounts of our ordinary shares or ADSs, including those issued upon the exercise of our outstanding stock options, the market price of our ADSs could fall. Such sales, or perceived potential sales, by our existing shareholders might make it more difficult for us to issue new equity or equity-related securities in the future at a time and place we deem appropriate. Shares held by our existing shareholders may be sold in the public market in the future subject to the restrictions contained in Rule 144 and Rule 701 under the Securities Act and the applicable lock-up agreements. If any existing shareholder or shareholders sell a substantial amount of ordinary shares after the expiration of the applicable lock-up periods, the prevailing market price for our ADSs could be adversely affected.

In addition, certain of our shareholders or their transferees and assignees will have the right to cause us to register the sale of their shares under the Securities Act upon the occurrence of certain circumstances. Registration of these shares under the Securities Act would result in these shares becoming freely tradable without restriction under the Securities Act immediately upon the effectiveness of the registration.

***Our ADS holders may be subject to limitations on transfer of their ADSs.***

Our ADSs are transferable on the books of the depository. However, the depository may close its books at any time or from time to time when it deems expedient in connection with the performance of its duties. The depository may close its books from time to time for a number of reasons, including in connection with corporate events such as a rights offering, during which time the depository needs to maintain an exact number of ADS holders on its books for a specified period. The depository may also close its books in emergencies, and on weekends and public holidays. The depository may refuse to deliver, transfer or register transfers of our ADSs generally when our share register or the books of the depository are closed, or at any time if we or the depository thinks it is advisable to do so because of any requirement of law or of any government or governmental body, or under any provision of the deposit agreements, or for any other reason.

***We will incur increased costs as a result of being a public company, particularly after we cease to qualify as an “emerging growth company.”***

As a public company, we incur significant legal, accounting and other expenses that we did not incur as a private company, including additional costs associated with our public company reporting obligations. The Sarbanes-Oxley Act of 2002, as well as rules subsequently implemented by the SEC and New York Stock Exchange, impose various requirements on the corporate governance practices of public companies. As a company with less than US\$1.07 billion in net revenues for our last fiscal year, we qualify as an “emerging growth company” pursuant to the JOBS Act. An emerging growth company may take advantage of specified reduced reporting and other requirements that are otherwise applicable generally to public companies. These provisions include exemption from the auditor attestation requirement under Section 404 of the Sarbanes-Oxley Act of 2002 in the assessment of the emerging growth company’s internal control over financial reporting and permission to delay adopting new or revised accounting standards until such time as those standards apply to private companies. However, we have elected to “opt out” of the provision that allow us to delay adopting new or revised accounting standards and, as a result, we will comply with new or revised accounting standards as required when they are adopted for public companies. This decision to opt out of the extended transition period under the JOBS Act is irrevocable.

We expect these rules and regulations to increase our legal and financial compliance costs and to make some corporate activities more time-consuming and costly. After we are no longer an “emerging growth company,” we expect to incur significant expenses and devote substantial management effort toward ensuring compliance with the requirements of Section 404 of the Sarbanes-Oxley Act of 2002 and the other rules and regulations of the SEC. We are currently evaluating and monitoring developments with respect to these rules and regulations, and we cannot predict or estimate with any degree of certainty the amount of additional costs we may incur or the timing of such costs.

In the past, shareholders of a public company often brought securities class action suits against the company following periods of instability in the market price of that company’s securities. If we were involved in a class action suit, it could divert a significant amount of our management’s attention and other resources from our business, which could harm our results of operations and require us to incur significant expenses to defend the suit. Any such class action suit, whether or not successful, could harm our reputation and restrict our ability to raise capital in the future. In addition, if a claim is successfully made against us, we may be required to pay significant damages, which could have a material adverse effect on our financial condition and results of operations.

#### **ITEM 4. INFORMATION ON THE COMPANY**

##### **A. History and Development of the Company**

We were founded in November 2014, as Nextev Inc., which was changed to our current name NIO Inc. in July 2017. Significant milestones in our development include the following:

###### **2015**

- In February 2015, we established NIO Nextev Limited (formerly known as Nextev Limited), our wholly-owned subsidiary in Hong Kong. We participated in the inaugural season of the FIA Formula E Championship as the Nextev TCR Formula E Team, and in June 2015, we secured the inaugural FIA Formula E Driver’s Championship with Nelson Piquet Jr. In November 2015, we held the inaugural NIO Formula Students Electric China NIO cup in Shanghai.
- In May 2015, NIO Nextev Limited incorporated NIO Co., Ltd. in China to, among other things, be our global headquarters and engage in research and development related activities. In the same month, NIO Nextev Limited established NIO GmbH in Germany as our vehicle design headquarters.
- In November 2015, NIO Nextev Limited established NIO USA, Inc. as our headquarters in the United States to design and develop our software and hardware for autonomous driving systems and other advanced technology modules for our vehicles.
- In December 2015, we established XPT Limited, or XPT, our wholly-owned subsidiary in Hong Kong, to engage in the development of systems and components used in electric vehicles.

## 2016

- In February 2016, NIO Nextev Limited established NIO Nextev (UK) Limited in the United Kingdom as our Formula E and EP9 electric supercar headquarters. NIO Nextev (UK) Limited also provides engineering support for vehicle development in Shanghai.
- In April 2016, NIO Nextev Limited incorporated NIO SPORT Limited in Hong Kong to handle Formula E related business. In April 2016, NIO SPORT Limited purchased the Nextev TCR Formula E Team (now the NIO Formula E Team), which NIO Nextev (UK) Limited operates on behalf of NIO SPORT Limited.
- In April 2016, XPT established XPT Technology Limited in Hong Kong in charge of intellectual property management of XPT. In the same month, XPT established XPT Inc. in the State of Delaware as an operational base in the United States to engage in technology development and cooperation. In May 2016, XPT established XPT (Jiangsu) Investment Co., Ltd. as its investment platform in China.
- In May 2016, we entered into a manufacturing cooperation agreement with JAC, pursuant to which the JAC-NIO Cooperation Project (New Energy Vehicle) officially launched since the signing of the framework agreement.
- In September 2016, XPT (Jiangsu) Investment Co., Ltd., or XPT Investment, and a state-owned company, Nanjing Xingzhi Science & Technology Industrial Development Co., Ltd., or Xingzhi, entered into a joint venture agreement to establish a joint venture, XPT (Nanjing) Energy Storage System Co., Ltd., or XPT ESS, to engage in the battery pack business. Each of XPT Investment and Xingzhi holds a 50% equity interest in XPT ESS.
- In October 2016, we obtained an autonomous vehicle testing permit in the State of California.
- In November 2016, we unveiled our NIO brand and the EP9 at the Saatchi Gallery in London.

## 2017

- In January 2017, we established NIO Power Express Limited, our wholly-owned subsidiary, which later incorporated NIO Energy Investment (Hubei) Co., Ltd. in April 2017 to handle our power management related businesses.
- In February 2017, we established NIO User Enterprise Limited, our wholly-owned subsidiary, which incorporated Shanghai NIO Sales and Services Co., Ltd. in March 2017, to handle sales and services of our electric vehicles. In March 2017, we unveiled our vision car, the NIO EVE, at South by Southwest 2017 in Austin, Texas. In April 2017, we further unveiled our first volume manufactured passenger car, the ES8, and showcased EP9 and the NIO EVE at the 2017 Shanghai International Automobile Industry Exhibition.
- In May 2017, our EP9 electric supercar broke the record for fastest lap for a production car at the Nürburgring Nordschleife “Green Hell” track in Germany after having already broken the records for fastest autonomous lap and fastest lap for a production car at the Circuit of the Americas Race Track in Austin, Texas in the United States in February 2017.
- In May 2017, NIO Energy Investment (Hubei) Co., Ltd. and a PRC provincial government investment vehicle, Hubei Technology Investment Group Limited, entered into a joint venture agreement to establish a joint venture to conduct research and development and design of infrastructure for new energy automobiles.
- In November 2017, we opened our first NIO House in Beijing. In December 2017, we held our first NIO Day and introduced the ES8 to a widespread audience and began taking orders for the ES8.

- In March 2018, we were in the first batch of companies to obtain a Shanghai Intelligent Connected Vehicle Test License to test seventeen items including, among others, obstacles identification and response and automatic emergency braking on the testing roads, traffic sign recognition and lane keeping systems in the testing roads.
- In April 2018, we were in the first batch of companies to obtain a Beijing Autonomous Driving Test License to test various items including, among others, perception and compliance with traffic regulations, emergency reaction and manual intervention and integrated driving ability on testing roads.
- In April 2018, we entered into a series of contractual arrangements with Shanghai Anbin and Beijing NIO, our VIEs, and their respective shareholders to conduct certain of our operations in China in the future.
- In April 2018 and July 2018, XPT Limited, XPT Investment, and certain investors entered into a share purchase agreement and a supplementary agreement, respectively, pursuant to which such investors, subject to certain closing conditions, agreed to invest an aggregate RMB1,269.9 million in XPT (Jiangsu) Automotive Technology Co., Ltd., or XPT Automotive, a company established in May 2018. Upon the consummation of the transaction, XPT Investment holds a 78.91% equity interest in XPT Automotive and the other investors hold an aggregate 21.09% equity interest.
- In April 2018, NIO Co., Ltd., Hubei Yangtze River NIO New Energy Industrial Planning Fund and two state-owned companies, Guangzhou Automobile Group Co., Ltd. and GAC New Energy Automobile Co., Ltd. entered into a joint venture agreement to establish a joint venture, GAC NIO New Energy Automobile Technology Co., Ltd., to conduct sales of charger modules and design of automobile parts.
- In May 2018, XPT Investment set up XPT Automotive as a wholly-owned subsidiary of XPT Investment. XPT Automotive, XPT and XPT Investment entered into a set of agreements, pursuant to which, XPT and XPT Investment transferred the shareholdings in their respective subsidiaries to XPT Automotive. Following the transaction, XPT Technology Limited, XPT Automotive and Shanghai XPT Technology Limited entered into a share transfer agreement, pursuant to which XPT Technology Limited agreed to transfer a 100% equity interest in Shanghai XPT Technology Limited to XPT Automotive, as a result of which Shanghai XPT Technology Limited became a wholly-owned subsidiary of XPT Automotive.
- In May 2018, XPT (Nanjing) E-Powertrain Technology Co., Ltd. and Nanjing Punch Powertrain Automatic Transmission Co., Ltd. entered into a joint venture agreement to establish a joint venture to develop, produce and sell gear boxes for new energy vehicles and other components of new energy vehicles, and provide after-sales service.
- In May 2018, XPT Investment purchased the 50% equity interest in XPT ESS held by Xingzhi and, together with the 50% equity interest it holds in XPT ESS, transferred 100% of the equity interest in XPT ESS to XPT Automotive during the restructuring of XPT Investment and its group companies.
- In July 2018, NIO Co., Ltd. and a state-owned company, Chongqing Changan Automobile Co., Ltd., entered into a joint venture agreement to establish a joint venture to design and develop new energy automobiles as well as their parts and components.
- In December 2018, XPT Automotive, Xtronics Innovation Ltd. and Wistron (Kunshan) Co., Ltd., or Wistron Kunshan, entered into a joint venture agreement, pursuant to which Wistron Kunshan purchased and subscribed for certain equity interests in XTRONICS (Nanjing) Automotive Intelligent Technologies Co., Ltd., or XTRONICS Nanjing. Upon the consummation of the first phase of the transaction, XPT Automotive holds a 50% equity interest in XTRONICS Nanjing.

## 2019

- In February 2019, we issued \$750 million aggregate principal amount of 4.50% convertible senior notes due 2024, or the 2024 Notes. The 2024 Notes are unsecured debt and are not redeemable by us prior to the maturity date except for certain changes in tax law. In accordance with the indenture governing the 2024 Notes, or the Indenture, holders of the 2024 Notes may require us to purchase all or any portion of their notes on February 1, 2022 at a repurchase price equal to 100% of the principal amount of the 2024 Notes to be repurchased, plus accrued and unpaid interest, and may require us, upon a fundamental change (as defined in the Indenture), to repurchase for cash all or part of their 2024 Notes at a fundamental change repurchase price equal to 100% of the principal amount of the 2024 Notes to be repurchased, plus accrued and unpaid interest. In addition, the holders of the 2024 Notes may convert their notes to a number of our ADSs at their option at any time prior to the close of business on the second business day immediately preceding the maturity date pursuant to the Indenture. The 2024 Notes that are converted in connection with a make-whole fundamental change (as defined in the Indenture) may be entitled to an increase in the conversion rate for such 2024 Notes.
- In connection with the issuance of the 2024 Notes, we entered into capped call transactions and zero-strike call option transactions. The cap price of these capped call transactions is initially US\$14.92 per ADS, representing a premium of approximately 100% to the NYSE closing price of our ADSs on January 30, 2019, which was US\$7.46 per ADS, and is subject to adjustment under the terms of these capped call transactions. Pursuant to the zero-strike call option transactions, we purchased, in the aggregate, approximately 26.8 million ADSs, with delivery thereof (subject to adjustment) by the respective zero-strike call option counterparties at settlement shortly after the scheduled maturity date of the 2024 Notes, subject to the ability of each zero-strike call option counterparty to elect to settle all or a portion of the respective zero-strike option transaction early.
- In March 2019, we have agreed with the related contractual parties to cease construction of our planned manufacturing facility in Jiading, Shanghai and terminate this development project.

Our principal executive offices are located at Building 20, No. 56 Antuo Road, Jiading District, Shanghai 201804, PRC. Our telephone number at this address is +86-21-6908-3306. Our registered office in the Cayman Islands is located at the offices of Maples Corporate Services Limited, PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands. Our agent for service of process in the United States is Puglisi & Associates, located at 850 Library Avenue, Suite 204, Newark, Delaware 19711.

## B. Business Overview

We are a pioneer in China's premium electric vehicle market. We design, jointly manufacture, and sell smart and connected premium electric vehicles, driving innovations in next generation technologies in connectivity, autonomous driving and artificial intelligence. Redefining user experience, we aim to provide users with comprehensive, convenient and innovative charging solutions and other user-centric service offerings. Our Chinese name, Weilai (蔚来), which means Blue Sky Coming, reflects our commitment to a more environmentally friendly future.

The first model we developed was the EP9 supercar, introduced in 2016. The EP9 set a world record as the then fastest all-electric car on the track at the Nürburgring Nordschleife "Green Hell" track in Germany in May 2017, finishing a lap in 6 minutes and 45.90 seconds. Combined with an attractive design and strong driving performance, the EP9 delivers extraordinary acceleration and best-in-class electric powertrain technology, helping position us as a premium brand.

We launched our first volume manufactured electric vehicle, the seven-seater ES8, to the public at our NIO Day event on December 16, 2017 and began making deliveries to users on June 28, 2018. In December 2018, we launched its variant, the six-seater ES6, with delivery beginning in March 2019. The ES8 is an all-aluminum alloy body, premium electric SUV that offers exceptional performance, functionality and mobility lifestyle. It is equipped with our proprietary e-propulsion system, which is capable of accelerating from zero to 100 kilometers (km) per hour (kph) in 4.4 seconds and delivering a New European Driving Cycle, or NEDC, driving range of up to 355 km and a maximum range of up to 500 kilometers when constantly running at 60 kph and equipped with a 70-kilowatt-hour battery pack. As of December 31, 2018, we had delivered 11,348 seven-seater ES8s to customers in more than 200 cities.

We launched our second volume manufactured electric vehicle, the ES6, to the public at our NIO Day event on December 15, 2018. The ES6 is a five-seater high-performance long-range premium electric SUV. The ES6 is smaller but more affordable than the ES8, allowing us to target a broader market in the premium SUV segment. The ES6 currently offers the Standard, Performance and Premier versions with pre-subsidy starting prices of RMB358,000, RMB398,000 and RMB498,000, respectively. Users can pre-order the ES6 through the NIO App and we expect to begin making deliveries of the ES6 in June 2019.

We aim to create the most worry-free experience for our users, online or offline, at home or on-the-go. In response to common concerns over the accessibility and convenience of EV charging, we offer a comprehensive, convenient and innovative suite of charging solutions. These solutions, which we call our NIO Power solutions, include Power Home, our home charging solution; Power Swap, our innovative battery swapping service; Power Mobile, our mobile charging service through charging trucks; and Power Express, our 24-hour on-demand pick-up and drop-off charging service. In addition, our vehicles are compatible with China's national charging standards and have access to a nationwide publicly accessible charging network of approximately 300,000 charging piles. Beyond charging solutions, we offer comprehensive value-added services to our users, such as statutory and third-party liability insurance and vehicle damage insurance through third-party insurers, repair and routine maintenance services, courtesy car during lengthy repairs and maintenance, nationwide roadside assistance, as well as an enhanced data package. We believe these solutions and services, together, will create a holistic user experience throughout the vehicle lifecycle.

The electric powertrain technologies we developed for the EP9 set the technological foundation for the development of our vehicles, from the ES8, to the ES6 and to other future models. Our e-propulsion system consists of three key sub-systems: an electric drive system, or EDS, an energy storage system, or ESS, and a vehicle intelligence control system, or VIS. Our electric powertrain reflects our cutting-edge proprietary technologies and visionary engineering in our EV design.

We are a pioneer in automotive smart connectivity and enhanced Level 2 autonomous driving. NOMI, which we believe is one of the most advanced in-car AI assistants developed by a Chinese company, is a voice activated AI digital companion that personalizes the user's driving experience. NIO Pilot, our proprietary enhanced Level 2 advanced driver assistance system, or ADAS, is enabled by 23 sensors and equipped with the Mobileye EyeQ<sup>®</sup>4 ADAS processor, which is eight times more powerful than its predecessor.

We have significant in-house capabilities in the design and engineering of electric vehicles, electric vehicle components and software systems. We have strategically located our teams in locations where we believe we have access to the best talent. Our strong design, engineering and research and development capabilities enable us to launch smart and connected premium electric vehicles that are customized for, and thus appealing to, Chinese consumers. In addition, our research and development efforts also have resulted in an extensive intellectual property portfolio that we believe differentiates us from our competitors.

We adopt an innovative sales model compared to incumbent automobile manufacturers. We sell our vehicles through our own sales network, including NIO Houses and our mobile application. NIO Houses are not only the showrooms for our vehicles, but also clubhouses for our users with multiple social functions. Prospective users can place orders using our mobile application and more importantly, our mobile application fosters a dynamic and interactive online platform. We believe our online and offline integrated community which is developing from our NIO Houses and mobile application will retain user engagement and cultivate loyalty to our brand, along with other successful branding activities, such as our annual NIO Day and our Drivers' Championship winning Formula E team.

### Reservations, Production and Delivery

We began making deliveries of our first volume manufactured vehicle, the seven-seater ES8, to users on June 28, 2018. The table below sets forth certain operating data relating to the seven-seater ES8 up to December 31, 2018.

	May 2018	June 2018 <sup>(1)</sup>	July 2018	August 2018	September 2018	October 2018	November 2018	December 2018
ES8s produced for the period	228	272	831	1,296	2,079	2,060	3,348	2,661
ES8s delivered for the period	—	100	381	1,121	1,766	1,573	3,089	3,318
Cumulative ES8s delivered	—	100	481	1,602	3,368	4,941	8,030	11,348

(1) Deliveries for June represent deliveries for the period from June 28, 2018 (being the date we began making deliveries of the seven-seater ES8 to the public) through June 30, 2018.

In December 2018, we launched (i) the six-seater ES8, with delivery beginning in March 2019, and (ii) our second volume manufactured electric vehicle, the ES6, with delivery expected to begin in June 2019.

### Our Vehicles

We design, jointly manufacture and sell our vehicles in China's premium electric vehicle segment. We began making deliveries to the public of our first volume manufactured car, the seven-seater ES8 on June 28, 2018. In December 2018, we launched its variant, the six-seater ES8, with delivery beginning in March 2019. In addition, we launched our second volume manufactured electric vehicle, the ES6, to the public at our NIO Day event on December 15, 2018. The ES6 is a five-seater high-performance long-range premium electric SUV. The ES6 is smaller but more affordable than the ES8, allowing us to target a broader market in the premium SUV segment. The ES6 currently offers the Standard, Performance and Premier versions with pre-subsidy starting prices of RMB358,000, RMB398,000 and RMB498,000, respectively. Users can pre-order the ES6 through the NIO App and we expect to begin making deliveries of the ES6 in June 2019. We plan to leverage the platform technologies from the ES8 and the ES6 to build our future models, including the ET7.

Our goal is to launch a new vehicle model each year for the near future as we plan to offer our users more choices to suit their preferences and target different segments within the premium electric vehicle market in China. We also plan to upgrade our existing models on an ongoing basis with facelifts for each model around every one or two years and do a major model redesign or upgrade every three years.

We plan to exclusively sell our vehicles in China for the near future.



## ES8

The ES8, our first volume manufactured vehicle, is a spacious six or seven-seater high-performance premium electric SUV. The ES8 was officially launched at our NIO Day event on December 16, 2017, following which we began taking reservations. We started making deliveries to the public of the seven-seater ES8 on June 28, 2018 and have ramped up deliveries since launch. In December 2018, we launched its variant, the six-seater ES8, with delivery beginning in March 2019.

With both front and rear motors (240 kilowatt (kW) each), the ES8 delivers 480 kW of power and 840 units or Newton meters (Nm) of torque to all four wheels. The ES8's e-propulsion system enables the ES8 to accelerate from zero to 100 kph in just 4.4 seconds. The ES8 is equipped with a 70-kilowatt-hour liquid-cooled battery pack comprised of cutting-edge square cell batteries. The battery pack features an energy density of 135 watt hours per kilogram (wh/kg) and provides an approximately 1,200-charge-discharge lifecycle with an 87% capacity retention. The ES8 achieves 500 kilometers of range when constantly running at 60 kph, and the car achieves a NEDC driving range of 355 kilometers. An 84-kilowatt-hour battery pack is expected to be made available in the second half of 2019. With the new 84-kilowatt-hour battery system, the ES8 can achieve a NEDC driving range of 430 km.

With 21 active safety features, the ES8 is designed to meet five-star Chinese New Car Assessment Program safety standards developed by the China Automotive Technology Research Center. In addition to standard safety features for a vehicle in its class, ES8 also features or will feature, driver drowsiness detection, lane departure warning, lane change assistance, automatic emergency braking, side door opening warning, and 360-degree high definition surround vision, among other advanced safety measures. The ES8 is also designed to include safety features, such as electric stability program, electric traction control, cornering brake control, hill descent control, hill start assist, rear view camera, front and rear parking sensors, side distance indication system, direct-tire pressure monitoring system, blind spot detection, dynamic wheel torque by brake and roll stability control. In addition, the braking distance of the ES8 from 100 kph to a complete stop is 33.8 meters.

The ES8 is the first car in China to have an all-aluminum alloy body and chassis featuring aerospace grade 7003 series aluminum alloy, enabling torsional stiffness of 44,140 Nm/Deg, and also features the highest amount of aluminum for any mass production car yet. The active air suspension on the ES8 creates, we believe, a comfortable riding experience. The ES8 has a 3,010 millimeter long wheelbase, to create a truly mobile living space. The three-row, seven-seat layout makes full use of the interior space. The innovative "lounging seat" and "child-care mode", together with the nappa leather wrap, create, we believe, a comfortable atmosphere, redefining the riding experience. The smart air quality system includes an activated carbon and high-efficiency particulate air, or HEPA, filter and negative ion generator.

Together with the launch of the ES8 in 2017, we launched our NIO Pilot system. We have activated certain functions of our NIO Pilot system and expect to activate most of the features on it by the second quarter of 2019. Our NIO Pilot ADAS, with comprehensive enhanced Level 2 autonomous driving features, is enabled by 23 sensors, including a trifocal front-facing camera, four surround exterior cameras, five millimeter-wave radars, 12 ultrasonic sensors and a driver monitor camera. The ES8 comes equipped with the Mobileye EyeQ<sup>®</sup>4 ADAS chip which has a computation capacity eight-times more powerful than its predecessor, the Mobileye EyeQ<sup>®</sup>3.

In addition, the ES8's sophisticated 4G support and software and hardware suite enables subscribers to enjoy upgraded services through FOTA updates. Each vehicle comes standard with eight gigabytes per month of data. Our remote updates are driven by our centralized connected vehicle gateway which controls all electric control units, or ECUs. The ES8 provides high-speed parallel over-the-air updates, allowing the ES8 to acquire new features from time to time while minimizing downtime.

Together with the launch of the ES8, we launched our NOMI system, an optional feature, which we believe is one of the most advanced in-car AI assistants developed by a Chinese company. Our goal is to provide users with a more natural interaction with the in-car AI system and enhanced safety by further removing the need for users to keep looking at the screen while driving. NOMI combines the ES8's intelligence and car connectivity functionalities to turn the ES8 into an intuitive companion that can listen to, talk with, and help drivers and passengers along the way. Through NOMI, users are able to use shortcuts and voice control to make phone calls, play music and control systems, including navigation, air-conditioning, opening and closing windows, climate control, controlling the seat massage function, operating in-car media and controlling the in-car camera (including taking pictures), among others. We intend to improve the system and add additional functions through FOTA upgrades.

The seven-seater ES8 and the six-seater ES8 have pre-subsidy starting prices of RMB448,000 and RMB456,000, respectively. Purchasers can purchase additional options that come with the ES8, including different wheel styles, certain exterior colors, NIO Pilot and NOMI, among others. We are also producing approximately 10,000 “Founder’s Edition” vehicles, available for RMB548,000 before subsidies, which comes standard with additional features such as the nappa luxury interior package (consisting of nappa leather perforated seats, a nappa leather interior wrap and front massage seats), all-season comfort package (heated steering wheel, second row heated seats, and front row ventilated seat), a premium audio system, an enhanced head unit display and additional NIO Pilot functions. Such features can also be added based on user preferences to our standard ES8. The ES8 also comes equipped with a wireless charging board. We currently provide our users with the option of a battery payment arrangement, where users can make battery payments in installments. For the ES8 ordered before January 15, 2019, there is an RMB100,000 reduction in the purchase price and users adopting this arrangement pay RMB1,280 per month, payable over 78 months. For the ES8 and ES6 ordered after January 16, 2019, there is an RMB100,000 reduction in the purchase price and users adopting this arrangement pay RMB1,660 per month, payable over 60 months. To purchase an ES8, a customer is first required to pay a refundable deposit reserving the car, which for the ES8 is RMB5,000, and prior to the user’s ES8 entering into production, a non-refundable deposit of RMB45,000 must be made (which can include the initial RMB5,000 reservation deposit) and is applied towards the purchase price of the vehicle.

### **ES6**

The ES6 is a five-seater high-performance electric premium SUV launched in December 2018. We expect to begin making deliveries of the ES6 in June 2019. The ES6 is smaller but more affordable than the ES8, allowing us to target a broader market in the premium SUV segment. The ES6 currently offers the Standard, Performance and Premier versions with pre-subsidy starting prices of RMB358,000, RMB398,000, and RMB498,000, respectively. Users can pre-order the ES6 through the NIO App.

The ES6 is the world’s first SUV equipped with a combination of the permanent magnet motor (160 kW) and the induction motor (240 kW). The ES6 delivers 400 kW of power and 725 Newton meters of torque to all four wheels with an energy conversion rate of 97%. The ES6 can accelerate from zero to 100 kph in 4.7 seconds. The braking distance of the ES6 from 100 kph to a complete stop is 33.9 meters. When we start making deliveries of the ES6, we plan to offer users of the ES6 with a 70-kilowatt-hour battery pack. An 84-kilowatt-hour battery pack is expected to be made available in the second half of 2019. The ES6 is the first car in China with a hybrid structure of aluminum alloy (91%) and carbon fiber (9%), featuring aircraft grade 7 series aluminum alloy, enabling torsional stiffness of 44,930 Nm/Deg, the highest among any mass production SUV globally. The use of high-strength carbon fiber makes the ES6 lighter but more solid. It features the independent suspension, Continuous Damping Control (CDC) and the intelligent electric all-wheel-drive system. Users have the option of installing the active air suspension and switching between driving modes, creating a more comfortable riding experience.

The ES6 is equipped with Lion, a high-performance intelligent gateway enabling data exchange and remote upgrading via FOTA. Additionally, the ES6’s Dragon security architecture offers a matrix-like firewall to enhance data security and protect user privacy. In addition, the speech-based interactive NOMI system with a voice-based interactive feature is built into the ES6. The ES6 also has an upgraded head-up display, a digital instrument cluster and an 11.3 inch second-generation multi-touch screen. Moreover, the ES6 has a pre-installed NIO Pilot system with a Mobileye EyeQ<sup>®</sup>4 and 23 sensors.

### **Our Power Solutions**

Through our NIO Power solutions, we offer a comprehensive and innovative suite of power solutions to address the battery charging needs of our users. We aim to provide power services in most major cities in China, with our solutions being easily accessible through our mobile application. We also offer our users our valet service where we pick up, charge and then return the vehicle. Our goal is to provide the most convenient power solutions to our users. Using our mobile application, our users will be able to monitor battery levels and charging status. The charging status of batteries and the charging solutions available to users are all connected through our cloud, enabling us to assist users in finding the most convenient charging solution available in a given area.

### ***Home Charging (NIO Power Home)***

Through NIO Power Home, we install chargers at our customers' homes after the purchase of a new vehicle based on customer request where installation at the customer's home is feasible. Given the convenience of having a home charger installed, we aim to install a home charger for our users whenever practicable. Our home charger is expected to be the first to have an auto-identification function which enables a vehicle to automatically pair with its exclusively compatible home charger. Charging takes place by simply inserting the charging gun into the vehicle's charging port. The first NIO Power Home device and basic installation are initially included in the price of the vehicle though there may be charges in certain circumstances. Any user has the option of postponing such installation if installation is not feasible at his or her residence at the time of purchase. Any subsequent installation is subject to charge on a case-by-case basis. Installation is performed by professional third-party contractors engaged by us. Our charging pile design won the "best of best" reddot award in 2018. Under normal temperatures and battery conditions, the battery of the ES8 would be charged from approximately 20% to 90% power level in seven to eight hours using our home charger.

### ***Power Express and Other Power Solutions***

We have tailored our charging solutions to serve the needs of Chinese users. We anticipate that many of our users are likely to live in condominiums or apartment buildings where they are unable to install a home charger. We aim to provide such users with a level of convenience and service with our other power solutions so that they can enjoy a similar level of convenience as our users with home chargers installed. We are also committed to ensuring the high standard of quality and performance of our charging solutions.

To that end, we offer our users our Power Express valet service and other charging solutions, including access to public charging, access to our Power Mobile charging trucks, and battery swapping.

Using our mobile application, a user is able to arrange to have our team pick up his or her vehicle at the user's designated parking location. The vehicle is driven to a nearby battery charging station or battery swap station or a charging truck is driven to the parking location. The vehicle is returned to the user once battery charging or swapping is completed. Users are able to select "immediate service" which provides the fastest charging option to meet a more urgent charging demand or "reservation service" for scheduled charging services. We also plan to provide "idle charging" which allows users to set an anticipated start time and end time when their vehicle is expected to remain idle, such as overnight, and the threshold of the vehicle's cruising range when the service will be triggered, as well as a specific location where the vehicle is parked during specific periods. Our one-click charging service will be automatically triggered when the vehicle is idle and parked at the specified location during the specified period. Users are able to monitor their vehicle charging status in real time using our mobile application. We aim to provide users with the fastest charging experience, optimizing convenience to users by identifying the most appropriate charging solution based on the user's travel habits through cloud-based smart scheduling.

We offer our users our energy package, which provides them with access to our Power Express services and charging solutions, including public charging, access to our Power Mobile charging trucks, and battery swapping for a fixed monthly fee, which is initially set at RMB980 per month if paid monthly, or RMB10,800 annually, for up to 15 charges per month. We currently anticipate that our energy package and Power Express services will primarily be utilized by users without home chargers installed. However, users who do not purchase our energy package are able to access our Power Express services and charging solutions on a pay-per-use basis, and the initial price for such services is set at RMB180 per charge.

### *Access to Public Charging*

Our users have access to a network of public chargers, which as of December 31, 2018 consisted of approximately 300,000 publicly accessible charging piles. These chargers have been installed by both public and private sectors, including state-owned electricity companies and automotive original equipment manufacturers, or OEMs. Data from over 156,000 public chargers as of December 31, 2018, installed by the third parties, including the China Southern Grid, are synchronized to our cloud so that users can access real-time information on the availability and location of these chargers. We plan to increase the number of chargers with data synchronized to our cloud. The Chinese government has also set a target of more than 4.8 million charging piles in 2020. Access to these chargers is included in our energy package or can be provided on a pay-per-use basis. Under normal temperatures and battery conditions, the battery of the ES8 would be charged from approximately 20% to 90% power (or battery) level in seven to eight hours using a normal charger or in approximately 75 minutes using a supercharger.

In addition, we have entered into a framework agreement with the State Grid Corporation of China with the aim of expanding the network of publicly accessible charging piles through technology and business model innovations in a collaborative way. Pursuant to the framework agreement, the parties have agreed to cooperate in the following areas: (i) building systematic solutions for electric cars, charging piles and grid network by leveraging each party's own resources and standardizing electric vehicle charging and battery swap technology; (ii) application of smart vehicle connectivity technology to practice; (iii) innovation in electric vehicle charging and battery swap technology; (iv) the construction and operation of electric vehicle charging and battery swap infrastructure, and (v) the sales, leasing and insurance of or for electric vehicles. While this framework agreement sets forth certain long-term strategic cooperation principles for cooperation between the State Grid Corporation of China and us, the actual implementation of such principles would likely require the parties to enter into supplemental agreements covering specific areas of cooperation.

### *Fast Charging Trucks (Power Mobile)*

Through NIO Power Mobile, we provide charging through charging trucks. We plan to use these charging trucks to supplement our charging network. Users are able to book NIO Power Mobile services in advance conveniently through our mobile application. We own fast charging trucks, which are equipped with our proprietary fast-charging technology.

As of December 31, 2018, we had approximately 485 NIO Power Mobile trucks in operation. We plan to initially deploy these trucks in major cities, including Beijing, Shanghai, Guangzhou, Shenzhen, Chengdu, Hangzhou, Nanjing and Suzhou, among others. We may also redeploy these trucks based on user demand.

### *Battery Swapping (Power Swap)*

Through Power Swap, we offer our users the ability to arrange for a battery swap for the ES8 and ES6. Our swap stations are compact stations located in parking lots and other locations. The typical size of a swap station is approximately three parking spaces, or 45 square meters. Swap stations are designed to be fully automated, but for the first and second years of operation we plan to have one staff member at each location to ensure reliability for the initial roll-out. Once a vehicle is parked in the swap station and the driver activates the swap function, battery swapping will take place automatically. Charging of the batteries at swap stations takes place while the batteries are stored at the swap station and their charging status information is sent to our cloud. Our battery swap stations were developed in-house and use chassis replacement technology and apply more than 300 patented technologies to provide precise positioning, rapid disassembly, compact integration, and flexible deployment, allowing battery replacement within minutes.

As of December 31, 2018, we had battery swap stations in 22 cities, including Beijing, Shanghai, Guangzhou, Shenzhen, Hefei, Chengdu, Nanjing, Suzhou and Hangzhou. We had 28 battery swap stations in total along the two major highways in China: G2 highway that connects Beijing and Shenzhen, and G4 highway that connects Beijing and Shanghai.

### **Our Other Value-Added Service Offerings**

Through one click using our mobile application, our users can access a full suite of innovative services, as part of our strategy of redefining the user experience. In addition to our NIO Power solutions described above, we offer our users our NIO Service, comprised of other value-added services provided primarily through our service package, which can be ordered conveniently through our mobile application.

### ***Service Package***

We offer our users a service package, which, at a price initially set at RMB14,800 per year, provides statutory and third-party liability and vehicle damage insurance through third-party insurers, repair and routine maintenance services, courtesy car during repair and maintenance lasting more than 24 hours, roadside assistance and an enhanced data package, among other services. As of December 31, 2018, approximately 90% of our users had a subscription for our service package.

Through our service package, we aim to provide users with a “worry free” vehicle ownership experience. Using our mobile application, users are able to arrange for vehicle service with a few clicks. At a user’s request, we pick up the car, arrange for maintenance and repair services, and then return the car to users once the services are done. As long as the maintenance and repair is covered under our service package, no additional fee will be invoiced to the service package subscriber. If the user has a car accident, we will also assist the user in engaging with the insurance company and providing necessary repairs.

We provide users who subscribe to this service package with an enhanced Internet data package with an additional 7GB of data per month. We also have agreements with China Taiping Insurance, pursuant to which we will procure basic mandatory automobile insurance and vehicle damage insurance for our users as part of the service package. Users are also able to supplement this basic insurance coverage with China Taiping Insurance at an additional cost, which will be paid to the insurance provider. We are currently seeking to enter into arrangements with additional insurance providers.

### ***Battery Payment Arrangement***

We currently provide our users with the option of a battery payment arrangement, where users can make battery payments in installments. For the ES8 ordered before January 15, 2019, there is an RMB100,000 reduction in the purchase price and users adopting this arrangement pay RMB1,280 per month, payable over 78 months. For the ES8 and ES6 ordered after January 16, 2019, there is an RMB100,000 reduction in the purchase price and users adopting this arrangement pay RMB1,660 per month, payable over 60 months.

### ***Vehicle Financing and License Plate Registration***

We currently have agreements with Bank of China, China Industrial Bank, Great China Finance Leasing Co., Ltd. and China Merchants Bank, pursuant to which we assist users in procuring financing when they purchase our vehicles. We assist our users in their application for financing, making the buying process easier. Through our arrangements with our partner banks, we believe we are able to assist our users in procuring financing on attractive terms. We also apply for license plate registration on behalf of our users at the time of purchase.

### ***Vehicle Engineering and Design***

We have significant in-house vehicle engineering capabilities, which cover all major areas of vehicle engineering starting from concept to completion. Our vehicle engineering group consists of: (i) four design groups, namely, body and exterior; chassis; interior, heating and cooling; and electrical and electronics; (ii) two integration groups, namely, mechanical and electrical, which are together responsible for integrating components and systems into a complete vehicle and work with the design groups; and (iii) two advanced engineering groups, namely, vehicle concepts and system concepts, which focus on future products and longer term innovation. We aim to implement industry best practices throughout the engineering and design process.

We have strategically located our vehicle engineering teams based on where we believe the right talent is located. As of December 31, 2018, our vehicle engineering group had 808 employees worldwide, with 692 located in Shanghai, 62 in San Jose, our North American headquarters in the United States, 40 in Oxford, United Kingdom and 14 in Munich, Germany. We have significant engineering capabilities at our Shanghai headquarters, which was selected due to its status as a global automotive hub, providing us with a significant talent pool. Our international offices provide us with deeper capabilities in certain areas. Our San Jose and Oxford teams focus on advanced development work with our Oxford team also working on complex computer-aided engineering, and our Munich team focuses on light-weight material development and vehicle design. In addition, our engineering teams in Munich focus on lightweight and e-powertrain engineering and work on the challenges of energy and resource efficiency and design our vehicles, including the interior and exterior.

## **Our Technology**

We believe one of our core technology competencies is our proprietary e-propulsion system. It also has a modular design, allowing future models to incorporate a significant portion of this technology. Our technologies, including battery management system, electric driving system, vehicle control system, and autonomous driving, among others, are cutting-edge and differentiates us from our competitors. The ES8 and ES6 integrate many of these industry-leading technology modules, including our proprietary e-propulsion system, digital cockpit, enhanced level 2 ADAS system, smart data router, security architecture and cloud data platform, to create a comprehensive interactive system for the optimal user experience.

### ***Electric Powertrain (E-propulsion System)***

We have developed our own e-propulsion system. The e-propulsion system consists primarily of an electric drive system, or EDS, an energy storage system, or ESS, and a vehicle intelligence control system, or VIS.

Our integrated EDS has a copper rotor induction motor, a motor controller with a unique topology design, and a high-torque gearbox. The combination of high-power and high-torque is expected to provide users with powerful driving force. We possess dual technologies for induction motors and permanent magnet motors. Our first volume manufactured vehicle, the ES8, is equipped with integrated EDS, delivering 480 kW of power. Our second volume manufactured vehicle, the ES6, is the world's first SUV equipped with a combination of the permanent magnet motor (160 kW) and the induction motor (240 kW), delivering 400 kW of power.

Our lightweight ESS uses high-energy density battery cells and high-strength housing. Currently, the ES8 is equipped with our proprietary 70-kilowatt-hour liquid-cooled battery pack developed and packaged in-house, bringing a high energy density of 135wh/kg. Starting the second half of 2019, an 84-kilowatt-hour battery pack is expected to be made available, giving our users more flexibility in choosing the battery packs they desire based on their specific needs. Our ESS is high-capacity and has industry-leading thermal management technology and a safety structure design. In addition, our ESS is equipped with a state-of-the-art battery management system, a high-efficiency liquid-cooled design and swapping technology to achieve long-lasting, stable and new energy solutions. In particular, our battery management system provides real-time monitoring of the vehicle insulation status, a comprehensive fault diagnosis mechanism to ensure the safety and reliability of battery pack use. We are able to upgrade the software of our battery management units and cell supervising circuits and switch-boxes through FOTA updates. We conduct extensive testing to ensure safety, performance, durability and reliability. We also possess the module capability of prismatic, pouch and cylindrical cells, with a planned annual production capacity of over seven gigawatts per hour.

Our advanced VIS includes a vehicle control unit, or VCU, electric vehicle controller and ADAS system. A VCU is an intelligent controller, which can control the torque output according to different driver behavior and control region torque according to best energy recovery. The vehicle control system's network architecture also takes into account functional safety and network security. The intelligent high- and low-voltage energy management system can monitor and adjust the optimized pure electric cruising range in real time and the adaptive cruise control system, or ACC, automatic parking and other functions can meet the requirements of automatic assisted driving. Our VCUs and ADAS have passed software testing and vehicle calibration and verification, thus bringing a new experience of smart and safe driving.

### ***Immersive Experiences Powered by Artificial Intelligence***

Our digital cockpit is an AI driven, scalable and flexible architecture that presents the user with an intelligent and immersive interface which provides, we believe, an industry leading integrated user experience. Each of the ES8 and the ES6 uses NVIDIA DRIVE™ for its in-car digital cockpit. It adopts a single highly advanced proprietary controller, supporting a flexible multiple-operating system environment running Android, QNX, and Linux. This in-cabin technology enables a unified user experience across all four interior displays and advanced user interaction through our AI connected assistant, NOMI.

NOMI is designed to be one of the most advanced AI systems in a production vehicle and through NOMI we aim to revolutionize the relationship between users and their vehicles. NOMI learns users' habits and interests through deep learning algorithms in order to meet their individual needs under different circumstances. We have built flexibility into our system which will allow for new functions and applications to be added through future software updates.

### ***Vehicle Control and Connectivity***

Our vehicles are equipped with our proprietary software and hardware, enabling us to control the vehicles' ECU and BCU modules, including core electric powertrain control software, which allows for an integrated and optimized control over vehicle performance.

We are one of the first automobile manufacturers in China that have both the FOTA and the software over-the-air capabilities. Our FOTA firmware management technology will allow the operating firmware of ECUs in vehicles to be wirelessly updated and upgraded. The vehicle will be connected to our information cloud at all times, and when there is a firmware or software update available, our cloud will push an update message to the vehicle which triggers an update. Upgrades will be wirelessly downloaded to the vehicle, installed, and launched, including updates for firmware, software, operating systems and applications. FOTA updates will enable us to upgrade the operating firmware down to the individual programmable ECU level across the vehicle's core systems, such as powertrain and ADAS. Since we began to make deliveries of the seven-seater ES8 in June 2018, we have completed over ten FOTA updates, improving more than 200 features.

We expect this technology will allow us to fix bugs and remotely install new features and services after a vehicle has already been delivered to customers. As a result, we expect to be able to reduce the cost and time of marketing new feature roll-outs.

Our proprietary software leverages Linux, QNX and Android systems and control systems such as the central digital cockpit, connected gateway, ADAS and cyber security systems. We believe our highly-integrated design allows us to reduce the development time and cost of new technologies and creates an upgradable and flexible system for our next generation of products. The ES8 and the ES6's smart data router, or SDR, has, we believe, industry leading connectivity and remote service capabilities with a comprehensive end-to-end security framework. The SDR enables a superior driver experience by tracking vehicle settings, user preferences and offering instant remote vehicle diagnostics with respect to faults, alerts and logs to our service and maintenance team. The SDR's high speed Ethernet accelerates our autonomous driving development by uploading relevant video and driving metadata. The SDR also offers a completely integrated vehicle security system enabled by a firewall, an intrusion detection system and machine learning for continuous improvement.

### ***Autonomous Driving***

The ES8 and ES6's ADAS system is built for advanced processing and learning capabilities.

Our ES8 and ES6 are equipped with NIO Pilot, a comprehensive enhanced Level 2 ADAS system that will update with new features over time through high-speed FOTA updates. The ES8 is the world's first vehicle to come equipped with the Mobileye's EyeQ®4 ADAS processor. The NIO Pilot hardware consists of 23 sensors, including a front-facing trifocal camera, four exterior surround cameras, five millimeter-wave radars, 12 ultrasonic sensors, and an interior driver monitor camera. Our multi-sensor ADAS solution has a reaction time that is many times faster than the average human reaction time.

NIO Pilot also has a built-in algorithm that we expect to source driving data across the entire vehicle fleet of ES8s and ES6s. This allows us to accelerate the enhancement of autonomous driving solutions, without materially impacting driver safety or vehicle operation, before activating these features for users. Our autonomous and assisted driving algorithm development is accelerated by our smart data management system which flags and uploads unusual events (false positives and negative events as well as corner cases) for in-house analysis. We anticipate that as we increase the scale of business and more of our vehicles are on the road, this functionality will enable us to validate algorithms against millions of miles of empirical data in a short period of time.

We plan to roll out our ADAS features through FOTA updates after undergoing a rigorous and thorough testing of the features. We have successfully realized various features for NIO Pilot, including front collision warning and automatic emergency braking, park assist, automatic high-beam control, lane changing assistance, lane departure warning, blind spot detection, rear cross-traffic alert, door opening warning. We are currently further testing these features to ensure safety and smoothness, and will roll out these features in the future. NIO Pilot features under development include: (i) active ADAS features, such as adaptive cruise control, traffic jam pilot, and highway autopilot for lateral and longitudinal support in certain conditions; (ii) driving support, including automatic lane keeping assistance, automatic lane change, automatic park assistance, and traffic sign recognition; and (iii) alerts and warnings, including front cross-traffic alerts and side distance indication. We plan to roll out the primary functions of the adaptive cruise control system through FOTA updates first in the second quarter of 2019 and the remaining ADAS features described above by the end of 2019.

We have established autonomous driving research and development centers in Shanghai and San Jose. As of December 31, 2018, we had 233 full-time specialized engineers carrying out smart driving system technology projects, such as custom production hardware and sensors, environment awareness, data fusion, route planning, vehicle control, deep learning and car networking, with the aim of developing an intelligent driving system for electric vehicles.

In July 2016, our self-driving car completed a start-function test at the National Autonomous Vehicle Testing Center in Shanghai. The test was intended to improve reliability, detection accuracy, and application scenarios through the deployment of a sensor configuration scheme suitable for mass production, multi-sensor data fusion and target detection tracking technology.

In October 2016, we obtained an autonomous vehicle testing permit issued by the State of California and became among the first group of businesses to obtain such a permit. In March 2018, we were in the first batch of companies to obtain a Shanghai Intelligent Connected Vehicle Test Permit to test seventeen items including, among others, obstacles identification and response and automatic emergency braking on the testing roads, traffic sign recognition and lane keeping systems in the testing roads. In April 2018, we were in the first batch of companies to obtain a Beijing Autonomous Driving Test License, to test various items including, among others, perception and compliance with traffic regulations, emergency reaction and manual intervention and integrated driving ability on testing roads.

In December 2016, we established a cross-functional team for ADAS system management with core members from project management, autonomous driving development, supply chain, product quality, product planning, manufacturing, logistics and finance. Our ADAS system management team is committed to deploying technology to products tailored for the Chinese market. It collaborates closely with vehicle integration, electric architecture and other engineering teams to ensure successful product rollout.

In February 2017, we set a world record by completing the fastest autonomous lap at the Circuit of the Americas Race Track in Austin, Texas. The NIO EP9 drove autonomously without any interventions, recording a time of two minutes 40.33 seconds at a top speed of 160 mph.

#### ***Cloud Data Platform and Integrated Vehicle Security Solution***

Our cloud data platform stores vehicle, sensor and user data in a single data lake to minimize data duplication and cost. We can easily access fleet level data and analytics for diagnostic purposes and autonomous driving development. The NIO cloud data platform is designed to enable rapid development and deployment of new applications across fleet and users.



While other OEMs must use multiple vendors to build their security solutions, we have one comprehensive end-to-end security framework. Our integrated security framework protects vehicle data from end-of-assembly to end-of-life. All external and critical internal communications are protected by on-the-fly encryption. Our cloud-based developer suite for maintenance and analytics enables us to continue improving our security and stay ahead of future threats.

### ***Worldwide Research and Development Footprint***

We have strategically located our teams in locations where we believe we will have access to the best talent. Our global engineering office is located at our Shanghai, China headquarters. Our vehicle design headquarters is in Munich, Germany and our software and autonomous driving technology is designed and developed at our North American headquarters in San Jose in the United States. Our Formula E headquarters and advanced vehicle concepts team are stationed across two United Kingdom offices in London and Oxford.

#### *Shanghai*

Our engineering research and development headquarters is in Shanghai, where we had a team of 2,667 research and development personnel as of December 31, 2018. Our team in Shanghai coordinates between each of our other research and development teams globally while also focusing on vehicle integration, electrical engineering and integration, body and interior engineering, chassis engineering and engineering quality and support. In Shanghai we have an advanced research and development center, which provides comprehensive testing and research and development services related to electric and smart vehicles, including vehicle integration, electric engineering and integration, battery, motor, and electrical control, power management and charging devices, customer service and spare parts management. More than half of the patents obtained globally by us originated from our team in Shanghai.

#### *Silicon Valley*

Our San Jose office, located in the heart of Silicon Valley, is our North American headquarters and global advanced technology center. As of December 31, 2018, the San Jose team consisted of 640 employees, 62 of which are focused on vehicle engineering. We also have a smaller studio in San Francisco with 16 employees focused on user experience and interface. Our teams in San Jose and San Francisco focus on innovation in the areas of: autonomous systems, artificial intelligence, electric powertrain technology, digital systems, cloud architecture, digital cockpit security, user experience, user interface and vehicle engineering.

#### *Munich*

Our Munich office is primarily responsible for our product and brand design. As of December 31, 2018, in Munich we had a team with approximately 198 employees, 166 of which are focused on vehicle engineering, vehicle interior and exterior design, user experience and user interface design, and brand design.

#### *United Kingdom*

In the U.K. we have a London office which is our performance product research and development center and our Formula E team headquarters. The office is responsible for our cooperation with the FIA Formula E program and U.K. market operations. Our Centre for Innovation and Enterprise is located at the Begbroke Science Park near Oxford and houses our performance program, advanced engineering group and Formula E team technical offices. The Formula E team's operational base is at Donington Park. We had 40 employees focused on vehicle engineering in the U.K. as of December 31, 2018.

## **Vehicle Servicing and Warranty Terms**

### *Service, Service Centers and Service Vans*

We currently provide servicing both through authorized third party service centers and NIO service centers, both of which provide repair, maintenance and bodywork services. For our NIO service centers, we hire qualified employees to provide customer services of high quality. We conduct professional training and tests to our employees. We typically lease the premises used for our NIO service centers. As of December 31, 2018, we had 13 NIO service centers across 11 cities, including Beijing, Shanghai, Guangzhou, Shenzhen, Nanjing, Suzhou, Chengdu, Xi'an, Shijiazhuang, Tianjin and Wuhan.

For authorized third party service centers, we have a network management team to carefully select and bring authorized service centers into our network. Our team selects service centers based on the following criteria: (i) capability of repairing the aluminum alloy body of our vehicles; (ii) experience with servicing high-end branded vehicles, as these typically have more complex features requiring more technical training which would also be useful in servicing our vehicles; and (iii) service-related operational capabilities as determined by our field team during on-site inspections. We enter into agreements with the service centers, pursuant to which a service center first becomes a candidate. Following the purchase of certain required equipment by the candidate service center, including diagnostic equipment and tools and training by our staff, we conduct a review and provided that the review is successful, we certify the service center as an authorized center which will be available to our users through our mobile application. As of December 31, 2018, we had 78 authorized service centers across 60 cities, including Beijing, Shanghai, Shenzhen, Chengdu, Hefei, Hangzhou, Wuhan, Nanjing, Suzhou and Guangzhou.

By December 31, 2018, we have deployed 110 service vans in 78 cities which we selected based on user demand. We also plan to increase coverage thereafter based on user demand.

### *New Vehicle Limited Warranty Policy*

For the initial owner of the ES8 and ES6, we are providing an extended warranty subject to certain conditions, including, among others, that the extended warranty only applies for the original owner of the vehicle and not for any subsequent buyers of the vehicle; the user must service the vehicle only with us or one of our authorized service centers; and the vehicle must not have experienced any major accident. As required under relevant PRC law, we also provide (i) a bumper to bumper three-year or 120,000-km warranty, (ii) for critical EV components (battery pack, electrical motors, power electrical unit and vehicle control unit), an eight-year or 120,000-km warranty, and (iii) a two-year or 50,000-km warranty covering vehicle repair, replacement and refund. See "Item 3. Key Information—D. Risk Factors—Risks Related to Our Business and Industry—Our warranty reserves may be insufficient to cover future warranty claims which could adversely affect our financial performance."

## **User Development and Branding**

### *User Development*

We aim to engage with users and create an environment conducive for user interaction both online and offline. Our mobile application had over 760,000 registered users as of December 31, 2018 and over 190,000 daily active users on peak days in 2018.

### *Mobile Application*

Our mobile application, the NIO App, is designed to be a portal not only for selling cars where users can make reservations for the ES8 and ES6 and, in the future, our other vehicles, but also for accessing our other services, including those under our energy package and service package.

The layout of products offered on our mobile application is designed to be intuitive and easy to use. Our mobile application allows customers to order an ES8 and ES6 and easily check the latest status of an order. Users can also use our mobile application to find charging stations or arrange for charging or battery swap services through NIO Power. Users are also able to monitor battery and charging status using our mobile application.

In order to foster community building, our mobile application allows our users to engage with other users through moment sharing and users can shop for our merchandise and earn NIO Credits (as described below). We also notify users of our events through our mobile application.

Our mobile application also has our product information and information on locations of NIO Houses. Customers can also shop in our online shop for items, such as NIO apparel, accessories, games and children's items. Using the friend function, our customers can connect with other NIO customers. Our mobile application also keeps our users updated on our latest announcements and activities.

#### *NIO House*

We aim to provide our users with experiences that go beyond the car with our NIO Houses. NIO Houses are intended to function not just as showrooms for our vehicles and services, but also as a living space for our customers and their friends. Potential users can browse our cars and products and go for test drives and interact with our team of user development specialists. If a new user decides to purchase a car, our team walks them through the process and assists the user in completing his or her order through our mobile application.

In November 2017 we opened our first NIO House in Beijing, and as of December 31, 2018 had 13 NIO Houses in total, two in Shanghai, two in Beijing, and one in each of Nanjing, Guangzhou, Shenzhen, Hangzhou, Suzhou, Chengdu, Xi'an, Hefei and Dongguan.

The first NIO House, which occupies over 32,000 square feet, has two floors and seven main areas and is Beijing's largest brand experience center. The features and design of each NIO House may vary based on what we believe to be user preferences in the relevant city or area and we may include larger flagship NIO Houses as well as other types, such as NIO House "light" in smaller cities and pop-up NIO Houses. Each NIO House features a gallery showcasing our brand and products, and may also feature a lounge for our users to relax and socialize, forums which consist of a theater and which we intend to be a place for gatherings, meetings or presentations, "labs" which are bookable meeting rooms and workspaces, a library, an open kitchen and a kids joy camp. Although we charge (through cash or NIO Credits) small amounts for the use of certain services at NIO Houses or for certain items, we mainly intend to use NIO Houses to support our vehicle sales and user development activities.

#### **Branding**

We focus on promoting awareness of our brand generally and in particular as a premium brand with high-quality vehicles and services in China. We aim to engage in cost-effective branding activities taking advantage of social media and to build an online and offline ecosystem of users that will promote awareness of our brand. To a lesser extent, we engage in limited mass-marketing, such as through billboard advertising in airports. Our branding efforts include the following:

#### *NIO Day*

We held our first "NIO Day" in December 2017 at the Beijing Wukesong Arena, where we introduced the seven-seater ES8. We launched our second volume manufactured electric vehicle, the ES6, to the public on our second "NIO Day" in December 2018. We plan to hold NIO Day each year on which we introduce our new vehicles and products to users. Our first two NIO Days consisted of presentations by our Chief Executive Officer, Bin Li, who introduced our ES8 and ES6, respectively. The second NIO Day had 150 million views and produced a significant increase in our social media followers, as well as over 5,500 Chinese media reports. We believe that NIO Day gives us an opportunity to interact with our current and prospective users while providing us with more publicity and brand awareness.

#### *Formula E*

We have a Formula E team, which is a racing team that competes in the Fédération Internationale de l'Automobile, or FIA, Formula E championship electric racing series, which helps increase brand awareness. We were the title sponsor for the Drivers' Championship winning team in the inaugural FIA Formula E season in 2015.

## *EP9*

Our development of the EP9 was part of our brand-building efforts. Through its achievements it brings attention to our capabilities and to our brand. The EP9 is an electric two-seat sports car developed by us. The EP9 has four high-performance inboard motors and four individual gearboxes, the EP9 delivers 1 megawatt of power, equivalent to 1,360PS. The EP9 accelerates from zero to 200 kph in 7.1 seconds and has a top speed of 313 kph. With an interchangeable battery system, the EP9 is designed to be charged in 45 minutes. The EP9 achieved a new lap record at the Nürburgring Nordschliefe where on October 12, 2016, the EP9 lapped the 20.8 km 'Green Hell' track in 7 minutes and 5.12 seconds, beating the previous electric vehicle lap record held, marking it out as one of the fastest electric cars in the world. On May 12, 2017, the EP9 lapped the 20.8 km 'Green Hell' track in 6 minutes and 45.90 seconds, breaking its own record. Previously, in November 2016, it had set a new electric vehicle record at Circuit Paul Ricard in France, recording a time of 1 minute 52.78 seconds, surpassing the previous record of 2 minutes and 40 seconds. We believe these achievements, along with the media attention we have received, have boosted our reputation and awareness of our brand.

### *Other Branding Activities*

We also participate in events, including displaying our cars and technology at automotive shows, such as Shanghai's 17th International Automobile Industry Exhibition, where we unveiled the ES8 and showcased the EP9 as well as our vision concept car, the NIO EVE. We also showcased the NIO EVE at the South by Southwest festival in Austin, Texas. We also conduct many other smaller events at our NIO Houses. We also have NIO Life, which includes an online store where users, accessing our mobile application, can purchase NIO merchandise, including NIO sweaters, miniature cars, phone cases, tote bags and calendars, among others. Since we launched our online store in December, 2016, over 1,000,000 pieces of merchandise have been sold or awarded to our users online and offline. We also provide users with NIO Credits to encourage user engagement and for certain positive behavior, including a clean safety record for the year. NIO Credits are earned, among other things, through frequent sign-ins to our mobile application, sharing articles from our mobile application on users' own social media, through a welcome package upon the purchase of a vehicle, and referrals of new vehicle purchasers. NIO Credits can be used both at our online store and at our NIO Houses to purchase merchandise. As of December 31, 2018, approximately 119 million NIO Credits had been used in total.

### **Manufacturing, Supply Chain and Quality Control**

We view the manufacturers and suppliers we work with as key partners in our vehicle development process. We aim to leverage our partners' industry expertise to ensure that each vehicle we produce meets our strict quality standards.

#### *Manufacturing*

##### *Nanjing Advanced Manufacturing Engineering Center*

Our Nanjing Advanced Manufacturing Technology and Engineering Center, or Nanjing AMTEC, houses our trial production, or pilot line, which is mainly used to test engineering prototypes and is also used by our research and development department to develop and verify new processes, materials and products. We believe that our use of this line advances production time by six months to eight months. All of our new models are first tested at the Nanjing AMTEC. Nanjing AMTEC pilot line covers the three processes of bodywork, painting and general assembly.

We also use Nanjing AMTEC to train employees for the JAC-NIO manufacturing base.

### ***Partnership with JAC***

We entered into an arrangement with Jianghuai Automobile Group Co., Ltd., or JAC, for manufacturing the ES8 for five years starting from May 2016, which may be renewed as agreed by JAC and us. JAC is a major state-owned automobile manufacturer in China, with a 50-year history of automotive manufacturing and annual sales of nearly 700,000 vehicles, including passenger and commercial vehicles. JAC has in-house development, manufacturing, and testing systems for new energy vehicles, and is an established player in China's new energy vehicle market. In addition, JAC has a joint venture partnership with Volkswagen for the manufacturing of electric cars. We also expect our partnership with JAC will allow us to bring our vehicles to the market at an accelerated pace by taking advantage of JAC's capacity and through its capital investment and support. JAC has invested more than RMB2.2 billion to the construction of a brand-new world-class factory for the production of the ES8 and potentially other future vehicles with us. This factory has the capability of conducting stamping, welding, painting and assembly, and is equipped with testing tracks, a quality inspection center and a utility power and sewage treatment center. Given its advances in new energy vehicle manufacturing, JAC has contributed to our ability to bring the ES8 to the market more quickly and helps us to meet our production requirements.

We exercise significant control in the manufacturing partnership with JAC to ensure high quality standards. We conduct product development, provide supply chain systems, set production technique standards, and put in place quality management systems. We take a number of steps throughout the entire manufacturing process to ensure that our vehicles are manufactured in accordance with our standards. These steps include: (x) at the procurement stage, our being responsible for procuring all third-party components for our vehicles and applying our quality assurance procedures with respect to suppliers; and (y) at the manufacturing stage, our taking additional measures, including: (i) processing and owning the key tooling equipment, including stamping equipment, body connection equipment and inspection tools at the factory; and (ii) our training certain key supervisory personnel at Nanjing AMTEC. We have implemented operational policies and guidelines as well as quality inspection measures, conducting inspections of both parts and completed vehicles.

Pursuant to our agreement with JAC, we pay JAC on a per-vehicle basis monthly for the first three years, which allows us greater cost flexibility as we ramp up our operations. The factory covers an area of 138 acres. The factory has pressing facilities which include a high-speed, fully automated, five-sequence pressing line. It uses fully automated operation, real-time monitoring and alarm connection parameters to ensure reliable connection quality, while a total body laser detector is also equipped on the line to monitor the dimensional accuracy of the vehicle body. The factory has state-of-the-art production facilities and techniques, and also applies environmentally friendly techniques and uses renewable energy. Photovoltaic panels on top of the factory are expected to be installed to make use of solar energy and ground-source heat pumps have been used in the assembly area to provide a temperate working environment. In addition, we and JAC have put together a high-quality workforce, consisting of experienced management and supervisors from us and JAC and thousands of front-line employees selected from JAC. Our employees at the factory take on key management and supervisory roles in production, quality control and training. We believe that the manpower is sufficient for an annual production capacity of 120,000 vehicles based on running three shifts per day.

### ***Powertrain and Battery Pack***

We manufacture our powertrain, or e-propulsion system, our battery pack and engine driving system. We established AMTEC, in Nanjing for pilot production, motors and EDSs, Kunshan for inverters and Changshu for energy storage systems.

Nanjing AMTEC is located in the Nanjing Economic and Technological Development Zone. Its first phase was completed in August 2016. Its plant and ancillary facilities have a building area of 64,000 square meters and mainly produce motor and electric driving products with a planned capacity to make up to 300,000 motors annually. It is equipped with an intelligent information management system which is able to trace real-time performance of labor, equipment and materials, and technique parameters, quality and final products. Nanjing AMTEC has advanced equipment sourced from reputable international suppliers, including ABB, DMG, and TRUMF.

A second phase of Nanjing AMTEC is under construction, with planned production bases and power centers for PM motors, ESS, EDS and inverters, and additional highly automated lines which are expected to be put into operation by the end of 2019. Meanwhile, Nanjing AMTEC has passed the ISO 16949 audit, which audit is used to certify as to technical specification aimed at the development of a quality management system prepared by the International Automotive Task Force and the "Technical Committee" of the International Organization for Standardization.

In Changshu, we have a joint venture with Zhengli Investment Co., Ltd. for the production of pure electric automobile energy storage systems for the ES8. In Kunshan, we have our manufacturing base for inverters.

### ***Our Suppliers***

We have a “global brand, locally build” strategy where, to the extent practicable, we seek to partner with reputable international brands which have operations in China. The ES8 and ES6 each uses over 1,700 purchased parts which we source from over 160 suppliers. The majority of our supply base is located in China (including a significant portion of our suppliers which are global suppliers with a Chinese footprint), which we believe is beneficial as it enables us to acquire supplies more quickly and reduces risk of delays related to shipping and importing. We expect that as our scale increases we will be able to better take advantage of economies of scale with respect to pricing.

We have developed close relationships with several key suppliers. These include: Mobileye B.V., which provides its Mobileye EyeQ<sup>®</sup>4 ADAS processor used in the ES8 and ES6; CATL, which provides battery cells used in the battery pack of the ES8; Continental, which provides its air suspension system; Bosch, which provides its iBooster (vacuum-independent electromechanical brake booster, a key component for electromobility and driver assistance systems) and ADAS hardware (sensors and radars) used in the ES8 and the ES6; Brembo, which provides four-piston all-aluminum brake calipers used in the ES8 and the ES6; ThyssenKrupp, which provides steering systems; and Novelis, which provides aluminum coils used in the aluminum body panel of the ES8 and the ES6. Our electric driving systems and energy storage systems are developed in-house. We believe we have strong relationships with our suppliers. Despite our limited operating history, many of our suppliers have been willing to support our business. For example, we believe we are one of the first brands using the Bosch iBooster braking system in China.

We obtain systems, components, raw materials, parts, manufacturing equipment and other supplies and services from suppliers which we believe to be reputable and reliable. Similar to other global major automobile manufacturers, we follow our internal process to source suppliers taking into account quality, cost and timing. We have a parts quality management team which is responsible for managing and ensuring that supplies meet quality standards. Our quality standards are guided by industry standards, including AIAG (Automotive Industry Action Group) APQP (Advanced Product Quality Planning) and PPAP (Production Part Approval Process) procedures, which were developed by the U.S. automotive industry.

Our method for sourcing suppliers depends on the nature of the supplies needed. For general parts which are widely available, we seek proposals from multiple suppliers and choose based on quality and price competitiveness, among other factors. For parts requiring special designs, we solicit design proposals and choose largely based on design-related factors. However, in certain cases we have limited choices given our scale, such as for aluminum and battery cell packages, so in such circumstances we typically partner with suppliers that we believe to be well-positioned to meet our needs.

We enter into strategic framework agreements with key suppliers. These agreements typically cover the life cycle of a particular model of vehicle. We use various raw materials in our business, including aluminum, steel, carbon fiber, other non-ferrous metals such as copper, as well as cobalt. The prices for these raw materials fluctuate depending on market conditions and global demand for these materials. For certain raw materials, such as aluminum, our pricing is set within pricing bands which shift with respect to market prices.

While we obtain components from multiple sources whenever possible, similar to other automobile manufacturers, many of the components used in our vehicles are purchased by us from a single source. Eventually we plan to implement a multi-source volume purchasing strategy in order to reduce our reliance on sole source suppliers. We believe that will also help us to increase our ability to obtain quality components with better cost competitiveness.

### ***Quality Assurance***

We aim to deliver high-quality products and services to our users in line with our core values and commitments. We believe that our quality assurance systems are the key to ensuring the delivery of high-quality products and services, and to minimize waste and to maximize efficiency. We strongly emphasize quality management across all business functions, including product development, manufacturing, supplier quality management, procurement, charging solutions, user experience, servicing and logistics. Our quality management groups are responsible for our overall quality strategy, quality systems and processes, quality culture, and general quality management implementation.

During product development, many phases of testing vehicles are built to verify our design and production processes. For example, we built more than 250 ES8 testing vehicles in order to conduct a wide range of function and durability tests. The durability test runs for more than an aggregate of three million km.

The ES8 is manufactured at a new plant which is operated jointly by JAC and us with quality standards implemented by our team. All lines including stamping, body-in-white, painting, and general assembly are developed in accordance with industry standards with a high degree of automation. The manufacturing process performance failure mode effect analysis, control plans, and standard operation procedures are developed and audited carefully by us. We apply advanced product quality planning (APQP), which is a framework of procedures and techniques utilized in the global automotive industry, across all phases of product development and supplier quality management. Through our factory automated system, we monitor manufacturing process parameters and parts information for process control and traceability.

### ***Other Partnerships***

We have partnered with other strategic partners including Baidu for its iQIYI online video streaming, search engine, and map data and technology; Tencent for its Tencent Cloud; QQ music; and Keen Lab for NOMI text to speech function.

### **Certain Other Cooperation Arrangements**

We have entered into arrangements with Guangzhou Automobile Group Co., Ltd, or GAC, and Chongqing Changan Automobile Co Ltd, or Changan in order to take advantage of market opportunities in the entry and mid-range segments of the Chinese EV market, reduce supply chain costs through potential joint procurement and jointly conduct research and development activities. Any vehicles developed and sold under these arrangements will be marketed and sold using GAC's, Changan's, or other jointly developed brands.

### ***GAC***

In April 2018, (i) we, (ii) an entity associated with our founder Bin Li, Hubei Changjiang Weilai New Energy Industry Development Fund Partnership (Limited Partnership), or NIO Capital, (iii) Guangqi New Energy Automobile Co., Ltd., and (iv) GAC, jointly established a joint venture company, GAC-NIO New Energy Vehicle Technology Co., Ltd., or GAC JV, to mainly engage in electric vehicle and parts development, sales and services. GAC is a Chinese state-owned automaker headquartered in Guangzhou, Guangdong and listed on the Hong Kong Stock Exchange and the Shanghai Stock Exchange. Pursuant to the joint venture agreement entered into on December 28, 2017, we have agreed to invest 22.5% of the registered capital of the joint venture and unless otherwise unanimously approved by the board of directors of GAC JV, no dividend distribution will be made among shareholders prior to a qualified initial public offering of GAC JV. The joint venture agreement is valid for 20 years and can be renewed as agreed by the joint venture parties. The total registered capital of the joint venture is RMB500 million. With respect to governance rights, the parties have agreed that the board of directors will have five directors, with one appointed by each party and the remaining director appointed by all the parties together.

## ***Changan***

In January 2018, we and Changan entered into a joint venture agreement and a supplemental agreement agreeing to set up a joint venture, Changan NIO Renewable Automobile Co., Ltd., with a total registered capital of RMB98 million of which RMB49 million will be contributed by us. Pursuant to the joint venture agreement, it is valid for 20 years and can be renewed as agreed by Changan and us. In July 2018, Changan NIO Renewable Automobile Co., Ltd. was established. We expect to receive distribution of profits, if any, after deducting required reserves, in proportion to the respective actual capital contributions to be made by Changan and us. Pursuant to the joint venture agreement, “required reserves” include statutory reserve funds and surplus reserve funds. Under the Company Law of the PRC, before a company distributes its after-tax profit for the current year, 10% of the profit must be allocated to its statutory reserve funds, and the company is not required to do so once the cumulative amount of the statutory reserve funds reach 50% or more of the company’s registered capital. If the statutory reserve funds of the company are not sufficient to cover its losses in previous years, the company shall use the profit of the current year to cover the losses before accruing the statutory reserve funds. After the company has accrued the statutory reserve funds from its after-tax profit, it may, subject to its shareholders’ or the board’s decision, accrue certain discretionary reserve funds, including surplus reserve funds, from the after-tax profit. Changan is a state-owned Chinese automaker headquartered in Chongqing, China and listed on the Shenzhen Stock Exchange. The joint venture may provide services, such as design or development of vehicle or components, sales and after-sale service, sales of automotive parts and EV-related technology services. Pursuant to the joint venture agreement, any vehicles produced by the joint venture may use a Changan trademark and the joint venture will enter into a separate trademark license agreement with Changan. With respect to governance rights, we and Changan have agreed that the board of directors will have five directors, with two appointed by each party and the remaining director appointed by us and Changan together.

### **Sales and Delivery of Vehicles**

We directly sell our vehicles to users, which we believe allows us to provide a more consistent, differentiated and compelling user experience, compared to the traditional franchised distribution model used by our competitors in China. Vehicle purchases are placed through our mobile application, which provides an easy to follow and interactive vehicle shopping experience to our users. This also provides us with real-time information on demand for our vehicles, allowing us to plan our production more efficiently and reducing inventory needs. At our NIO Houses, users are able to purchase vehicles using our mobile application, assisted by our sales representatives at the NIO Houses. Users purchasing outside of our NIO Houses typically purchase through our mobile application and use our hotline for assistance with the purchase. We believe that our online and offline direct sales model is more cost-efficient by cutting out franchised distribution costs as well as lowering the number of physical locations required and also allows us to expand our sales network effectively and efficiently in China.

We have set up a vehicle delivery center in cities including Shanghai, Beijing, Guangzhou, Shenzhen, Chengdu, Nanjing, Suzhou, Wuhan, Xi’an, Shijiazhuang and Tianjin. Vehicles will be delivered to users at such centers.

### **Competition**

Competition in the automotive industry is intense and evolving. We believe the impact of new regulatory requirements for occupant safety and vehicle emissions, technological advances in powertrain and consumer electronic components, and shifting customer needs and expectations are causing the industry to evolve in the direction of electric-based vehicles. We believe the primary competitive factors in our markets are:

- pricing;
- technological innovation;
- vehicle performance, quality and safety;
- service and charging options;



- user experience;
- design and styling; and
- manufacturing efficiency.

The China automotive market is generally competitive. We have strategically entered into this market in the premium EV segment in which there is limited competition relative to other segments. However, we expect this segment will become more competitive in the future. We also expect that we will compete with international competitors, including Tesla. Our vehicles also compete with ICE vehicles in the premium segment. Given the quality and performance of the ES8 and the ES6, and their attractive pricing, we believe that we are strategically positioned in China's premium electric vehicle market.

### **Intellectual Property**

We have significant capabilities in the areas of vehicle engineering, development and design. As a result, we have developed a number of proprietary systems and technologies. As a result, our success depends, at least in part, on our ability to protect our core technology and intellectual property. To accomplish this, we rely on a combination of patents, patent applications and trade secrets, including employee and third-party nondisclosure agreements, copyright laws, trademarks, intellectual property licenses and other contractual rights to establish and protect our proprietary rights in our technology. As of February 28, 2019, we had 1,535 issued patents and 2,594 pending patent applications, 1,829 registered trademarks and 2,084 pending trademark applications in the United States, China, Europe and other jurisdictions. As of February 28, 2019, we also held or otherwise had the legal right to use 57 registered copyrights for software or works of art and 441 registered domain names, including www.nio.io. We intend to continue to file additional patent applications with respect to our technology.

### **Regulation**

This section sets forth a summary of the most significant rules and regulations that affect our business activities in China.

#### **Regulations and Approvals Covering the Manufacturing of Pure Electric Passenger Vehicles**

The NDRC promulgated the *Provisions on Administration of Investment in Automobile Industry, or the Investment Provisions*, which became effective on January 10, 2019. According to the Investment Provisions, enterprises are encouraged to, through equity investment and cooperation in production capacity, enter into strategic cooperation relationship, carry out joint research and development of products, organize manufacturing activities jointly and increase industrial concentration. The advantageous resources in production, high learning, research, application and other areas shall be integrated and core enterprises in automobile industry shall be propelled to form industrial alliance and industrial consortium.

According to the *Regulations on the Administration of Newly Established Pure Electric Passenger Vehicle Enterprises*, or the New Electric Passenger Vehicle Enterprise Regulations, which became effective on July 10, 2015, before our vehicles (including our current vehicles manufactured in cooperation with JAC) can be added to the *Announcement of Vehicle Manufacturers and Products*, or the Manufacturers and Products Announcement, issued by the MIIT, a procedure that is required in order for our vehicles to be approved for manufacture and sale in China, our vehicles must meet the applicable requirements set forth in relevant laws and regulations. Such relevant laws and regulations include, among others, the *Administrative Rules on the Admission of New Energy Vehicle Manufacturers and Products*, or the MIIT Admission Rules, which became effective on July 1, 2017, and the *Administrative Rules on the Admission of Passenger Vehicles Manufacturer and Products*, which became effective on January 1, 2012, and pass the review by the MIIT. Pure electric passenger vehicles that have entered into the Manufacturers and Products Announcement are required to undergo regular inspection every three years by the MIIT so that the MIIT may determine whether the vehicles remain qualified to stay in the Manufacturers and Products Announcement.

According to the MIIT Admission Rules, in order for our vehicles to enter into the Manufacturers and Products Announcement, our vehicles must satisfy certain conditions, including, among others, meeting certain standards set out therein, meeting other safety and technical requirements specified by the MIIT, and passing inspections conducted by a state-recognized testing institution. Once such conditions for vehicles are met and the application has been approved by the MIIT, the qualified vehicles are published in the Manufacturers and Products Announcement by the MIIT. Where any new energy vehicle manufacturer manufactures or sells any model of a new energy vehicle without the prior approval of the competent authorities, including being published in the Manufacturers and Products Announcement by the MIIT, it may be subject to penalties, including fines, forfeiture of any illegally manufactured and sold vehicles and spare parts and revocation of its business licenses.

### **Regulations on Compulsory Product Certification**

Under the *Administrative Regulations on Compulsory Product Certification* which was promulgated by the General Administration of Quality Supervision, Inspection and Quarantine, or the QSIQ, on July 3, 2009 and became effective on September 1, 2009 and the *List of the First Batch of Products Subject to Compulsory Product Certification* which was promulgated by the QSIQ in association with the State Certification and Accreditation Administration Committee on December 3, 2001 and became effective on May 1, 2002, the QSIQ is responsible for the regulation and quality certification of automobiles. Automobiles and parts and components must not be sold, exported or used in operating activities until they are certified by designated certification authorities of the PRC as qualified products and granted certification marks.

### **Regulations on Electric Vehicle Charging Infrastructure**

Pursuant to the *Guidance Opinions of the General Office of the State Council on Accelerating the Promotion and Application of the New Energy Vehicles*, which became effective on July 14, 2014, the *Guidance Opinions of the General Office of the State Council on Accelerating the Development of Charging Infrastructures of the Electric Vehicle*, which became effective on September 29, 2015 and the *Guidance on the Development of Electric Vehicle Charging Infrastructure (2015-2020)*, which became effective on October 9, 2015, the PRC government encourages the construction and development of charging infrastructure for electric vehicles, such as charging stations and battery swap stations, and only centralized charging and battery replacement power stations are required to obtain approvals for construction, permits from the relevant authorities. The *Circular on Accelerating the Development of Electrical Vehicle Charging Infrastructures in Residential Areas* promulgated on July 25, 2016 further provides that the operators of electrical vehicle charging and battery swap infrastructure are required to be covered under liability insurance policies to protect the purchasers of electric vehicles, covering the safety of electric vehicle charging infrastructure.

### **Regulations on Automobile Sales**

Pursuant to the *Administrative Measures on Automobile Sales* promulgated by the MOFCOM, April 5, 2017, which became effective on July 1, 2017, automobile suppliers and dealers are required to file with relevant authorities through the information system for the national automobile circulation operated by the competent commerce department within 90 days after the receipt of a business license. Where there is any change to the information concerned, automobile suppliers and dealers must update such information within 30 days after such change.

### **Regulations on the Recall of Defective Automobiles**

On October 22, 2012, the State Council promulgated the *Administrative Provisions on Defective Automotive Product Recalls*, which became effective on January 1, 2013. The product quality supervision department of the State Council is responsible for the supervision and administration of recalls of defective automotive products nationwide. Pursuant to the administrative provisions, manufacturers of automobile products are required to take measures to eliminate defects in products they sell. A manufacturer must recall all defective automobile products. Failure to recall such products may result in an order to recall the defective products from the quality supervisory authority of the State Council. If any operator conducting sales, leasing, or repair of vehicles discovers any defect in automobile products, it must cease to sell, lease or use the defective products and must assist manufacturers in the recall of those products. Manufacturers must recall their products through publicly available channels and publicly announce the defects. Manufacturers must take measures to eliminate or cure defects, including rectification, identification, modification, replacement or return of the products. Manufacturers that attempt to conceal defects or do not recall defective automobile products in accordance with relevant regulations will be subject to penalties, including fines, forfeiture of any income earned in violation of law and revocation of licenses.

Pursuant to the *Implementation Rules on the Administrative Provisions on Defective Automotive Product Recalls*, which was promulgated by the QSIQ on November 27, 2015 and became effective on January 1, 2016, if a manufacturer is aware of any potential defect in its automobiles, it must investigate in a timely manner and report the results of such investigation to the QSIQ. Where any defect is found during the investigations, the manufacturer must cease to manufacture, sell, or import the relevant automobile products and recall such products in accordance with applicable laws and regulations.

#### **Regulations on Product Liability**

Pursuant to the Product Quality Law of the PRC, promulgated on February 22, 1993 and amended on July 8, 2000, August 27, 2009 and December 29, 2018, a manufacturer is prohibited from producing or selling products that do not meet applicable standards and requirements for safeguarding human health and ensuring human and property safety. Products must be free from unreasonable dangers threatening human and property safety. Where a defective product causes physical injury to a person or property damage, the aggrieved party may make a claim for compensation from the producer or the seller of the product. Producers and sellers of non-compliant products may be ordered to cease the production or sale of the products and could be subject to confiscation of the products and/or fines. Earnings from sales in contravention of such standards or requirements may also be confiscated, and in severe cases, an offender's business license may be revoked.

#### **Favorable Government Policies Relating to New Energy Vehicles in the PRC**

##### *Government Subsidies for Purchasers of New Energy Vehicles*

On April 22, 2015, the Ministry of Finance, or the MOF, the Ministry of Science and Technology, or the MOST, the MIIT and the NDRC jointly issued the *Circular on the Financial Support Policies on the Promotion and Application of New Energy Vehicles in 2016-2020*, or the Financial Support Circular, which took effect on the same day. The Financial Support Circular provides that those who purchase new energy vehicles specified in the *Catalogue of Recommended New Energy Vehicle Models for Promotion and Application* by the MIIT, or the Recommended NEV Catalogue, may obtain subsidies from the PRC national government. Pursuant to the Financial Support Circular, a purchaser may purchase a new energy vehicle from a seller by paying the original price minus the subsidy amount, and the seller may obtain the subsidy amount from the government after such new energy vehicle is sold to the purchaser. The ES8 is eligible for such subsidies, and the ES6 will be eligible for such subsidies after being added into the Recommended NEV Catalogue. The Financial Support Circular also provided a preliminary phase-out schedule for the provision of subsidies.

On December 29, 2016, the MOF, the MOST, the MIIT and the NDRC jointly issued the *Circular on Adjusting the Subsidy Policy for the Promotion and Application of New Energy Vehicles*, or the Circular on Adjusting the Subsidy Policy, which took effect on January 1, 2017, to adjust the existing subsidy standard for purchasers of new energy vehicles. The Circular on Adjusting the Subsidy Policy capped the local subsidies at 50% of the national subsidy amount, and further specified that national subsidies for purchasers purchasing certain new energy vehicles (except for fuel cell vehicles) from 2019 to 2020 will be reduced by 20% as compared to 2017 subsidy standards.

The subsidy standard is reviewed and updated on an annual basis. The current subsidy standard is provided in the Circular on Further Improving the Subsidy Policies for the Promotion and Application of New Energy Vehicles, which was jointly promulgated by the MOF, the MOST, the MIIT and the NDRC on March 26, 2019. The current subsidy standard reduces the amount of national subsidies and cancels local subsidies, resulting in a significant reduction in the total subsidy amount applicable to the ES8 as compared to 2018.

### *Exemption of Vehicle Purchase Tax*

On December 26, 2017, the MOF, the SAT, the MIIT and the MOST jointly issued the *Announcement on Exemption of Vehicle Purchase Tax for New Energy Vehicle*, or the Announcement on Exemption of Vehicle Purchase Tax, pursuant to which, from January 1, 2018 to December 31, 2020, the vehicle purchase tax which is applicable for ICE vehicles is not imposed on purchases of qualified new energy vehicles listed in the *Catalogue of New Energy Vehicle Models Exempt from Vehicle Purchase Tax*, or the NEV Catalogue, issued by the MIIT. Such announcement provides that the policy on exemption of vehicle purchase tax is also applicable to new energy vehicles added to the Catalogue prior to December 31, 2017. The ES8 was added into the NEV Catalogue (15th batch) on December 19, 2017, so purchasers of ES8 may enjoy such tax exemption.

### *Non-imposition of Vehicle and Vessel Tax*

The *Preferential Vehicle and Vessel Tax Policies for Energy-saving and New Energy Vehicles and Vessels*, which was jointly promulgated by the MOF, the Ministry of Transport, the SAT and the MIIT on July 10, 2018, clarifies that pure electric passenger vehicles are not subject to vehicle and vessel tax.

### *New Energy Vehicle License Plate*

In recent years, in order to control the number of motor vehicles on the road, certain local governments have issued restrictions on the issuance of vehicle license plates. These restrictions generally do not apply to the issuance of license plates for new energy vehicles, which makes it easier for purchasers of new energy vehicles to obtain automobile license plates. For example, pursuant to the *Implementation Measures on Encouraging Purchase and Use of New Energy Vehicles in Shanghai*, local authorities will issue new automobile license plates to qualified purchasers of new energy vehicles without requiring such qualified purchasers to go through certain license-plate bidding processes and to pay license-plate purchase fees as compared with purchasers of ICE vehicles.

### *Policies Relating to Incentives for Electric Vehicle Charging Infrastructure*

On January 11, 2016, the MOF, the MOST, the MIIT, the NDRC and the National Energy Administration, or the NEA, jointly promulgated the *Circular on Incentive Policies on the Charging Infrastructures of New Energy Vehicles and Strengthening the Promotion and Application of New Energy Vehicles during the 13th Five-year Plan Period*, which became effective on January 1, 2016. Pursuant to such circular, the central finance department is expected to provide certain local governments with funds and subsidies for the construction and operation of charging facilities and other relevant charging infrastructure.

Certain local governments have also implemented incentive policies for the construction and operation of charging infrastructure. For example, pursuant to the *Supporting Measures on Encouraging the Development of Charging Infrastructures of the Electric Vehicles in Shanghai*, which took effect on May 5, 2016, builders of certain non-self-use charging infrastructure may be eligible for subsidies for up to 30% of their investment cost, and the operator of certain non-self-use charging infrastructure may be eligible for subsidies calculated based on electricity output.

All the above incentives are expected to facilitate acceleration of development of public charging infrastructure, which will consequently offer more accessible and convenient EV charging solutions to purchasers of electric vehicles.

### Incentives in Certain Major Cities

Government incentives to purchase electric vehicles exist at both the national and local level in China. The table below sets forth a summary of preferential policies in eight cities.

	Beijing ✓	Shanghai ✓	Guangzhou ✓	Shenzhen ✓	Chengdu	Nanjing	Hangzhou ✓	Wuhan
Restrictions on ICE vehicles purchases								
Quantity of NEV car plates	60,000 <sup>(1)</sup>	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited
Subsidies and Preferential Policies to NEVs	All NEVs have specific pool of license plates and have no traffic restrictions	Subsidies and preferential electricity rate for public charging facilities	Subsidies for construction cost and preferential electricity rate for public charging facilities in 2018, 2019 and 2020	Subsidies for construction cost of qualified operators of public charging facilities	Subsidies and preferential electricity rate for public and self-use charging facilities	N/A	Subsidies for public charging facilities at 25% of total investment in 2017 and 2018	Preferential electricity rate for NEV charging facilities, peak time rates and off-peak time rates are applied
Favorable Policies on driving restrictions to NEVs	No restriction on BEVs. ICE vehicles, PHEVs and HEVs are restricted by the last digit of the car plate on workdays	No restriction on NEVs. Non-local ICE vehicles are not allowed to pass through main viaducts <sup>(2)</sup> from 7am to 10am, and from 3pm to 8pm on workdays	No restriction on NEVs. Non-local ICE vehicles are not permitted to drive in the city center for over four consecutive days, and shall wait four days before entering the city center again	Non-local ICE trucks are not allowed to enter the city from 7am to 10am and from 3pm to 8pm on workdays. No restriction on non-local NEV trucks	No restriction on NEVs. ICE vehicles are not permitted to drive in the city center from 7:30am to 8pm on workdays by the last digit of the car plate	No restriction on NEVs. Non-local ICE light vehicles are not allowed to pass through the tunnel of Yangtze River	No restriction on NEVs. ICE vehicles are restricted by the last digit of the car plate from 7am to 9am and from 4:30pm to 6:30pm on workdays	No restriction on NEVs. ICE vehicles are restricted on designated bridges and tunnels from 7am to 10pm everyday by odd / even number of the car license plate

\* References in this table to (i) HEVs are to hybrid electric vehicles and (ii) PHEVs are to plug-in hybrid electric vehicles.

(1) The number of NEV licenses issued by the Beijing local government for 2018 is 60,000 while total new car licenses in Beijing decreased from 150,000 in 2017 to 100,000 in 2018.

(2) Including nine viaducts, two bridges and one tunnel.

### Regulations on Value-added Telecommunications Services

In 2000, the State Council promulgated the *Telecommunications Regulations of the PRC*, or the Telecommunications Regulations, which was most recently amended in February 2016 and provides a regulatory framework for telecommunications services providers in the PRC. The Telecommunications Regulations categorize all telecommunications businesses in China as either basic or value-added. Value-added telecommunications services are defined as telecommunications and information services provided through public network infrastructure. Pursuant to the *Classified Catalogue of Telecommunications Services*, an attachment to the Telecommunications Regulations, which was most recently updated in December 2015 by the MIIT, internet information services, or ICP services, are classified as value-added telecommunications services. Under the Telecommunications Regulations and relevant administrative measures, commercial operators of value-added telecommunications services must first obtain a license for conducting Internet content provision services, or an ICP license, from the MIIT or its provincial level counterparts. Otherwise, such operator might be subject to sanctions, including corrective orders and warnings, imposition of fines and confiscation of illegal gains and, in the case of significant infringement, orders to close the website.

Pursuant to the *Administrative Measures on Internet Information Services*, promulgated by the State Council in 2000 and amended in 2011, “internet information services” refer to the provision of information through the internet to online users, and are divided into “commercial internet information services” and “non-commercial internet information services.” A commercial ICP service operator must obtain an ICP license before engaging in any commercial ICP service within China, while the ICP license is not required if the operator will only provide internet information on a non-commercial basis.

In addition to the regulations and measures above, the provision of commercial internet information services on mobile internet applications are regulated by the *Administrative Provisions on Information Services of Mobile Internet Applications*, promulgated by the State Internet Information Office in June 2016. Information services providers of mobile internet applications are subject to these provisions, including acquiring relevant qualifications and being responsible for management of information security.

### **Regulations on Consumer Rights Protection**

Our business is subject to a variety of consumer protection laws, including the *PRC Consumer Rights and Interests Protection Law*, as amended in 2013 and became effective on March 15, 2014, which imposes stringent requirements and obligations on business operators. Failure to comply with these consumer protection laws could subject us to administrative sanctions, such as the issuance of a warning, confiscation of illegal income, imposition of fines, an order to cease business operations, revocation of business licenses, as well as potential civil or criminal liabilities.

### **Regulations on Internet Information Security and Privacy Protection**

In November 2016, the Standing Committee of the National People's Congress, or the SCNPC, promulgated the *Cyber Security Law of the PRC*, or the Cyber Security Law, which became effective on June 1, 2017. The Cyber Security Law requires that a network operator, which includes, among others, internet information services providers, take technical measures and other necessary measures in accordance with applicable laws and regulations and the compulsory requirements of the national and industrial standards to safeguard the safe and stable operation of its networks. We are subject to such requirements as we are operating a website and mobile application and providing certain internet services mainly through our mobile application. The Cyber Security Law further requires internet information services providers to formulate contingency plans for network security incidents, report to the competent departments immediately upon the occurrence of any incident endangering cyber security and take corresponding remedial measures.

Internet information services providers are also required to maintain the integrity, confidentiality and availability of network data. The Cyber Security Law reaffirms the basic principles and requirements specified in other existing laws and regulations on personal data protection, such as the requirements on the collection, use, processing, storage and disclosure of personal data, and internet information services providers being required to take technical and other necessary measures to ensure the security of the personal information they have collected and prevent the personal information from being divulged, damaged or lost. Any violation of the Cyber Security Law may subject the internet information services provider to warnings, fines, confiscation of illegal gains, revocation of licenses, cancellation of filings, shutdown of websites or criminal liabilities.

### **Regulations on E-commerce**

On August 31, 2018, the SCNPC promulgated the *E-Commerce Law of the People's Republic of China*, or the E-Commerce Law, which became effective as of January 1, 2019. The E-Commerce Law establishes the regulatory framework for the e-commerce sector in the PRC for the first time by laying out certain requirements on e-commerce platform operators. According to the E-Commerce Law, the e-commerce platform operators shall prepare a contingency plan for cybersecurity events and take technological measures and other measures to prevent online illegal and criminal activities. The E-Commerce Law also expressly requires e-commerce platform operators to take necessary actions to ensure fair dealing on their platforms to safeguard the legitimate rights and interests of consumers, including to prepare platform service agreements and transaction information record-keeping and transaction rules, to prominently display such documents on the platform's website, and to keep such information for no less than three years following the completion of a transaction. Where the e-commerce platform operators conduct self-operated business on their platforms, they shall distinguish and mark their self-operated business from the businesses of the business operators using the platform in a prominent manner, and shall not mislead consumers. The e-commerce platform operators shall bear civil liability of a commodity seller or service provider for the business marked as self-operated, pursuant to the law.

## **Regulations on Land and the Development of Construction Projects**

### *Regulations on Land Grants*

Under the *Interim Regulations on Assignment and Transfer of the Rights to the Use of the State-owned Urban Land*, promulgated by the State Council on May 19, 1990, a system of assignment and transfer of the right to use state-owned land was adopted. A land user must pay land premiums to the state as consideration for the assignment of the right to use a land site within a certain term, and the land user who obtained the right to use the land may transfer, lease out, mortgage or otherwise commercially exploit the land within the term of use. Under the *Interim Regulations on Assignment and Transfer of the Rights to the Use of the State-owned Urban Land and the Law of the PRC on Urban Real Estate Administration*, the local land administration authority may enter into an assignment contract with the land user for the assignment of land use rights. The land user is required to pay the land premium as provided in the assignment contract. After the full payment of the land premium, the land user must register with the land administration authority and obtain a land use rights certificate which evidences the acquisition of land use rights.

### *Regulations on Planning of a Construction Project*

Pursuant to the *Regulations on Planning Administration regarding Assignment and Transfer of the Rights to Use of the State-Owned Land in Urban Area* promulgated by the Ministry of Construction in December 1992 and amended in January 2011, a construction land planning permit shall be obtained from the municipal planning authority with respect to the planning and use of land. According to the *Urban and Rural Planning Law of the PRC* promulgated by the SCNPC on October 28, 2007 and amended on April 24, 2015, a construction work planning permit must be obtained from the competent urban and rural planning government authority for the construction of any structure, fixture, road, pipeline or other engineering project within an urban or rural planning area.

After obtaining a construction work planning permit, subject to certain exceptions, a construction enterprise must apply for a construction work commencement permit from the construction authority under the local people's government at the county level or above in accordance with the *Administrative Provisions on Construction Permit of Construction Projects* promulgated by the Ministry of Housing and Urban-Rural Development, or the MOHURD, on June 25, 2014 and implemented on October 25, 2014 and amended on September 19, 2018.

Pursuant to the *Administrative Measures for Reporting Details Regarding Acceptance Examination upon Completion of Buildings and Municipal Infrastructure* promulgated by the Ministry of Construction on April 4, 2000 and amended on October 19, 2009 and the *Provisions on Acceptance Examination upon Completion of Buildings and Municipal Infrastructure* promulgated and implemented by the MOHURD on December 2, 2013, upon the completion of a construction project, the construction enterprise must submit an application to the competent department in the people's government at or above county level where the project is located, for examination upon completion of building and for filing purpose; and to obtain the filing form for acceptance and examination upon completion of construction project.

## **Regulations on Environmental Protection and Work Safety**

### *Regulations on Environmental Protection*

Pursuant to the *Environmental Protection Law of the PRC* promulgated by the SCNPC, on December 26, 1989, amended on April 24, 2014 and effective on January 1, 2015, any entity which discharges or will discharge pollutants during the course of operations or other activities must implement effective environmental protection safeguards and procedures to control and properly treat waste gas, waste water, waste residue, dust, malodorous gases, radioactive substances, noise vibrations, electromagnetic radiation and other hazards produced during such activities.

Environmental protection authorities impose various administrative penalties on persons or enterprises in violation of the *Environmental Protection Law*. Such penalties include warnings, fines, orders to rectify within the prescribed period, orders to cease construction, orders to restrict or suspend production, orders to make recovery, orders to disclose relevant information or make an announcement, imposition of administrative action against relevant responsible persons, and orders to shut down enterprises. Any person or entity that pollutes the environment resulting in damage could also be held liable under the *Tort Law of the PRC*. In addition, environmental organizations may also bring lawsuits against any entity that discharges pollutants detrimental to the public welfare.

#### *Regulations on Work Safety*

Under relevant construction safety laws and regulations, including the *Work Safety Law of the PRC* which was promulgated by the SCNPC on June 29, 2002, amended on August 27, 2009, August 31, 2014, and effective as of December 1, 2014, production and operating business entities must establish objectives and measures for work safety and improve the working environment and conditions for workers in a planned and systematic way. A work safety protection scheme must also be set up to implement the work safety job responsibility system. In addition, production and operating business entities must arrange work safety training and provide the employees with protective equipment that meets the national standards or industrial standards. Automobile and components manufacturers are subject to the above-mentioned environment protection and work safety requirements.

#### **Regulations on Fire Control**

Pursuant to the *Fire Safety Law of the PRC* promulgated by the SCNPC on April 29, 1998, amended on October 28, 2008 and which became effective on May 1, 2009 and the *Provisions on Supervision and Administration of Fire Protection of Construction Projects* promulgated by the Ministry of Public Security of the PRC on April 30, 2009, implemented on May 1, 2009 and later amended on July 17, 2012, which became effective on November 1, 2012, the construction entity of a large-scale crowded venue (including the construction of a manufacturing factory that is over 2,500 square meters) and other special construction projects must apply for fire prevention design review with fire control authorities, and complete fire assessment inspection and acceptance procedures after the construction project is completed. The construction entity of other construction projects must complete the filing for fire prevention design and the fire safety completion inspection and acceptance procedures within seven business days after obtaining the construction work permit and passing the construction completion inspection and acceptance. If the construction entity fails to pass the fire safety inspection before such venue is put into use, or fails to conform to the fire safety requirements after such inspection, it shall be subject to (i) orders to suspend the construction of projects, use of such projects or operation of relevant business; and (ii) a fine ranging between RMB30,000 and RMB300,000.

#### **Regulations on Intellectual Property Rights**

##### *Patent Law*

According to the *Patent Law of the PRC* (Revised in 2008), the State Intellectual Property Office is responsible for administering patent law in the PRC. The patent administration departments of provincial, autonomous region or municipal governments are responsible for administering patent law within their respective jurisdictions. The Chinese patent system adopts a first-to-file principle, which means that when more than one person files different patent applications for the same invention, only the person who files the application first is entitled to obtain a patent of the invention. To be patentable, an invention or a utility model must meet three criteria: novelty, inventiveness and practicability. A patent is valid for twenty years in the case of an invention and ten years in the case of utility models and designs.

##### *Regulations on Copyright*

The *Copyright Law of the PRC*, or the Copyright Law, which took effect on June 1, 1991 and was amended in 2001 and in 2010, provides that Chinese citizens, legal persons, or other organizations shall, whether published or not, own copyright in their copyrightable works, which include, among others, works of literature, art, natural science, social science, engineering technology and computer software. Copyright owners enjoy certain legal rights, including right of publication, right of authorship and right of reproduction. The Copyright Law as revised in 2010 extends copyright protection to Internet activities, products disseminated over the Internet and software products. In addition, the Copyright Law provides for a voluntary registration system administered by the China Copyright Protection Center, or the CPCC. According to the Copyright Law, an infringer of the copyrights shall be subject to various civil liabilities, which include ceasing infringement activities, apologizing to the copyright owners and compensating the loss of the copyright owner. Infringers of a copyright may also be subject to fines and/or administrative or criminal liabilities in severe situations.



Pursuant to the *Computer Software Copyright Protection Regulations* promulgated by the State Council on December 20, 2001 and amended on January 30, 2013, the software copyright owner may go through the registration formalities with a software registration authority recognized by the State Council's copyright administrative department. The software copyright owner may authorize others to exercise that copyright, and is entitled to receive remuneration.

#### *Trademark Law*

Trademarks are protected by the *Trademark Law of the PRC* which was adopted on August 23, 1982 and subsequently amended in 1993, 2001 and 2013, respectively, as well as by the *Implementation Regulations of the PRC Trademark Law* adopted by the State Council in 2002 and as most recently amended on April 29, 2014. The Trademark Office under the State Administration for Industry and Commerce, handles trademark registrations. The Trademark Office grants a ten-year term to registered trademarks and the term may be renewed for another ten-year period upon request by the trademark owner. A trademark registrant may license its registered trademarks to another party by entering into trademark license agreements, which must be filed with the Trademark Office for its record. As with patents, the Trademark Law has adopted a first-to-file principle with respect to trademark registration. If a trademark applied for is identical or similar to another trademark which has already been registered or subject to a preliminary examination and approval for use on the same or similar kinds of products or services, such trademark application may be rejected. Any person applying for the registration of a trademark may not injure existing trademark rights first obtained by others, nor may any person register in advance a trademark that has already been used by another party and has already gained a "sufficient degree of reputation" through such party's use.

#### *Regulations on Domain Names*

The MIIT promulgated the *Measures on Administration of Internet Domain Names*, or the Domain Name Measures, on August 24, 2017, which took effect on November 1, 2017 and replaced the *Administrative Measures on China Internet Domain Name* promulgated by the MIIT on November 5, 2004. According to the Domain Name Measures, the MIIT is in charge of the administration of PRC internet domain names. The domain name registration follows a first-to-file principle. Applicants for registration of domain names must provide the true, accurate and complete information of their identities to domain name registration service institutions. The applicants will become the holder of such domain names upon the completion of the registration procedure.

### **Regulations on Foreign Investment in China**

#### *Guidance Catalogue of Industries for Foreign Investment*

On June 28, 2017, the MOFCOM and the NDRC jointly promulgated the Catalogue. On June 28, 2018, the MOFCOM and the NDRC further promulgated the Negative List to amend the Catalogue. The Catalogue (as amended by the Negative List) lists the industries and economic activities in which foreign investment in the PRC is encouraged, restricted or prohibited. Any industry not listed in the Catalogue is a permitted industry. Pursuant to the Catalogue (as amended by the Negative List), the production and sale of battery bags and packs as well as the manufacture of the NEVs fall within the permitted catalogue. However, the Catalogue also provides that foreign investors shall hold no more than 50% of the equity interest in a service provider operating certain value-added telecommunications services (other than for e-commerce).

The establishment, operation and management of corporate entities in the PRC is governed by the *PRC Company Law*, which was initially promulgated by the SCNPC on December 29, 1993 and came into effect on July 1, 1994, and was subsequently amended on December 25, 1999, August 28, 2004, October 27, 2005, December 28, 2013 and October 26, 2018. The latest amended *PRC Company Law* became effective on October 26, 2018. The *PRC Company Law* generally governs two types of companies—limited liability companies and joint stock limited companies. The *PRC Company Law* shall also apply to foreign-invested companies. Where laws on foreign investment have other stipulations, such stipulations shall prevail. The establishment procedures, approval or record-filing procedures, registered capital requirements, foreign exchange matters, accounting practices, taxation and labor matters of a wholly foreign-owned enterprise are regulated by the *Wholly Foreign-owned Enterprise Law of the PRC*, or the WFOE Law, promulgated on April 12, 1986 and amended on October 31, 2000 and September 3, 2016, and the *Rules for the Implementation of the WFOE Law*, promulgated on December 12, 1990 and amended on April 12, 2001 and February 19, 2014. According to the amendments to the WFOE law in 2016, for any wholly foreign-owned enterprise to which the special entry management system does not apply, its establishment, operation duration and extension, separation, merger or other major changes shall be reported for record.

Pursuant to the *Provisional Administrative Measures for Record-filing Administration of the Establishment and Change of Foreign-invested Enterprises*, or the Provisional Measures, promulgated by the MOFCOM on October 8, 2016 (as amended on July 30, 2017 and June 30, 2018), establishment and modifications of foreign-invested enterprises which are not subject to the approval under the special entry management measures shall be filed with the delegated commercial authorities.

#### *Foreign Investment Law*

On March 15, 2019, the National People's Congress promulgated the Foreign Investment Law, which will take effect on January 1, 2020 and will replace three existing laws on foreign investments in China, namely, the PRC Equity Joint Venture Law, the PRC Cooperative Joint Venture Law and the Wholly Foreign-owned Enterprise Law, together with their implementation rules and ancillary regulations. The Foreign Investment Law embodies an expected PRC regulatory trend to rationalize its foreign investment regulatory regime in line with prevailing international practice and the legislative efforts to unify the corporate legal requirements for both foreign and domestic invested enterprises in China. The Foreign Investment Law establishes the basic framework for the access to, and the promotion, protection and administration of foreign investments in view of investment protection and fair competition.

According to the Foreign Investment Law, “foreign investment” refers to investment activities directly or indirectly conducted by one or more natural persons, business entities, or otherwise organizations of a foreign country (collectively referred to as “foreign investor”) within China, and the investment activities include the following situations: (i) a foreign investor, individually or collectively with other investors, establishes a foreign-invested enterprise within China; (ii) a foreign investor acquires stock shares, equity shares, shares in assets, or other similar rights and interests of an enterprise within China; (iii) a foreign investor, individually or collectively with other investors, invests in a new project within China; and (iv) investments in other means as provided by laws, administrative regulations, or the State Council.

According to the Foreign Investment Law, the State Council will publish or approve to publish a catalogue for special administrative measures, or the “negative list.” The Foreign Investment Law grants national treatment to foreign invested entities, except for those foreign invested entities that operate in industries deemed to be either “restricted” or “prohibited” in the “negative list.” Because the “negative list” has yet to be published, it is unclear whether it will differ from the current Special Administrative Measures for Market Access of Foreign Investment (Negative List). The Foreign Investment Law provides that foreign invested entities operating in foreign restricted or prohibited industries will require market entry clearance and other approvals from relevant PRC governmental authorities.

Furthermore, the Foreign Investment Law provides that foreign invested enterprises established according to the existing laws regulating foreign investment may maintain their structure and corporate governance within five years after the implementation of the Foreign Investment Law.

In addition, the Foreign Investment Law also provides several protective rules and principles for foreign investors and their investments in the PRC, including, among others, that local governments shall abide by their commitments to the foreign investors; foreign-invested enterprises are allowed to issue stocks and corporate bonds; except for special circumstances, in which case statutory procedures shall be followed and fair and reasonable compensation shall be made in a timely manner, expropriation or requisition of the investment of foreign investors is prohibited; mandatory technology transfer is prohibited; and the capital contributions, profits, capital gains, proceeds out of asset disposal, licensing fees of intellectual property rights, indemnity or compensation legally obtained, or proceeds received upon settlement by foreign investors within China, may be freely remitted inward and outward in RMB or a foreign currency. Also, foreign investors or the foreign investment enterprise should be imposed legal liabilities for failing to report investment information in accordance with the requirements.

## **Regulations on Foreign Exchange**

### *General Administration of Foreign Exchange*

Under the *PRC Foreign Currency Administration Rules* promulgated on January 29, 1996 and most recently amended on August 5, 2008 and various regulations issued by the State Administration of Foreign Exchange of the PRC, or the SAFE, and other relevant PRC government authorities, Renminbi is convertible into other currencies for current account items, such as trade-related receipts and payments and payment of interest and dividends. The conversion of Renminbi into other currencies and remittance of the converted foreign currency outside the PRC of capital account items, such as direct equity investments, loans and repatriation of investment, requires the prior approval from the SAFE or its local office.

Payments for transactions that take place within the PRC must be made in Renminbi. Unless otherwise approved, PRC companies may not repatriate foreign currency payments received from abroad or retain the same abroad. Foreign-invested enterprises may retain foreign exchange in accounts with designated foreign exchange banks under the current account items subject to a cap set by the SAFE or its local branch. Foreign exchange proceeds under the current accounts may be either retained or sold to a financial institution engaged in settlement and sale of foreign exchange pursuant to relevant SAFE rules and regulations. For foreign exchange proceeds under the capital accounts, approval from the SAFE is generally required for the retention or sale of such proceeds to a financial institution engaged in settlement and sale of foreign exchange.

Pursuant to the *Circular of the SAFE on Further Improving and Adjusting Foreign Exchange Administration Policies for Direct Investment*, or the SAFE Circular No. 59, promulgated by SAFE on November 19, 2012, which became effective on December 17, 2012 and was further amended on May 4, 2015 and October 10, 2018, approval of SAFE is not required for opening a foreign exchange account and depositing foreign exchange into the accounts relating to the direct investments. The SAFE Circular No. 59 also simplified foreign exchange-related registration required for the foreign investors to acquire the equity interests of Chinese companies and further improve the administration on foreign exchange settlement for foreign-invested enterprises.

The *Circular on Further Simplifying and Improving the Foreign Currency Management Policy on Direct Investment*, or SAFE Circular No. 13, effective from June 1, 2015, cancels the administrative approvals of foreign exchange registration of direct domestic investment and direct overseas investment and simplifies the procedure of foreign exchange-related registration. Pursuant to SAFE Circular No. 13, the investors shall register with banks for direct domestic investment and direct overseas investment.

The *Circular on Reforming the Management Approach regarding the Settlement of Foreign Capital of Foreign-invested Enterprise*, or SAFE Circular No. 19, which was promulgated by the SAFE on March 30, 2015 and became effective on June 1, 2015, provides that a foreign-invested enterprise may, according to its actual business needs, settle with a bank the portion of the foreign exchange capital in its capital account for which the relevant foreign exchange administration has confirmed monetary capital contribution rights and interests (or for which the bank has registered the injection of the monetary capital contribution into the account). Pursuant to SAFE Circular No. 19, for the time being, foreign-invested enterprises are allowed to settle 100% of their foreign exchange capital on a discretionary basis; a foreign-invested enterprise shall truthfully use its capital for its own operational purposes within the scope of business; where an ordinary foreign-invested enterprise makes domestic equity investment with the amount of foreign exchanges settled, the foreign-invested enterprise must first go through domestic re-investment registration and open a corresponding account for foreign exchange settlement pending payment with the foreign exchange administration or the bank at the place where it is registered.

The *Circular on Reforming and Regulating Policies on the Control over Foreign Exchange Settlement of Capital Accounts*, or SAFE Circular No. 16, which was promulgated by the SAFE and became effective on June 9, 2016, provides that enterprises registered in the PRC may also convert their foreign debts from foreign currency into Renminbi on a self-discretionary basis. SAFE Circular No. 16 also provides an integrated standard for conversion of foreign exchange under capital account items (including, but not limited to, foreign currency capital and foreign debts) on a self-discretionary basis, which applies to all enterprises registered in the PRC.

According to the Provisional Measures, the *Administrative Rules on the Company Registration*, which were promulgated by the State Council on June 24, 1994, became effective on July 1, 1994 and were amended on February 6, 2016, and other laws and regulations governing the foreign-invested enterprises and company registrations, the establishment of a foreign-invested enterprise and any capital increase and other major changes in a foreign-invested enterprise shall be registered with the SAMR or its local counterparts, and shall be filed via the foreign investment comprehensive administrative system, or the FICMIS, if such foreign-invested enterprise does not involve special access administrative measures prescribed by the PRC government.

Pursuant to SAFE Circular No. 13 and other laws and regulations relating to foreign exchange, when setting up a new foreign-invested enterprise, the foreign-invested enterprise shall register with the bank located at its registered place after obtaining the business license, and if there is any change in capital or other changes relating to the basic information of the foreign-invested enterprise, including, without limitation, any increase in its registered capital or total investment, the foreign-invested enterprise must register such changes with the bank located at its registered place after obtaining approval from or completing the filing with competent authorities. Pursuant to the relevant foreign exchange laws and regulations, the above-mentioned foreign exchange registration with the banks will typically take less than four weeks upon the acceptance of the registration application.

Based on the foregoing, if we intend to provide funding to our wholly foreign-owned subsidiaries through capital injection at or after their establishment, we must register the establishment of and any follow-on capital increase in our wholly foreign-owned subsidiaries with the SAMR or its local counterparts, file such via the FICMIS and register such with the local banks for the foreign exchange related matters.

#### *Loans by the Foreign Companies to their PRC Subsidiaries*

A loan made by foreign investors as shareholders in a foreign-invested enterprise is considered to be foreign debt in China and is regulated by various laws and regulations, including the *Regulation of the People's Republic of China on Foreign Exchange Administration*, the *Interim Provisions on the Management of Foreign Debts*, the *Statistical Monitoring of Foreign Debts Tentative Provisions*, the *Detailed Rules for the Implementation of Provisional Regulations on Statistics and Supervision of External Debt*, and the *Administrative Measures for Registration of Foreign Debts*. Under these rules and regulations, a shareholder loan in the form of foreign debt made to a PRC entity does not require the prior approval of the SAFE. However, such foreign debt must be registered with and recorded by the SAFE or its local branches within fifteen (15) business days after entering into the foreign debt contract. Pursuant to these rules and regulations, the balance of the foreign debts of a foreign-invested enterprise shall not exceed the difference between the total investment and the registered capital of the foreign-invested enterprise, or Total Investment and Registered Capital Balance.

Pursuant to the *Interim Provisions of the State Administration for Industry and Commerce on the Ratio of the Registered Capital to the Total Investment of a Sino-Foreign Equity Joint Venture Enterprise*, promulgated by the SAMR and effective on February 17, 1987, with respect to a sino-foreign equity joint venture, the registered capital shall be (i) no less than 7/10 of its total investment, if the total investment is US\$3 million or under US\$3 million; (ii) no less than 1/2 of its total investment, if the total investment is ranging from US\$3 million to US\$10 million (including US\$10 million), provided that the registered capital shall not be less than US\$2.1 million if the total investment is less than US\$4.2 million; (iii) no less than 2/5 of its total investment, if the total investment is ranging from US\$10 million to US\$30 million (including US\$30 million), provided that the registered capital shall not be less than US\$5 million if the total investment is less than US\$12.5 million; and (iv) no less than 1/3 of its total investment, if the total investment exceeds US\$30 million, provided that the registered capital shall not be less than US\$12 million if the total investment is less than US\$36 million.

On January 12, 2017, the People's Bank of China, or the PBOC, promulgated the *Notice of the People's Bank of China on Matters concerning the Macro-Prudential Management of Full-Covered Cross-Border Financing*, or PBOC Notice No. 9. Pursuant to PBOC Notice No. 9, within a transition period of one year from January 12, 2017, the foreign-invested enterprises may adopt the currently valid foreign debt management mechanism, or Current Foreign Debt Mechanism, or the mechanism as provided in PBOC Notice No. 9, or Notice No. 9 Foreign Debt Mechanism, at their own discretions. PBOC Notice No. 9 provides that enterprises may conduct independent cross-border financing in RMB or foreign currencies as required. Pursuant to PBOC Notice No. 9, the outstanding cross-border financing of an enterprise (the outstanding balance drawn, here and below) shall be calculated using a risk-weighted approach, or Risk-Weighted Approach, and shall not exceed certain specified upper limits. PBOC Notice No. 9 further provides that the upper limit of risk-weighted outstanding cross-border financing for enterprises shall be 200% of its net assets, or Net Asset Limits. Enterprises shall file with the SAFE in its capital item information system after entering into the relevant cross-border financing contracts and prior to three business days before drawing any money from the foreign debts.

Based on the foregoing, if we provide funding to our wholly foreign-owned subsidiaries through shareholder loans, the balance of such loans shall not exceed the Total Investment and Registered Capital Balance and we will need to register such loans with the SAFE or its local branches in the event that the Current Foreign Debt Mechanism applies, or the balance of such loans shall be subject to the Risk-Weighted Approach and the Net Asset Limits and we will need to file the loans with the SAFE in its information system in the event that the Notice No. 9 Foreign Debt Mechanism applies. According to PBOC Notice No. 9, after a transition period of one year from January 11, 2017, the PBOC and the SAFE will determine the cross-border financing administration mechanism for the foreign-invested enterprises after evaluating the overall implementation of PBOC Notice No. 9. As of the date hereof, neither the PBOC nor the SAFE has promulgated and made public any further rules, regulations, notices or circulars in this regard. It is uncertain which mechanism will be adopted by the PBOC and the SAFE in the future and what statutory limits will be imposed on us when providing loans to our PRC subsidiaries.

#### *Offshore Investment*

Under the *Circular of the State Administration of Foreign Exchange on Issues Concerning the Foreign Exchange Administration over the Overseas Investment and Financing and Round-trip Investment by Domestic Residents via Special Purpose Vehicles*, or SAFE Circular 37, issued by the SAFE and effective on July 4, 2014, PRC residents are required to register with the local SAFE branch prior to the establishment or control of an offshore special purpose vehicle, or SPV, which is defined as an offshore enterprise directly established or indirectly controlled by PRC residents for investment and financing purposes, with the enterprise assets or interests PRC residents hold in China or overseas. The term "control" means to obtain the operation rights, right to proceeds or decision-making power of an SPV through acquisition, trust, holding shares on behalf of others, voting rights, repurchase, convertible bonds or other means. An amendment to registration or subsequent filing with the local SAFE branch by such PRC resident is also required if there is any change in basic information of the offshore company or any material change with respect to the capital of the offshore company. At the same time, the SAFE has issued the *Operation Guidance for the Issues Concerning Foreign Exchange Administration over Round-trip Investment* regarding the procedures for SAFE registration under SAFE Circular 37, which became effective on July 4, 2014 as an attachment of Circular 37.

Under the relevant rules, failure to comply with the registration procedures set forth in the SAFE Circular 37 may result in bans on the foreign exchange activities of the relevant onshore company, including the payment of dividends and other distributions to its offshore parent or affiliates, and may also subject relevant PRC residents to penalties under PRC foreign exchange administration regulations.

#### **Regulations on Dividend Distribution**

The principal laws and regulations regulating the distribution of dividends by foreign-invested enterprises in the PRC include the *Company Law of the PRC*, as amended in 2004, 2005, 2013 and 2018, the *Wholly Foreign-owned Enterprise Law* promulgated in 1986 and amended in 2000 and 2016 and its implementation regulations promulgated in 1990 and subsequently amended in 2001 and 2014, the *Equity Joint Venture Law of the PRC* promulgated in 1979 and subsequently amended in 1990, 2001 and 2016 and its implementation regulations promulgated in 1983 and subsequently amended in 1986, 1987, 2001, 2011 and 2014, and the *Cooperative Joint Venture Law of the PRC* promulgated in 1988 and amended in 2000 and 2017 and its implementation regulations promulgated in 1995 and amended in 2014 and 2017. Under the current regulatory regime in the PRC, foreign-invested enterprises in the PRC may pay dividends only out of their retained earnings, if any, determined in accordance with PRC accounting standards and regulations. A PRC company is required to set aside as statutory reserve funds at least 10% of its after-tax profit, until the cumulative amount of such reserve funds reaches 50% of its registered capital unless laws regarding foreign investment provide otherwise. A PRC company shall not distribute any profits until any losses from prior fiscal years have been offset. Profits retained from prior fiscal years may be distributed together with distributable profits from the current fiscal year.

## Regulations on Taxation

### *Enterprise Income Tax*

On March 16, 2007, the SCNPC promulgated the *PRC Enterprise Income Tax Law* which was amended on February 24, 2017 and December 29, 2018. On December 6, 2007, the State Council enacted the *Regulations for the Implementation of the Enterprise Income Tax Law*, or collectively, the EIT Law. The EIT Law came into effect on January 1, 2008. Under the EIT Law, both resident enterprises and non-resident enterprises are subject to tax in the PRC. Resident enterprises are defined as enterprises that are established in China in accordance with PRC laws, or that are established in accordance with the laws of foreign countries but are actually or in effect controlled from within the PRC. Non-resident enterprises are defined as enterprises that are organized under the laws of foreign countries and whose actual management is conducted outside the PRC, but have established institutions or premises in the PRC, or have no such established institutions or premises but have income generated from inside the PRC. Under the EIT Law and relevant implementing regulations, a uniform corporate income tax rate of 25% is applied. However, if non-resident enterprises have not formed permanent establishments or premises in the PRC, or if they have formed permanent establishment or premises in the PRC but there is no actual relationship between the relevant income derived in the PRC and the established institutions or premises set up by them, enterprise income tax is set at the rate of 10% with respect to their income sourced from inside the PRC.

### *Value-added Tax*

The *Provisional Regulations of the PRC on Value-added Tax* were promulgated by the State Council on December 13, 1993, came into effect on January 1, 1994 and were subsequently amended from time to time; and the *Detailed Rules for the Implementation of the Provisional Regulations of the PRC on Value-added Tax* (Revised in 2011) was promulgated by the MOF on December 25, 1993 and subsequently amended on December 15, 2008 and October 28, 2011, or collectively, the VAT Law. On November 19, 2017, the State Council promulgated the *Decisions on Abolishing the Provisional Regulations of the PRC on Business Tax and Amending the Provisional Regulations of the PRC on Value-added Tax*, or the Order 691. On March 21, 2019, the MOF, the SAT and the General Administration of Customs jointly issued the *Announcement on Relevant Policies on Deepen the Reform of Value-added Tax*, or the Announcement 39. According to the VAT Law and the Order 691, all enterprises and individuals engaged in the sale of goods, the provision of processing, repair and replacement services, sales of services, intangible assets, real property and the importation of goods within the territory of the PRC are the taxpayers of value-added tax, or VAT. According to the Announcement 39, the VAT tax rates generally applicable are simplified as 13%, 9%, 6% and 0%, which will become effective on April 1, 2019, and the VAT tax rate applicable to the small-scale taxpayers is 3%.

### *Dividend Withholding Tax*

The EIT Law provides that since January 1, 2008, an income tax rate of 10% will normally be applicable to dividends declared to non-PRC resident investors that do not have an establishment or place of business in the PRC, or that have such establishment or place of business but the relevant income is not effectively connected with the establishment or place of business, to the extent such dividends are derived from sources within the PRC.

Pursuant to the *Arrangement Between the Mainland of China and the Hong Kong Special Administrative Region for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital*, or the Double Taxation Avoidance Arrangement, and other applicable PRC laws, if a Hong Kong resident enterprise is determined by the competent PRC tax authority to have satisfied the relevant conditions and requirements under such Double Taxation Avoidance Arrangement and other applicable laws, the 10% withholding tax on the dividends the Hong Kong resident enterprise receives from a PRC resident enterprise may be reduced to 5%. However, based on the *Circular on Certain Issues with Respect to the Enforcement of Dividend Provisions in Tax Treaties*, or SAT Circular 81, issued on February 20, 2009 by the SAT, if the relevant PRC tax authorities determine, in their discretions, that a company benefits from such reduced income tax rate due to a structure or arrangement that is primarily tax-driven, such PRC tax authorities may adjust the preferential tax treatment. According to the *Circular on Several Questions regarding the "Beneficial Owner" in Tax Treaties*, which was issued on February 3, 2018 by the SAT and took effect on April 1, 2018, when determining the applicant's status as the "beneficial owner" regarding tax treatments in connection with dividends, interests or royalties in the tax treaties, several factors, including, without limitation, whether the applicant is obligated to pay more than 50% of his or her income in twelve months to residents in third country or region, whether the business operated by the applicant constitutes the actual business activities, and whether the counterparty country or region to the tax treaties does not levy any tax or grant any tax exemption on relevant incomes or levy tax at an extremely low rate, will be taken into account, and such factors will be analyzed according to the actual circumstances of the specific cases. This circular further provides that an applicant who intends to prove his or her status as the "beneficial owner" shall submit the relevant documents to the relevant tax bureau according to the *Announcement on Issuing the Measures for the Administration of Non-Resident Taxpayers' Enjoyment of the Treatment under Tax Agreements*.

#### *Tax on Indirect Transfer*

On February 3, 2015, the SAT issued the *Circular on Issues of Enterprise Income Tax on Indirect Transfers of Assets by Non-PRC Resident Enterprises*, or Circular 7. Pursuant to Circular 7, an "indirect transfer" of assets, including equity interests in a PRC resident enterprise, by non-PRC resident enterprises, may be recharacterized and treated as a direct transfer of PRC taxable assets, if such arrangement does not have a reasonable commercial purpose and was established for the purpose of avoiding payment of PRC enterprise income tax. As a result, gains derived from such indirect transfer may be subject to PRC enterprise income tax. When determining whether there is a "reasonable commercial purpose" of the transaction arrangement, features to be taken into consideration include, inter alia, whether the main value of the equity interest of the relevant offshore enterprise derives directly or indirectly from PRC taxable assets; whether the assets of the relevant offshore enterprise mainly consists of direct or indirect investment in China or if its income is mainly derived from China; and whether the offshore enterprise and its subsidiaries directly or indirectly holding PRC taxable assets have a real commercial nature which is evidenced by their actual function and risk exposure. According to Circular 7, where the payer fails to withhold any or sufficient tax, the transferor shall declare and pay such tax to the tax authority by itself within the statutory time limit. Late payment of applicable tax will subject the transferor to default interest. Circular 7 does not apply to transactions of sale of shares by investors through a public stock exchange where such shares were acquired on a public stock exchange. On October 17, 2017, the SAT issued the *Circular on Issues of Tax Withholding regarding Non-PRC Resident Enterprise Income Tax*, or SAT Circular 37, which was amended by the *Announcement of the State Administration of Taxation on Revising Certain Taxation Normative Documents* issued on June 15, 2018 by the SAT. The SAT Circular 37 further elaborates the relevant implemental rules regarding the calculation, reporting and payment obligations of the withholding tax by the non-resident enterprises. Nonetheless, there remain uncertainties as to the interpretation and application of Circular 7. Circular 7 may be determined by the tax authorities to be applicable to our offshore transactions or sale of our shares or those of our offshore subsidiaries where non-resident enterprises, being the transferors, were involved.

### **Regulations on Employment and Social Welfare**

#### *Labor Contract Law*

The *Labor Contract Law of the PRC*, or the Labor Contract Law, which was promulgated on January 1, 2008 and amended on December 28, 2012, is primarily aimed at regulating rights and obligations of employer and employee relationships, including the establishment, performance and termination of labor contracts. Pursuant to the Labor Contract Law, labor contracts shall be concluded in writing if labor relationships are to be or have been established between employers and employees. Employers are prohibited from forcing employees to work above certain time limits and employers shall pay employees for overtime work in accordance with national regulations. In addition, employee wages shall be no lower than local standards on minimum wages and must be paid to employees in a timely manner.

### *Interim Provisions on Labor Dispatch*

Pursuant to the *Interim Provisions on Labor Dispatch* promulgated by the Ministry of Human Resources and Social Security on January 24, 2014, which became effective on March 1, 2014, dispatched workers are entitled to equal pay with full-time employees for equal work. Employers are allowed to use dispatched workers for temporary, auxiliary or substitutive positions, and the number of dispatched workers may not exceed 10% of the total number of employees.

### *Social Insurance and Housing Fund*

As required under the *Regulation of Insurance for Labor Injury* implemented on January 1, 2004 and amended in 2010, the *Provisional Measures for Maternity Insurance of Employees of Corporations* implemented on January 1, 1995, the *Decisions on the Establishment of a Unified Program for Old-Aged Pension Insurance of the State Council* issued on July 16, 1997, the *Decisions on the Establishment of the Medical Insurance Program for Urban Workers of the State Council* promulgated on December 14, 1998, the *Unemployment Insurance Measures* promulgated on January 22, 1999 and the *Social Insurance Law of the PRC* implemented on July 1, 2011 and amended on December 29, 2018, employers are required to provide their employees in the PRC with welfare benefits covering pension insurance, unemployment insurance, maternity insurance, work-related injury insurance and medical insurance. These payments are made to local administrative authorities. Any employer that fails to make social insurance contributions may be ordered to rectify the non-compliance and pay the required contributions within a prescribed time limit and be subject to a late fee. If the employer still fails to rectify the failure to make the relevant contributions within the prescribed time, it may be subject to a fine ranging from one to three times the amount overdue.

In accordance with the *Regulations on the Administration of Housing Funds* which was promulgated by the State Council in 1999 and amended in 2002, employers must register at the designated administrative centers and open bank accounts for depositing employees' housing funds. Employer and employee are also required to pay and deposit housing funds, with an amount no less than 5% of the monthly average salary of the employee in the preceding year in full and on time. See "Item 3. Key Information—D. Risk Factors—Risks Related to Doing Business in China—Increases in labor costs and enforcement of stricter labor laws and regulations in the PRC may adversely affect our business and our profitability."

### *Employee Stock Incentive Plan*

Pursuant to the *Notice of Issues Related to the Foreign Exchange Administration for Domestic Individuals Participating in Stock Incentive Plan of Overseas Listed Company*, which was issued by the SAFE on February 15, 2012, employees, directors, supervisors, and other senior management who participate in any stock incentive plan of a publicly-listed overseas company and who are PRC citizens or non-PRC citizens residing in China for a continuous period of no less than one year, subject to a few exceptions, are required to register with the SAFE through a qualified domestic agent, which may be a PRC subsidiary of such overseas listed company, and complete certain other procedures.

In addition, the SAT has issued certain circulars concerning employee stock options and restricted shares. Under these circulars, employees working in the PRC who exercise stock options or are granted restricted shares will be subject to PRC individual income tax. The PRC subsidiaries of an overseas listed company are required to file documents related to employee stock options and restricted shares with relevant tax authorities and to withhold individual income taxes of employees who exercise their stock options or purchase restricted shares. If the employees fail to pay or the PRC subsidiaries fail to withhold income tax in accordance with relevant laws and regulations, the PRC subsidiaries may face sanctions imposed by the tax authorities or other PRC governmental authorities.

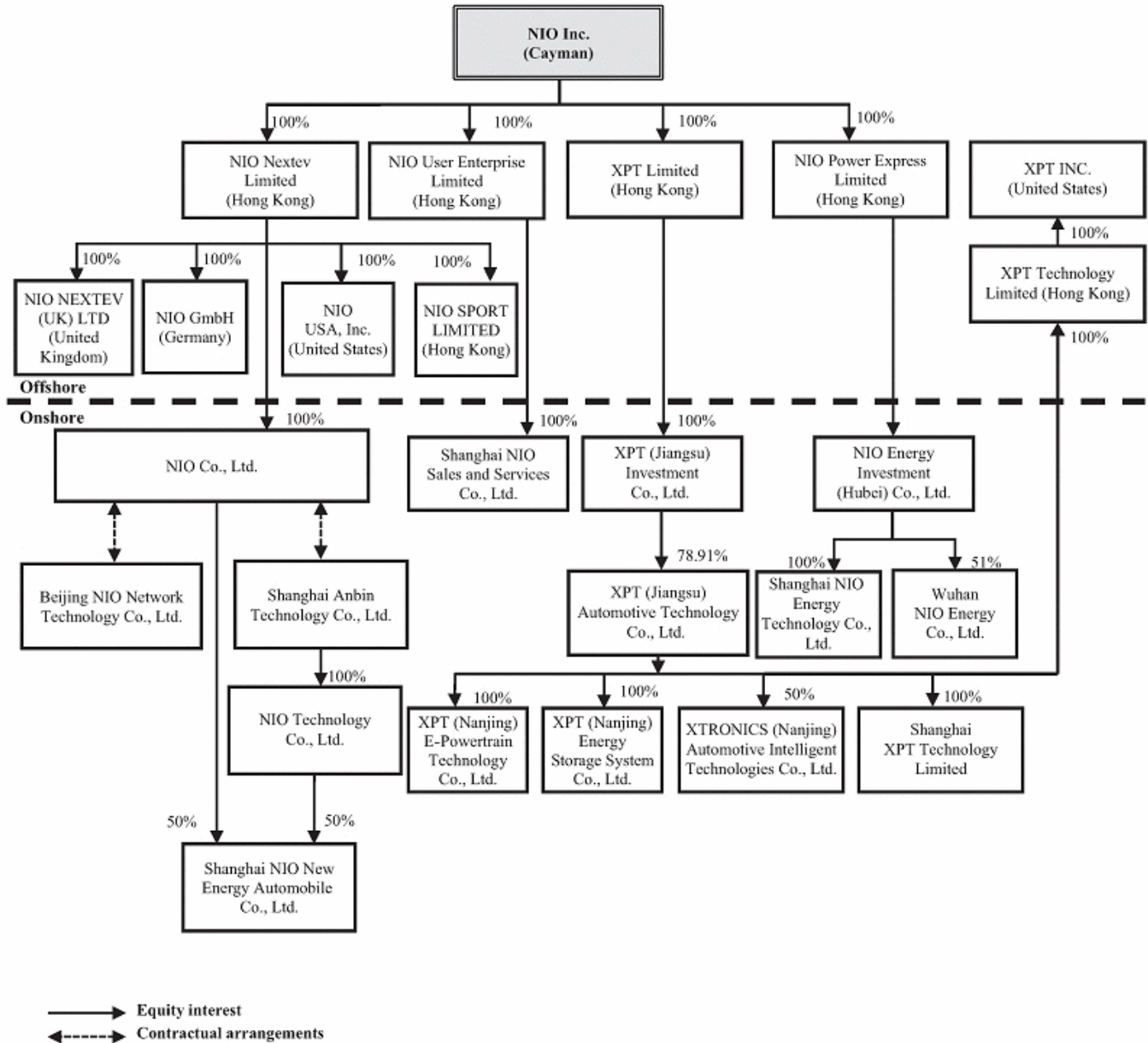


## M&A Rules and Overseas Listing

On August 8, 2006, six PRC governmental and regulatory agencies, including the MOFCOM and the CSRC, promulgated the *Rules on Acquisition of Domestic Enterprises by Foreign Investors*, or the M&A Rules, governing the mergers and acquisitions of domestic enterprises by foreign investors that became effective on September 8, 2006 and was revised on June 22, 2009. The M&A Rules, among other things, require that if an overseas company established or controlled by PRC companies or individuals, or PRC Citizens, intends to acquire equity interests or assets of any other PRC domestic company affiliated with the PRC Citizens, such acquisition must be submitted to the MOFCOM for approval. The M&A Rules also require that an offshore special vehicle, or a special purpose vehicle formed for overseas listing purposes and controlled directly or indirectly by the PRC companies or individuals, shall obtain the approval of the CSRC prior to overseas listing and trading of such special purpose vehicle's securities on an overseas stock exchange.

## C. Organizational Structure

The following diagram illustrates our current corporate structure, which includes our significant subsidiaries and consolidated affiliated entities as of the date of this annual report:



## Contractual Agreements with the VIEs and Their Respective Shareholders

### *Shanghai Anbin Technology Co., Ltd.*

The following is a summary of the contractual agreements with NIO Co., Ltd., or NIO WFOE, and Shanghai Anbin Technology Co., Ltd., or Shanghai Anbin.



*Agreements that provide us with effective control over Shanghai Anbin*

**Power of Attorney.** On April 19, 2018, each shareholder of Shanghai Anbin, Shanghai Anbin and NIO WFOE entered into powers of attorney. The terms contained in the respective powers of attorney are substantially similar. Pursuant to the powers of attorney, each shareholder of Shanghai Anbin irrevocably authorized NIO WFOE to act on the behalf of such shareholder with respect to all matters concerning the shareholding of the shares in Shanghai Anbin, including without limitation, attending shareholders' meetings of Shanghai Anbin, exercising all the shareholders' rights and shareholders' voting rights, and designating and appointing the legal representative, directors, supervisors, chief executive officer and other senior management members of Shanghai Anbin.

**Loan Agreement.** On April 19, 2018, each shareholder of Shanghai Anbin, Shanghai Anbin and NIO WFOE entered into loan agreements. The terms contained in the respective loan agreements are substantially similar. Pursuant to the loan agreements, NIO WFOE should provide the shareholders of Shanghai Anbin with a loan in the aggregate amount of RMB30 million for the purpose of contribution of the registered capital of Shanghai Anbin. The shareholders agree that the proceeds from the transfer of the equity interest of the shareholders in Shanghai Anbin or increase of the working capital of Shanghai Anbin, pursuant to the exercise of the right to acquire such equity interest by NIO WFOE under the exclusive option agreement, should be used by the shareholders to repay the loan to the extent permissible. The loan agreements should become effective upon execution by the parties, and should expire upon the date of full performance by the parties of their respective obligations under the loan agreements.

**Equity Interest Pledge Agreement.** On April 19, 2018, each shareholder of Shanghai Anbin, Shanghai Anbin, and NIO WFOE entered into equity interest pledge agreements. The terms contained in the respective equity interest pledge agreements are substantially similar. Pursuant to the equity interest pledge agreements, those shareholders should pledge 100% equity interest in Shanghai Anbin to NIO WFOE to guarantee the performance by Shanghai Anbin and its shareholders of their obligations under the loan agreement, the exclusive option agreement, the exclusive business cooperation agreement, and the power of attorney. If events of default defined therein occur, upon giving written notice to the shareholders, as pledgee, NIO WFOE to the extent permitted by PRC laws may exercise the right to enforce the pledge, unless the event of default has been successfully resolved to the satisfaction of NIO WFOE within twenty days after the delivery of the written notice. Those shareholders agree that, without NIO WFOE's prior written consent, during the term of the equity interest pledge agreement, they will not place or permit the existence of any security interest or other encumbrance on the equity interest in Shanghai Anbin or any portion thereof. We have completed registering the equity pledge with the relevant office of the SAMR in accordance with the PRC Property Rights Law.

*Agreements that allow us to receive economic benefits from Shanghai Anbin*

**Exclusive Business Cooperation Agreement.** On April 19, 2018, Shanghai Anbin and NIO WFOE entered into an exclusive business cooperation agreement. Pursuant to the exclusive business cooperation agreement, NIO WFOE has the exclusive right to provide Shanghai Anbin with comprehensive technical support, consulting services and other services. Without prior written consent of NIO WFOE, Shanghai Anbin should not directly or indirectly accept the same or any similar services provided by any third party regarding the matters contemplated by this agreement. During the term of this agreement where necessary, Shanghai Anbin may enter into further service agreements with NIO WFOE or any other party designated by NIO WFOE, which shall provide the specific contents, methods, personnel, and fees for specific services. Shanghai Anbin should pay NIO WFOE service fees, which should be determined by NIO WFOE after considering, among other things, the operation conditions of Shanghai Anbin, contents and value of the services provided by NIO WFOE. NIO WFOE will have exclusive and proprietary ownership, rights and interests in any and all intellectual property arising out of or developed during the performance of this agreement. Unless terminated in accordance with the provisions of this agreement or terminated in writing by NIO WFOE, the agreement shall remain effective.

*Agreements that provide us with the option to purchase the equity interests in Shanghai Anbin*

**Exclusive Option Agreement.** On April 19, 2018, each shareholder of Shanghai Anbin, Shanghai Anbin and NIO WFOE entered into exclusive option agreements. The terms contained in the respective exclusive option agreements are substantially similar. Pursuant to the exclusive option agreement, the shareholders of Shanghai Anbin irrevocably granted NIO WFOE an irrevocable and exclusive right to purchase, or designate one or more persons to purchase the equity interests in Shanghai Anbin held by the shareholders at a price equal to the amount of registered capital contributed by the shareholders in Shanghai Anbin or any portion thereof or at a price mutually agreed by NIO WFOE and the shareholders. Those shareholders further undertake that, without the prior written consent of NIO WFOE, Shanghai Anbin will not sell, transfer, mortgage or dispose of in any other manner any legal or beneficial interest in Shanghai Anbin held by its shareholders, or allow the encumbrance thereon, except for the interest placed in accordance with the equity interest pledge agreement, power of attorney and this agreement. Without the prior written consent of NIO WFOE, shareholders shall cause the shareholders' meeting or the directors (or the executive director) of Shanghai Anbin not to approve the merger or consolidation with any person, or acquisition of or investment in any person. This agreement will remain effective until all equity interests held by those shareholders in Shanghai Anbin have been transferred or assigned to NIO WFOE and/or any other person designated by NIO WFOE in accordance with this agreement.

***Beijing NIO Network Technology Co., Ltd.***

The following is a summary of the contractual agreements with NIO WFOE and Beijing NIO Network Technology Co., Ltd. or Beijing NIO.

*Agreements that provide us with effective control over Beijing NIO*

**Power of Attorney.** On April 19, 2018, each shareholder of Beijing NIO, Beijing NIO and NIO WFOE entered into powers of attorney. The terms contained in the respective powers of attorney are substantially similar. Pursuant to the powers of attorney, each shareholder of Beijing NIO irrevocably authorized NIO WFOE to act on the behalf of such shareholder with respect to all matters concerning the shareholding of the shares in Beijing NIO, including without limitation, attending shareholders' meetings of Beijing NIO, exercising all the shareholders' rights and shareholders' voting rights, and designating and appointing the legal representative, directors, supervisors, chief executive officer and other senior management members of Beijing NIO.

**Loan Agreement.** On April 19, 2018, each shareholder of Beijing NIO, Beijing NIO and NIO WFOE entered into loan agreements. The terms contained in the respective loan agreements are substantially similar. Pursuant to the loan agreement, NIO WFOE should provide the shareholders of Beijing NIO with a loan in aggregate amount of RMB10 million for the purpose of contribution of the registered capital of Beijing NIO or increase of the working capital of Beijing NIO. The shareholders agree that the proceeds from the transfer of the equity interest of the shareholders in Beijing NIO or for the working capital of Beijing NIO, pursuant to the exercise of the right to acquire such equity interest under the exclusive option agreement, should be used by the shareholders to repay the loan to the extent permissible. The loan agreements should become effective upon execution by the parties, and should expire upon the date of full performance by the parties of their respective obligations under the loan agreements.

**Equity Interest Pledge Agreement.** On April 19, 2018, each shareholder of Beijing NIO, Beijing NIO, and NIO WFOE entered into equity interest pledge agreements. The terms contained in the respective equity interest pledge agreements are substantially similar. Pursuant to the equity interest pledge agreements, those shareholders should pledge 100% equity interest in Beijing NIO to NIO WFOE to guarantee the performance by Beijing NIO and its shareholders of their obligations under the loan agreement, the exclusive option agreement, the exclusive business cooperation agreement and the power of attorney. If events of default defined therein occur, upon giving written notice to the shareholders, as pledgee, NIO WFOE to the extent permitted by PRC laws may exercise the right to enforce the pledge, unless the event of default has been successfully resolved to the satisfaction of NIO WFOE within twenty days after the delivery of the written notice. Those shareholders agree that, without NIO WFOE's prior written consent, during the term of the equity interest pledge agreement, they will not place or permit the existence of any security interest or other encumbrance on the equity interest in Beijing NIO or any portion thereof. We have completed registering the equity pledge with the relevant office of the SAMR in accordance with the PRC Property Rights Law.

*Agreements that allow us to receive economic benefits from Beijing NIO*

**Exclusive Business Cooperation Agreement.** On April 19, 2018, Beijing NIO and NIO WFOE entered into an exclusive business cooperation agreement. Pursuant to the exclusive business cooperation agreement, NIO WFOE has the exclusive right to provide Beijing NIO with comprehensive technical support, consulting services and other services. Without prior written consent of NIO WFOE, Beijing NIO should not directly or indirectly accept the same or any similar services provided by any third party regarding the matters contemplated by this agreement. During the term of this agreement where necessary, Beijing NIO may enter into further service agreements with NIO WFOE or any other party designated by NIO WFOE, which shall provide the specific contents, methods, personnel, and fees for specific services. Beijing NIO should pay NIO WFOE service fees, which should be determined by NIO WFOE after considering, among other things, the operation conditions of Beijing NIO, contents and value of the services provided by NIO WFOE. NIO WFOE will have exclusive and proprietary ownership, rights and interests in any and all intellectual property arising out of or developed during the performance of this agreement. Unless terminated in accordance with the provisions of this agreement or terminated in writing by NIO WFOE, the agreement shall remain effective.

*Agreements that provide us with the option to purchase the equity interests in Beijing NIO*

**Exclusive Option Agreement.** On April 19, 2018, each shareholder of Beijing NIO, Beijing NIO and NIO WFOE entered into exclusive option agreements. The terms contained in the respective exclusive option agreements are substantially similar. Pursuant to the exclusive option agreement, the shareholders of Beijing NIO irrevocably granted NIO WFOE an irrevocable and exclusive right to purchase, or designate one or more persons to purchase the equity interests in Beijing NIO held by the shareholders at a price equal to the amount of registered capital contributed by the shareholders in Beijing NIO or any portion thereof, or at a price mutually agreed by NIO WFOE and the shareholders. Those shareholders further undertake that, without the prior written consent of NIO WFOE, Beijing NIO should not sell, transfer, mortgage or dispose of in any other manner any legal or equity interest in Beijing NIO held by its shareholders, or allow the encumbrance thereon, except for the interest placed in accordance with the equity interest pledge agreement, power of attorney and this agreement. Without the prior written consent of NIO WFOE, shareholders shall cause the shareholders' meeting or the directors (or the executive director) of Beijing NIO not to approve the merger or consolidation with any person, or acquisition of or investment in any person. This agreement will remain effective until all equity interests held by those shareholders in Beijing NIO have been transferred or assigned to NIO WFOE and/or any other person designated by NIO WFOE in accordance with this agreement.

In the opinion of Han Kun Law Offices, our PRC legal counsel:

- the ownership structures of our VIEs in China and NIO WFOE comply with all existing PRC laws and regulations; and
- the contractual arrangements between NIO WFOE, our VIEs and their respective shareholders governed by PRC laws are valid, binding and enforceable, and will not result in any violation of PRC laws or regulations currently in effect.

However, there are substantial uncertainties regarding the interpretation and application of current and future PRC laws, regulations and rules. On March 15, 2019, the National People's Congress approved the Foreign Investment Law, which will take effect on January 1, 2020. Since the law is relatively new, uncertainties exist in relation to its interpretation and implementation. The Foreign Investment Law does not explicitly classify whether variable interest entities that are controlled through contractual arrangements would be deemed as foreign invested enterprises if they are ultimately "controlled" by foreign investors. However, it has a catch-all provision under definition of "foreign investment" that includes investments made by foreign investors in China through other means as provided by laws, administrative regulations or the State Council. Therefore it still leaves leeway for future laws, administrative regulations or provisions of the State Council to provide for contractual arrangements as a form of foreign investment. Accordingly, the PRC regulatory authorities may in the future take a view that is contrary to the above opinion of our PRC counsel. If the PRC government finds that the agreements that establish the structure for operating our business do not comply with PRC government restrictions on foreign investment, we may be required to unwind such agreements and/or dispose of such business. For a description of the risks related to our corporate structure, please see "Item 3. Key Information—D. Risk Factors—Risks Related to Our Corporate Structure."

#### D. Property, Plants and Equipment

Currently, we own land use rights with respect to a parcel of land in Nanjing of approximately 325,289.51 square meters and the ownership with respect to the plant thereon for a term ending on March 10, 2063, which are used for the manufacture of our e-propulsion system, battery pack and engine driving system. We also leased a number of our facilities. The following table sets forth the location, approximate size, primary use and lease term of our major leased facilities:

<b>Location<sup>(1)</sup></b>	<b>Approximate Size (Building) in Square Meters/Feet<sup>(2)</sup></b>	<b>Primary Use</b>	<b>Lease Expiration Date</b>
Shanghai, China	60,407.24	Global headquarters and office	August 14, 2019 – June 19, 2025
	9,070.9	User center (sales, marketing, and customer service)	March 14, 2022 – September 30, 2025
Shenzhen	24,566	Integrated vehicle research and development	April 9, 2021 – June 19, 2025
	907.33	Power management	October 31, 2020 – November 30, 2023
	118	Warehouse	January 15, 2020
Chengdu	13,645	Sales, marketing, and customer service	September 30, 2023 – July 19, 2027
	710.75	Power management	July 31, 2020 – October 31, 2023
Hangzhou	3,982	Sales, marketing, and customer service	December 31, 2020 – March 31, 2028
	478	Power management	October 1, 2021 – June 30, 2025
	1,221	Sales, marketing, and customer service	June 30, 2023 – December 31, 2023
Nanjing	323	Power management	February 28, 2021 – August 31, 2023
	163	Office	November 5, 2019
Suzhou	5,405	Sales, marketing, and customer service	March 31, 2023 – October 31, 2023
	375.75	Power management	March 31, 2022 – June 30, 2028
Beijing	355	Office	May 31, 2021
	8,631	Sales, marketing, and customer service	April 30, 2024 – August 31, 2024
	345.75	Power management	September 20, 2021 – August 31, 2024
Hefei	3,165.91	Office	December 19, 2019 – October 19, 2020
	18,027	Sales, marketing, and customer service	June 30, 2022 – June 30, 2027
	90.66	Warehouse	October 14, 2020 - March 31, 2023
Kunming	1,003	Power management	December 19, 2019 – November 19, 2023
	101	Power management	February 28, 2023 – November 30, 2023
Jinan	60	Office	June 30, 2019
	1280	Sales, marketing, and customer service	October 6, 2019 – March 31, 2025
Zhuhai	149	Office	June 14, 2019 – December 9, 2019
	177	Sales, marketing, and customer service	February 28, 2021
Guangzhou	50	Office	June 19, 2019
	696.15	Office	October 31, 2020 – December 31, 2020
	6,167	Sales, marketing, and customer service	December 31, 2020 - December 31, 2025
Wuhan	1,621.7	Power management	December 31, 2019 – December 31, 2023
	393.52	Office	November 14, 2020
	4,251	Sales, marketing, and customer service	July 14 2019 - October 31 2028
Xi'an	131	Power management	September 30, 2021 - August 31, 2023
	6,446	Sales, marketing, and customer service	September 30, 2024 – February 28, 2029
Chongqing	148	Warehouse	July 25, 2019 - September 30, 2019
	217	Office	May 24, 2019 - June 30, 2019
	8,326.13	Sales, marketing, and customer service	July 15, 2019 – September 5, 2025
Ningbo	400	Power management	July 31, 2023 – November 30, 2023
	286	Office	May 9, 2019
	5,657	Sales, marketing, and customer service	August 15, 2019 – April 8, 2025
	210	Power management	August 15, 2023 – December 14, 2023

<b>Location<sup>(1)</sup></b>	<b>Approximate Size (Building) in Square Meters/Feet<sup>(2)</sup></b>	<b>Primary Use</b>	<b>Lease Expiration Date</b>
Wenzhou	327	Office	April 22, 2019
	4,873.68	Sales, marketing, and customer service	July 30, 2019 - March 23, 2024
	60	Power management	September 17, 2026
Wuxi	422.43	Office	October 31, 2019
	280	Power management	December 31, 2021 - August 31, 2023
	911	Sales, marketing, and customer service	February 15, 2024
Tianjin	5165	Sales, marketing, and customer service	June 14, 2019 – September 30, 2028
	171	Power management	January 3, 2020 – October 1, 2023
Shijiazhuang	167.82	Office	June 30, 2021
	1,492.27	Sales, marketing, and customer service	November 8, 2023
	217	Power management	September 29, 2019 – September 24, 2023
Changsha	262.04	Office	July 24, 2021
	566	Sales, marketing, and customer service	June 30, 2019 – September 5, 2019
	370	Power management	August 14, 2022 – November 30, 2023
Zhengzhou	3762	Sales, marketing, and customer service	September 30, 2023 – October 31, 2024
	154	Power management	October 8, 2023 – October 31, 2024
	182	Office	January 13, 2022
Qingdao	5,670	Sales, marketing, and customer service	December 31, 2023 – December 14, 2024
	193	Power management	October 19, 2021 – November 30, 2021
Fuzhou	87.63	Office	May 31, 2019
	1,109.2	Sales, marketing, and customer service	July, 2019 – February 7, 2020
Lanzhou	78	Office	July 31, 2019
Yangzhou	110	Office	July 15, 2019
Taiyuan	98.51	Office	July 31, 2019
	529	Sales, marketing, and customer service	February 28, 2021
Jinhua	241.04	Office	August 31, 2019
	41.25	Power management	September 27, 2023
Nanchang	167.78	Office	October 22, 2019
Dalian	293.8	Office	October 23, 2019 – January 1, 2022
Changzhou	868.85	Sales, marketing, and customer service	February 29, 2024
	55	Power management	July 31, 2023
Dongguan	1,392.53	Sales, marketing, and customer service	September 30, 2024
	54	Power management	June 30, 2023
Huangshan	25	Power management	September 7, 2021
	161.41	Office	November 25, 2019
Yiwu	160	Sales, marketing, and customer service	November 30, 2019
	54	Power management	September 27, 2023
Jiaxing	264	Office	November 30, 2020
	137	Sales, marketing, and customer service	December 31, 2019
Yinchuan	136.3	Office	May 25, 2019
Foshan	3642	Sales, marketing, and customer service	December 23, 2019- September 30, 2028
Xiamen	9584.01	Sales, marketing, and customer service	December 31, 2019- November 30, 2028
	90	Power management	September 30, 2023 – October 31, 2023
Changchun	43	Office	August 28, 2019
Xuchang	181.07	Office	November 15, 2019
Yancheng	91.98	Office	June 16, 2019
Taizhou	324	Office	August 31, 2019
Haikou	355	Sales, marketing, and customer service	November 30, 2019
	50	Power management	December 31, 2023
Nantong	555	Sales, marketing, and customer service	April 30, 2024
Yichang	235	Office	December 24, 2019

<b>Location<sup>(1)</sup></b>	<b>Approximate Size (Building) in Square Meters/Feet<sup>(2)</sup></b>	<b>Primary Use</b>	<b>Lease Expiration Date</b>
Shantou	162.8	Office	January 31, 2020
Xining	426	Office	February 29, 2020
Yinchuan	187.58	Office	January 24, 2020
San Jose, California	85,017	North American headquarters and global software development center	September 30, 2023
	99,424	Sales, marketing light assembly, research and development	September 30, 2023
San Francisco, California	12,250	User experience/user interface team	September 1, 2019
Munich, Germany	3,679	Design headquarters	December 2020 – December 2021
Air Street, London (UK)	2,960	Management, finance, legal, sponsorship, UK corporate HQ	January 2026, break option in January 2021
Begbroke Science Park (Oxford, UK – Rooms 37, 43, 44, 45, 49 and 50)	10,365	Formula E / Performance Programme HQ, engineering function	Each room lease expires on various dates between August 2019 – August 2020
Begbroke Science Park (Oxford, UK) Building 6	4,875	Engineering function, HR, finance and IT	July 2022, break any-time after July 2020
Donington Park (UK)	14,916	Formula E racing garages	December 2023, break clause any time after December 2020

(1) We also lease a number of facilities for our NIO House locations, office space, service and logistics centers and small areas for battery swap stations in China.

(2) Properties in China and Germany are presented in square meters. All others are presented in square feet.

We intend to add new facilities or expand our existing facilities as we add employees and expand our production organization. We believe that suitable additional or alternative space will be available in the future on commercially reasonable terms to accommodate our foreseeable future expansion.

#### **ITEM 4.A. UNRESOLVED STAFF COMMENTS**

Not applicable.

#### **ITEM 5. OPERATING AND FINANCIAL REVIEW AND PROSPECTS**

The following discussion of our financial condition and results of operations is based upon and should be read in conjunction with our consolidated financial statements and their related notes included elsewhere in this annual report. This annual report contains forward-looking statements. See “Forward-Looking Information.” In evaluating our business, you should carefully consider the information provided under the caption “Item 3. Key Information—D. Risk Factors” in this annual report. We caution you that our businesses and financial performance are subject to substantial risks and uncertainties.

##### **A. Operating Results**

###### **Overview**

We are a pioneer in China’s premium electric vehicle market. We design, jointly manufacture, and sell smart and connected premium electric vehicles, driving innovations in next generation technologies in connectivity, autonomous driving and artificial intelligence. Redefining user experience, we aim to provide users with comprehensive, convenient and innovative charging solutions and other user-centric service offerings.



We launched our first volume manufactured electric vehicle, the seven-seater ES8, to the public at our NIO Day event on December 16, 2017. In December 2018, we launched its variant, the six-seater ES8, with delivery beginning in March 2019. The ES8 is an all-aluminum alloy body, premium electric SUV that offers exceptional performance, functionality and mobility lifestyle. As of December 31, 2018, we had delivered 11,348 seven-seater ES8s to customers in more than 200 cities.

We launched our second volume manufactured electric vehicle, the ES6, to the public at our NIO Day event on December 15, 2018. The ES6 is a five-seater high-performance long-range premium electric SUV. The ES6 is smaller but more affordable than the ES8, allowing us to target a broader market in the premium SUV segment. The ES6 currently offers the Standard, Performance and Premier versions with pre-subsidy starting prices of RMB358,000, RMB398,000 and RMB498,000, respectively. Users can pre-order the ES6 through the NIO App and we expect to begin making deliveries of the ES6 in June 2019.

We began making deliveries of the seven-seater ES8 to users on June 28, 2018, and we recorded revenues of RMB4,951.2 million (US\$720.1 million) for the year ended December 31, 2018, which mainly consisted of revenues from the sales of our vehicles, revenue from a number of embedded products and services offered together with the sale of vehicles, revenues from our services including charging solutions such as our energy package and one-off usage of our Power Express services, as well as revenues from monthly fees, excluding those fees for statutory and third-party liability insurance and vehicle damage insurance paid directly to third-party insurers, under our service package.

The ES8 is manufactured in partnership with JAC at its Hefei manufacturing plant. Pursuant to our arrangement with JAC, given JAC's significant investment in this plant for the manufacturing of our vehicles, we have agreed to compensate JAC to the extent the Hefei manufacturing plant incurs any operating losses for the first 36 months after the plant commences mass production, which occurred on April 10, 2018. We expect that the Hefei manufacturing plant's ability to achieve and/or maintain profitability will be significantly affected by our sales volumes. If we are obligated to compensate JAC for any losses, our cash flows and financial position could be materially impacted, particularly if such losses are incurred as a result of lower than anticipated sales volumes. See "Item 3. Key Information—D. Risk Factors—Risks Related to Our Business and Industry—Manufacturing in collaboration with partners is subject to risks."

### Key Line Items Affecting Our Results of Operations

#### Revenues

The following table presents our revenue components by amount and as a percentage of the total revenues for the years indicated.

	Year Ended December 31,			
	2016	2017	2018	
	RMB	RMB	RMB	US\$
	(in thousands)			
<b>Revenues:</b>				
Vehicle sales	-	-	4,852,470	705,762
Other sales	-	-	98,701	14,355
<b>Total revenues</b>	<b>-</b>	<b>-</b>	<b>4,951,171</b>	<b>720,117</b>

We began generating revenues in June 2018, when we began making deliveries and sales of the ES8. We currently generate revenues from (i) vehicle sales, which represent revenues from sales of the ES8, and (ii) other sales, which mainly consist of revenues from sales of our energy package and service package, and a number of embedded products and services offered together with vehicle sales. Embedded products and services include charging piles, vehicle internet connection service and extended lifetime warranty. Revenue from sales of the ES8 and charging piles are recognized when the vehicles are delivered and charging piles are installed. For vehicle internet connection services, we recognize revenue using a straight-line method. As for the extended lifetime warranty, given our limited operating history and lack of historical data, we recognize revenue over time based on a straight-line method initially, and will continue monitoring the cost pattern periodically and adjust the revenue recognition pattern to reflect the actual cost pattern as it becomes available with more data. Revenues for our energy package or service package are recognized over time on a monthly basis as our customers receive and consume the benefits of the related package.

In December 2018, we launched our second volume manufactured electric vehicle, the ES6. Users can pre-order the ES6 through the NIO App and we expect to generate revenues from sales of the ES6 as soon as we begin making deliveries of the ES6 expected in June 2019.

### *Cost of Sales*

The following table presents our cost of sales components by amount and as a percentage of our total cost of sales for the years indicated.

	<b>Year Ended December 31,</b>			
	<b>2016</b>	<b>2017</b>	<b>2018</b>	
	<b>RMB</b>	<b>RMB</b>	<b>RMB</b>	<b>US\$</b>
	<b>(in thousands)</b>			
<b>Cost of Sales:</b>				
Vehicle sales	-	-	(4,930,135)	(717,058)
Other sales	-	-	(276,912)	(40,275)
<b>Total cost of sales</b>	<b>-</b>	<b>-</b>	<b>(5,207,047)</b>	<b>(757,333)</b>

We incur cost of sales in relation to (i) vehicle sales, including, among others, purchases of raw materials and manufacturing expenses, and (ii) other sales, including cost of sales relating to our energy package and service package, the installation of charging piles and directly related staff costs. Cost of sales with respect to vehicle sales also includes compensation to JAC for actual losses incurred at the Hefei manufacturing plant where the ES8 is manufactured.

### *Operating Expenses*

#### *Research and Development Expenses*

Research and development expenses consist primarily of (i) design and development expenses, which include, among others, consultation fees, outsourcing fees and expenses of testing materials and (ii) employee compensation, representing salaries, benefits and bonuses as well as share-based compensation expenses for our research and development staff. Our research and development expenses also include travel expenses, depreciation and amortization of equipment used in relation to our research and development activities, rental and related expenses with respect to laboratories and offices for research and development teams and others, which primarily consists of telecommunication expenses, office fees and freight charges.

Our research and development expenses are mainly driven by the number of our research and development employees, the stage and scale of our vehicle development and development of technology.

#### *Selling, General and Administrative Expenses*

Our selling, general and administrative expenses include (i) employee compensation, including salaries, benefits and bonuses as well as share-based compensation expenses with respect to our employees other than research and development staff, (ii) marketing and promotional expenses, which primarily consist of marketing and advertising costs, sponsorship fees and racing costs related to our Formula E team, (iii) rental and related expenses, which primarily consist of rental for NIO Houses and offices, (iv) professional service expenses, which consist of outsourcing fees primarily relating to human resources and IT functions, design fees paid for NIO Houses and fees paid to auditors and legal counsel, (v) depreciation and amortization expenses, primarily consisting of depreciation and amortization of leasehold improvements, IT equipment and software, among others, (vi) expenses of low value consumables, primarily consisting of, among others, IT consumables, office supplies, sample fees and IT-system related licenses, (vii) traveling expenses, and (viii) other expenses, which includes telecommunication expenses, utilities and other miscellaneous expenses.

Our selling, general and administrative expenses are significantly affected by the number of our non-research and development employees, marketing and promotion activities and the expansion of our sales and after-sales network, including NIO Houses and other leased properties.

#### ***Interest Income***

Interest income primarily consists of interest earned on cash deposits in banks. In 2016, interest income also consisted of late payment penalties which we recorded as interest income related to a preferred shareholder having delayed its investment payment which was due in 2016.

#### ***Interest Expense***

Interest expense consists of interest expense with respect to our indebtedness.

#### ***Share of losses of Equity Investees***

Share of losses of equity investees primarily consists of our share of the losses net of shares of gains of Suzhou Zenlead XPT New Energy Technologies Co., Ltd., GAC JV, Changan NIO Renewable Automobile Co., Ltd., Hainan Weilai Xiqi Renewable Automobile Technology Co., Ltd., Kunshan Siwopu Intelligent Equipment Co., Ltd., and Nanjing Weibang Transmission Technology Co., Ltd., in which, as of December 31, 2018, we held a 22.5% to 51.0% equity interest. Our equity interest is accounted for using the equity method since we exercise significant influence but do not own a majority equity interest in or control those investees.

#### ***Investment Income***

Investment income primarily consists of gains on trading in short-term investment securities, primarily consisting of structured bank deposits.

#### ***Other Income/(Loss), Net***

Other losses and income primarily consist of gains or losses we incur based on movements between the U.S. dollar and the Renminbi. We have historically held a significant portion of our cash and cash equivalents in U.S. dollars, while we have incurred a significant portion of our expenses in RMB. Other income also includes (i) income we received with respect to one-off design and research and development services we provided to certain parties and (ii) government grants.

#### ***Income Tax Expense***

Income tax expense primarily consists of current income tax expense, mainly attributable to intra-group income earned by our German, UK and Hong Kong subsidiaries which are eliminated upon consolidation but were subject to tax in accordance with applicable tax law.

### **Taxation**

#### ***Cayman Islands***

We are incorporated in the Cayman Islands. The Cayman Islands currently have no form of income, corporate or capital gains tax and no estate duty, inheritance tax or gift tax. There are no other taxes likely to be material to us levied by the government of the Cayman Islands except for stamp duties which may be applicable on instruments executed in, or, after execution, brought within the jurisdiction of the Cayman Islands.

## **PRC**

Generally, our PRC subsidiaries are subject to enterprise income tax on their taxable income in China at a statutory rate of 25%. The enterprise income tax is calculated based on the entity's global income as determined under PRC tax laws and accounting standards.

Our products and services are primarily subject to value-added tax at a rate of 16% on the vehicles and charging piles, repair and maintenance services and charging services as well as 6% on services such as research and development services, in each case less any deductible value-added tax we have already paid or born. We are also subject to surcharges on value-added tax payments in accordance with PRC law.

Dividends paid by our PRC subsidiaries in China to our Hong Kong subsidiaries will be subject to a withholding tax rate of 10%, unless the relevant Hong Kong entity satisfies all the requirements under the Double Taxation Avoidance Arrangement and receives approval from the relevant tax authority. If our Hong Kong subsidiaries satisfy all the requirements under the tax arrangement and receive approval from the relevant tax authority, then the dividends paid to the Hong Kong subsidiaries would be subject to withholding tax at the standard rate of 5%. Effective from November 1, 2015, the above-mentioned approval requirement has been abolished, but a Hong Kong entity is still required to file application package with the relevant tax authority, and settle the overdue taxes if the preferential 5% tax rate is denied based on the subsequent review of the application package by the relevant tax authority.

If NIO Inc. or any of our subsidiaries outside of China were deemed to be a "resident enterprise" under the PRC Enterprise Income Tax Law, it would be subject to enterprise income tax on its worldwide income at a rate of 25%.

Under the PRC Enterprise Income Tax Law, research and development expenses incurred by an enterprise in the course of carrying out research and development activities that have not formed intangible assets and are included in the profit and loss account for the current year. Besides deducting the actual amount of research and development expenses incurred, an enterprise is allowed an additional 75% deduction of the amount in calculating its taxable income for the relevant year. For research and development expenses that have formed intangible assets, the tax amortization is based on 175% of the costs of the intangible assets.

### **Critical Accounting Policies**

Our consolidated financial statements have been prepared in accordance with U.S. GAAP. Significant accounting policies followed by us in the preparation of the accompanying consolidated financial statements are summarized below:

#### ***Revenue recognition***

Revenue is recognized when or as the control of the goods or services is transferred to a customer. Depending on the terms of the contract and the laws that apply to the contract, control of the goods and services may be transferred over time or at a point in time. Control of the goods and services is transferred over time if our performance:

- provides all of the benefits received and consumed simultaneously by the customer;
- creates and enhances an asset that the customer controls as we perform; or
- does not create an asset with an alternative use to us and we have an enforceable right to payment for performance completed to date.

If control of the goods and services transfers over time, revenue is recognized over the period of the contract by reference to the progress towards complete satisfaction of that performance obligation. Otherwise, revenue is recognized at a point in time when the customer obtains control of the goods and services.

Contracts with customers may include multiple performance obligations. For such arrangements, we allocate revenue to each performance obligation based on its relative standalone selling price. We generally determine standalone selling prices based on the prices charged to customers. If the standalone selling price is not directly observable, it is estimated using expected cost plus a margin or adjusted market assessment approach, depending on the availability of observable information. Assumptions and estimations have been made in estimating the relative selling price of each distinct performance obligation, and changes in judgments on these assumptions and estimates may impact the revenue recognition.

When either party to a contract has performed, we present the contract in the statement of financial position as a contract asset or a contract liability, depending on the relationship between our performance and the customer's payment.

A contract asset is our right to consideration in exchange for goods and services that we have transferred to a customer. A receivable is recorded when we have an unconditional right to consideration. A right to consideration is unconditional if only the passage of time is required before payment of that consideration is due.

If a customer pays consideration or we have a right to an amount of consideration that is unconditional, before we transfer a good or service to the customer, we present the contract liability when the payment is made or a receivable is recorded (whichever is earlier). A contract liability is our obligation to transfer goods or services to a customer for which we have received consideration (or an amount of consideration is due) from the customer. Our contract liabilities primarily resulted from the multiple performance obligations identified in the vehicle sales contract and the sales of energy and service packages, which are recorded as deferred revenue and advance from customers.

### *Vehicle sales*

We generate revenue from sales of electric vehicles, currently the ES8, together with a number of embedded products and services through a series of contracts. We identify the users who purchase the ES8 as our customers. There are multiple distinct performance obligations explicitly stated in a series of contracts, including sales of the ES8, charging piles, vehicle internet connection services and extended lifetime warranty which are accounted for in accordance with Accounting Standards Codification ("ASC") 606, Revenue From Contracts With Customers, or ASC 606. The standard warranty provided by us is accounted for in accordance with ASC 460, Guarantees, and the estimated costs are recorded as a liability when we transfer the control of ES8 to a user.

Customers only pay the amount after deducting the government subsidies to which they are entitled for the purchase of electric vehicles, which is applied on their behalf and collected by us or JAC, from the government. We have concluded that government subsidies should be considered as a part of the transaction price we charge a customer for the electric vehicle, as the subsidy is granted to the buyer of the electric vehicle and the buyer remains liable for such amount in the event the subsidies were not received by us. For efficiency reason, we or JAC applies and collects the payments on a customer's behalf. In the instance that some eligible customer installment payment for battery, we believe such arrangement contains a significant financing component and as a result adjust the amount considering the impact of time value on the transaction price using an appropriate discount rate (i.e., the interest rates of the loan reflecting the credit risk of the borrower). The long-term receivable of installment payment for battery was recognized as non-current assets. The difference between the gross receivable and the present value is recorded as unrealized finance income. Interest income resulting from a significant financing component will be presented separately from revenue from contracts with customers as this is not considered to be our ordinary business.

We use a cost plus margin approach to determine the estimated standalone selling price for each individual distinct performance obligation identified, considering our pricing policies and practices, and the data utilized in making pricing decisions. The overall contract price is then allocated to each distinct performance obligation based on the relative estimated standalone selling price in accordance with ASC 606. The revenue for sales of the ES8 and charging piles are recognized at a point in time when the control of the product is transferred to the customer. For the vehicle internet connection service, we recognize the revenue using a straight-line method. As for the extended lifetime warranty, given our limited operating history and lack of historical data, we decide to recognize the revenue over time based on a straight-line method initially, and will continue monitoring the cost pattern periodically and adjust the revenue recognition pattern to reflect the actual cost pattern as it becomes available with more data.

As the consideration for the vehicle and all embedded services must be paid in advance, which means the payments received are prior to the transfer of goods or services by us, we record a contract liability (deferred revenue) for the allocated amount regarding those unperformed obligations.

#### *Sales of Energy and Service Packages*

We also sell our users two packages, Energy Package and Service Package. The Energy Package provides ES8 users with a comprehensive range of charging solutions (including charging and battery swapping). The energy service is applied by users on our mobile application depending on their needs. We can decide the most appropriate service to offer according to its available resource. Through the Service Package, we offer ES8 users with a “worry free” vehicle ownership experience (including free repair service with certain limitations, routine maintenance service, enhanced data package, etc.), which can be applied by our users via our mobile application.

We identify the users who purchase Energy Package and Service Package to meet the definition of a customer. The agreements for Energy Package and Service Package create legal enforceability to both parties on a monthly basis as the respective Energy or Service Packages can be canceled at any time without any penalty. We conclude the energy or service provided in Energy Package or Service Package respectively meets the stand-ready criteria and contains only one performance obligation within each package, the revenue is recognized overtime on a monthly basis as customer simultaneously receives and consumes the benefits provided and the term of legally enforceable contract is only one month.

#### *Incentives*

We offer a self-managed customer loyalty program points, which can be used in our online store and at NIO Houses to redeem NIO merchandise. We determine the value of each point based on cost of the NIO merchandise that can be redeemed with points. Customers and NIO fans and advocates have a variety of ways to obtain the points. The major accounting policy for its points program is described as follows:

##### (1) Sales of ES8s

We conclude the points offered linked to the purchase transactions of the ES8s are a material right and accordingly a separate performance obligation according to ASC 606, and should be taken into consideration when allocating the transaction price of the ES8 sales. We also estimate the probability of points redemption when performing the allocation. Since historical information does not yet exist for us to determine any potential points forfeitures and the fact that most merchandise can be redeemed without requiring a significant amount of points compared with the amount of points provided to users, we believe it is reasonable to assume all points will be redeemed and no forfeiture is estimated currently. The amount allocated to the points as a separate performance obligation is recorded as a contract liability (deferred revenue) and revenue should be recognized when future goods or services are transferred. We will continue to monitor when and if forfeiture rate data becomes available and will apply and update the estimated forfeiture rate at each reporting period.

##### (2) Sales of Energy Packages

Energy Package—When the customers charge their ES8 without using our charging network, we grant points based on the actual cost the customers incur. We record the value of the points as a reduction of revenue from the Energy Package. Since historical information does not yet exist for us to determine any potential points forfeiture and most merchandise can be redeemed without requiring a significant amount of points compared with the amount of points provided to our users, we have used an estimated forfeiture rate of zero.

(3) Other scenarios

Customers or users of our mobile application can also obtain points through any other ways, such as frequent sign-ins to our mobile application and sharing articles from our mobile application to users' own social media. We believe these points are to encourage user engagement and generate market awareness. As a result, we account for such points as selling and marketing expenses with a corresponding liability recorded under other current liabilities of our consolidated balance sheets upon the points offering. We estimate liabilities under the customer loyalty program based on cost of the merchandise that can be redeemed, and our estimate of probability of redemption. At the time of redemption, we record a reduction of inventory and other current liabilities. In certain cases where merchandise is sold for cash in addition to points, we record other revenue.

Similar to the reasons above, we do not expect points forfeiture and continue to assess when and if a forfeiture rate should be applied.

*Practical expedients and exemptions*

We follow guidance on immaterial promises when identifying performance obligations in the vehicle sales contracts and have concluded that lifetime roadside assistance and out-of-town charging services are not performance obligations considering these two services are value-added services to enhance user experience rather than critical items for ES8 driving and we have forecasted that usage of these two services will be very limited. We also perform an estimation on the stand-alone fair value of each promise, applying a cost plus margin approach and conclude that the standalone fair value of roadside assistance and out-of-town charging services are insignificant individually and in aggregate, representing less than 1% of the ES8's gross selling price and aggregate fair value of each individual promise.

Considering the qualitative assessment and the result of the quantitative estimate, we have concluded not to assess whether promises are performance obligations if they are immaterial in the context of the contract and the relative standalone fair value individually and in aggregate is less than 3% of the contract price, namely the road-side assistance and out-of-town charging services. Related costs are then accrued instead.

*Cost of sales*

Vehicle

Cost of vehicle revenue includes direct parts, materials, processing fee, loss compensation to JAC, labor costs, manufacturing overhead (including depreciation of assets associated with the production) and reserves for estimated warranty expenses. Cost of vehicle revenue also includes adjustments to warranty expense and charges to write down the carrying value of the inventory when it exceeds its estimated net realizable value and to provide for on-hand inventory that is either obsolete or in excess of forecasted demand.

Service and other

Cost of service and other revenue includes direct parts, material, labor costs, vehicle internet connectivity costs, and depreciation of assets that are associated with sales of energy and service packages.

*Share-based compensation*

We grant restricted share units, or RSUs, and share options to eligible employees and non-employee consultants and account for share-based compensation in accordance with ASC 718, Compensation—Stock Compensation and ASC 505-50, Equity-Based Payments to Non-Employees.

Employees' share-based compensation awards are measured at the grant date fair value of the awards and recognized as expenses (a) immediately at the grant date if no vesting conditions are required; (b) for share options or restricted shares granted with only service conditions, using the straight-line vesting method, net of estimated forfeitures, over the vesting period; (c) for share options granted with service conditions and the occurrence of an initial public offering as a performance condition, cumulative share-based compensation expenses for the options that have satisfied the service condition should be recorded upon the completion of the initial public offering, using the graded vesting method (this performance condition was met upon completion of our initial public offering on September 12, 2018 and the associated share-based compensation expense for awards vested as of that date were recognized); or (d) for share options where the underlying share is liability within the scope of ASC 480, using the graded vesting method, net of estimated forfeitures, over the vesting period, and re-measuring the fair value of the award at each reporting period end until the award is settled.

All transactions in which goods or services are received in exchange for equity instruments are accounted for based on the fair value of the consideration received or the fair value of the equity instrument issued, whichever is more reliably measurable.

Share-based compensation expenses for share options and restricted shares granted to non-employees are measured at fair value at the earlier of the performance commitment date or the date service is completed, and recognized over the period during which the service is provided. We apply the guidance in ASC 505-50 to measure share options and restricted shares granted to non-employees based on the then-current fair value at each reporting date.

The fair value of the restricted shares were assessed using the income approaches / market approaches, with a discount for lack of marketability given that the shares underlying the awards were not publicly traded at the time of grant. This assessment required complex and subjective judgments regarding our projected financial and operating results, our unique business risks, the liquidity of our ordinary shares and our operating history and prospects at the time the grants were made. In addition, the binomial option-pricing model is used to measure the value of share options. The determination of the fair value is affected by the fair value of the ordinary shares as well as assumptions regarding a number of complex and subjective variables, including the expected share price volatility, actual and projected employee and non-employee share option exercise behavior, risk-free interest rates and expected dividends. The fair value of these awards was determined taking into account independent valuation advice.

The assumptions used in share-based compensation expense recognition represent management's best estimates, but these estimates involve inherent uncertainties and application of management judgment. If factors change or different assumptions are used, the share-based compensation expenses could be materially different for any period. Moreover, the estimates of fair value of the awards are not intended to predict actual future events or the value that ultimately will be realized by grantees who receive share-based awards, and subsequent events are not indicative of the reasonableness of the original estimates of fair value made by us for accounting purposes.

Forfeitures are estimated at the time of grant and revised in subsequent periods if actual forfeitures differ from those estimates. We use historical data to estimate pre-vesting options and record share-based compensation expenses only for those awards that are expected to vest.

#### ***Earnings/(Loss) per share***

Basic earnings/(loss) per share is computed by dividing net income/(loss) attributable to holders of ordinary shares, considering the accretions to redemption value of the preferred shares, by the weighted average number of ordinary shares outstanding during the period using the two-class method. Under the two-class method, net income is allocated between ordinary shares and other participating securities based on their participating rights. Diluted earnings/(loss) per share is calculated by dividing net income/(loss) attributable to ordinary shareholders, as adjusted for the accretion and allocation of net income related to the preferred shares, if any, by the weighted average number of ordinary and dilutive ordinary equivalent shares outstanding during the period. Ordinary equivalent shares consist of shares issuable upon the conversion of the preferred shares using the if-converted method, unvested restricted shares, RSUs and ordinary shares issuable upon the exercise of outstanding share options (using the treasury stock method). Ordinary equivalent shares are not included in the denominator of the diluted earnings per share calculation when inclusion of such shares would be anti-dilutive.

#### ***Segment reporting***

ASC 280, Segment Reporting, establishes standards for companies to report in their financial statements information about operating segments, products, services, geographic areas, and major customers.



Based on the criteria established by ASC 280, our chief operating decision maker (“CODM”) has been identified as our Chief Executive Officer, who reviews consolidated results when making decisions about allocating resources and assessing performance of the company. As a whole and hence, we have one reportable segment. We do not distinguish between markets or segments for the purpose of internal reporting. As our long-lived assets are substantially located in the PRC, no geographical segments are presented.

### Income taxes

Current income taxes are recorded in accordance with the regulations of the relevant tax jurisdiction. We account for income taxes under the asset and liability method in accordance with ASC 740, Income Tax. Under this method, deferred tax assets and liabilities are recognized for the tax consequences attributable to differences between carrying amounts of existing assets and liabilities in the financial statements and their respective tax basis, and operating loss carry-forwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred taxes of a change in tax rates is recognized in the consolidated statements of comprehensive loss in the period of change. Valuation allowances are established when necessary to reduce the amount of deferred tax assets if it is considered more likely than not that amount of the deferred tax assets will not be realized.

We record liabilities related to uncertain tax positions when, despite our belief that our tax return positions are supportable, we believe that it is more likely than not that those positions may not be fully sustained upon review by tax authorities. Accrued interest and penalties related to unrecognized tax benefits are classified as income tax expense. We did not recognize uncertain tax positions as of December 31, 2017 and 2018.

### Recently issued accounting pronouncements

For a summary of recently issued accounting pronouncements, see Note 3 to the consolidated financial statements of NIO Inc. and its subsidiaries pursuant to Item 17 of Part III of this annual report.

### Results of Operations

The following table sets forth a summary of our consolidated results of operations for the years indicated. This information should be read together with our consolidated financial statements and related notes included elsewhere in this annual report. The operating results in any year are not necessarily indicative of the results that may be expected for any future period.

	Year Ended December 31,			
	2016	2017	2018	
	RMB	RMB	RMB	US\$
	(in thousands)			
<b>Revenues: (1)</b>				
Vehicle sales	—	—	4,852,470	705,762
Other sales	—	—	98,701	14,355
<b>Total revenues</b>	—	—	4,951,171	720,117
<b>Cost of sales:(2)</b>				
Vehicle sales	—	—	(4,930,135)	(717,058)
Other sales	—	—	(276,912)	(40,275)
<b>Total cost of sales</b>	—	—	(5,207,047)	(757,333)
Gross loss	—	—	(255,876)	(37,216)
Operating expenses:(2)				
Research and development(2)	(1,465,353)	(2,602,889)	(3,997,942)	(581,477)
Selling, general and administrative(2)	(1,137,187)	(2,350,707)	(5,341,790)	(776,931)
<b>Total operating expenses</b>	(2,602,540)	(4,953,596)	(9,339,732)	(1,358,408)
<b>Loss from operations</b>	(2,602,540)	(4,953,596)	(9,595,608)	(1,395,624)
Interest income	27,556	18,970	133,384	19,400
Interest expenses	(55)	(18,084)	(123,643)	(17,983)
Share of losses of equity investee	-	(5,375)	(9,722)	(1,414)
Investment income	2,670	3,498	—	—
Other income/(loss), net	3,429	(58,681)	(21,346)	(3,105)
<b>Loss before income tax expenses</b>	(2,568,940)	(5,013,268)	(9,616,935)	(1,398,726)
Income tax expense	(4,314)	(7,906)	(22,044)	(3,206)
<b>Net loss</b>	(2,573,254)	(5,021,174)	(9,638,979)	(1,401,932)

(1) We began generating revenues in June 2018, when we began making deliveries and sales of the ES8. We currently generate revenues from vehicle sales and other sales.

(2) Share-based compensation was allocated in cost of sales and operating expenses as follows:

	Year Ended December 31,			
	2016	2017	2018	
	RMB	RMB	RMB	US\$
	(in thousands)			
Cost of Sales	—	—	9,289	1,351
Research and development expenses	14,484	23,210	109,124	15,871
Selling, general and administrative expenses	62,200	67,086	561,055	81,603
Total	<u>76,684</u>	<u>90,296</u>	<u>679,468</u>	<u>98,825</u>

**Years Ended December 31, 2018 and 2017**

**Revenues**

We recorded revenues of RMB4,951.2 million (US\$720.1 million) for vehicle sales and other sales in 2018, as we began making deliveries of our first volume manufactured electric vehicle, the ES8, on June 28, 2018 and delivered 11,348 vehicles by December 31, 2018. We did not record any revenues in 2017.

**Cost of sales**

We recorded cost of sales of RMB5,207.0 million (US\$757.3 million) in 2018. Our cost of sales mainly consists of (i) direct parts, materials and manufacturing overhead (including depreciation of assets associated with the production) of RMB4,527.5 million; (ii) processing fee and compensation to JAC for its operating losses incurred during the same period in the amount of RMB222.9 million; and (iii) labor costs that are associated with sales of energy and service packages of RMB102.6 million. We did not record any cost of sales in 2017.

**Research and Development Expenses**

Research and development expenses increased by 53.6% from RMB2,602.9 million in 2017 to RMB3,997.9 million (US\$581.5 million) in 2018, primarily due to a 84.2% increase in employee compensation, which increased from RMB1,004.8 million in 2017 to RMB1,850.9 million (US\$269.2 million) in 2018, primarily due to (i) an increase in share-based compensation expenses recognized related to the stock options granted to certain of our non-US employees after our initial public offering and (ii) an increase in the number of our research and development employees (including employees of our product and software development teams) by approximately 75% from 2017 to 2018.

**Selling, General and Administrative Expenses**

Selling, general and administrative expenses increased by 127.2% from RMB2,350.7 million in 2017 to RMB5,341.8 million (US\$776.9 million), primarily due to, (i) a 142.6% increase in employee compensation with respect to our non-research and development employees, which increased from RMB929.9 million in 2017 to RMB2,256.5 million (US\$328.2 million) in 2018, primarily due to (x) an increase in the number of non-research and development employees by approximately 210% from 2017 to 2018, in line with the expansion of our business and (y) an increase in share-based compensation expenses recognized related to the stock options granted to certain of our non-US employees after our initial public offering; (ii) a 121.3% increase in marketing and promotional expenses, which increased from RMB523.5 million in 2017 to RMB1,158.5 million (US\$168.5 million) in 2018, as we increased our marketing and advertising expenses for the ES8 in 2018 and incurred expenses relating to (x) an auto exhibition in Beijing in May 2018 and (y) a number of nationwide test-drive activities for customers in 2018, (iii) a 108.3% increase in rental and related expenses, which increased from RMB216.1 million in 2017 to RMB450.1 million (US\$65.5 million) in 2018, as we continued to expand our network of NIO Houses and rented additional office space and (iv) a 142.3% increase in professional services expenses, which increased from RMB238.7 million in 2017 to RMB578.5 million (US\$84.1 million) in 2018, as we incurred more (x) outsourcing fees primarily related to human resources and IT functions that support business expansion, (y) design fees paid in connection with our NIO Houses and (z) auditor fees and legal fees.

### ***Loss from Operations***

As a result of the foregoing, we incurred a loss from operations of RMB9,595.6 million (US\$1,395.6 million) in 2018, as compared to a loss of RMB4,953.6 million in 2017.

### ***Interest Income***

In 2018, we recorded interest income of RMB133.4 million (US\$19.4 million) as compared to RMB19.0 million in 2017, primarily due to the interest income received on higher cash balances deposited with banks in 2018.

### ***Interest Expense***

In 2018, we recorded interest expense of RMB123.6 million (US\$18.0 million), as compared to interest expense of RMB18.1 million in 2017, primarily due to an increase in our indebtedness in 2018.

### ***Share of Losses of Equity Investees***

We recorded share of losses of equity investees of RMB9.7 million (US\$1.4 million) in 2018, as compared with share of losses of equity investee of RMB5.4 million in 2017, primarily because most of our equity investees were loss-making start-up companies.

### ***Investment Income***

We recorded investment income RMB3.5 million in 2017, as compared to nil in 2018, we did not record any investment income, as we invested in certain short-term wealth management products in 2017 and recorded investment income generated therefrom.

### ***Other Loss, Net***

We recorded other losses of RMB21.3 million (US\$3.1 million) in 2018, as compared to other loss of RMB58.7 million in 2017, primarily due to the depreciation of RMB against the U.S. dollar in 2018. In 2018, we held a significant portion of our cash and cash equivalents in U.S. dollars, while we incurred a significant portion of our expenses in RMB.

### ***Income Tax Expense***

In 2018, our income tax expense was RMB22.0 million (US\$3.2 million), an increase of 178.8% from RMB7.9 million in 2017. It represented income taxes paid and accrued with respect to transfer pricing compensation for our operations in Germany, UK and Hong Kong.

### ***Net Loss***

As a result of the foregoing, we incurred a net loss of RMB9,639.0 million (US\$1,401.9 million) in 2018, as compared to a net loss of RMB5,021.2 million in 2017.

## ***Years Ended December 31, 2017 and 2016***

### ***Research and Development Expenses***

Research and development expenses increased by 77.6% from RMB1,465.4 million in 2016 to RMB2,602.9 million in 2017, primarily due to (i) a 53.4% increase in design and development expenses, which increased from RMB948.8 million in 2016 to RMB1,455.3 million in 2017, as we engaged in trial production of the ES8 and advanced the development of the ES6 and (ii) a 122.7% increase in employee compensation, which increased from RMB451.3 million in 2016 to RMB1,004.8 million in 2017, as the number of our research and development employees increased by approximately 90.0% from December 31, 2016 to December 31, 2017.

### ***Selling, General and Administrative Expenses***

Selling, general and administrative expenses increased by 106.7% from RMB1,137.2 million in 2016 to RMB2,350.7 million in 2017, due to, among others, (i) a 96.5% increase in employee compensation with respect to our non-research and development employees, which increased from RMB473.3 million in 2016 to RMB929.9 million in 2017, primarily resulting from the increase in the number of our non-research and development employees by approximately 90.0% from December 31, 2016 to December 31, 2017, in line with the expansion of our business, (ii) an 118.6% increase in marketing and promotional expenses, which increased from RMB239.5 million in 2016 to RMB523.5 million in 2017 as marketing and promotional activities increased, with our preparation for the launch of our first volume manufactured vehicle, the ES8, (iii) a 136.2% increase in rental and related expenses, which increased from RMB91.5 million in 2016 to RMB216.1 million in 2017, as we began to establish our network of NIO Houses and rented additional facilities in relation to our charging network and office space and (iv) increased depreciation and amortization expenses, resulting from our increased depreciable assets, including leasehold improvements, IT equipment and software, among others, as our business expanded. The increase was also due to increased low value consumable expenses, travel expenses and other expenses.

### ***Loss from Operations***

As a result of the foregoing, we incurred a loss from operations of RMB4,953.6 million in 2017, as compared to a loss of RMB2,602.5 million in 2016.

### ***Interest Income***

In 2017, we recorded interest income of RMB19.0 million as compared to RMB27.6 million in 2016, primarily due to a preferred shareholder having delayed its investment payment due in 2016, which resulted in penalties which we recorded as interest income in 2016.

### ***Interest Expense***

In 2017, we recorded interest expense of RMB18.1 million, as compared to interest expense of RMB55,000 in 2016, primarily due to the increase in our indebtedness in 2017.

### ***Share of Losses of Equity Investee***

We recorded share of losses of equity investee of RMB5.4 million in 2017, consisting of our share of the losses of Suzhou Zenlead XPT New Energy Technologies Co., Ltd. We did not record any share of losses of equity investee in 2016.

### ***Investment Income***

In 2017, we recorded investment income of RMB3.5 million as compared to RMB2.7 million in 2016, primarily due to a larger size of investment in 2017 as compared to 2016.

### *Other Income/(Loss), Net*

We recorded other losses of RMB58.7 million in 2017, as compared to other income of RMB3.4 million in 2016, primarily due to the appreciation of the RMB against the U.S. dollar. In 2017, we held a significant portion of our cash and cash equivalents in U.S. dollars, while a significant portion of our expenses were incurred in RMB.

### *Income Tax Expense*

In 2017, our income tax expense was RMB7.9 million, an increase of 83.7% from RMB4.3 million in 2016, primarily due to income taxes paid with respect to transfer pricing compensation to our operations in Germany.

### *Net Loss*

As a result of the foregoing, we incurred a net loss of RMB5,021.2 million in 2017, as compared to a net loss of RMB2,573.3 million in 2016.

## **B. Liquidity and Capital Resources**

### **Cash Flows and Working Capital**

We had net cash used in operating activities of RMB2,201.6 million, RMB4,574.7 million and RMB7,911.8 million (US\$1,150.7 million) in 2016, 2017 and 2018, respectively. Our principal sources of liquidity have been proceeds from issuances of equity securities in our initial public offering and private placements, our notes offering, and our bank facilities.

As of December 31, 2018, we had a total of RMB3,224.4 million (US\$469.0 million) in cash and cash equivalents and restricted cash. As of December 31, 2018, 63.6% of our cash and cash equivalents and restricted were denominated in Renminbi and held in the PRC, and the other cash and cash equivalents and restricted cash were mainly denominated in U.S. dollars or Hong Kong dollars and held in the United States or Hong Kong. Our cash and cash equivalents consist primarily of cash on hand, time deposits and highly-liquid investments placed with banks, which are unrestricted as to withdrawal and use, and which have original maturities of three months or less.

As of December 31, 2018, the total size of our bank facilities was RMB6,835.0 million (US\$994.1 million), of which RMB1,330.4 million (US\$193.5 million), RMB69.4 million (US\$10.1 million) and RMB116.0 million (US\$16.9 million) were utilized for borrowing, letters of credit and bankers' acceptance, respectively.

We believe that our current cash and cash equivalents, short-term investment, available banking facilities, anticipated cash receipts from sales of vehicles and provision of services and proceeds from third-party equity investments in certain of our subsidiaries, will be sufficient to meet our anticipated working capital requirements and capital expenditures for the next 12 months. We may, however, decide to enhance our liquidity position or increase our cash reserve for future investments or operations through additional capital and finance funding. The issuance and sale of additional equity would result in further dilution to our shareholders. The incurrence of indebtedness would result in increased fixed obligations and could result in operating covenants that would restrict our operations.

The following table sets forth a summary of our cash flows for the years indicated.

	Year Ended December 31,			
	2016	2017	2018	
	RMB	RMB	RMB	US\$
	(in thousands)			
<b>Summary of Consolidated Cash Flow Data:</b>				
Net cash used in operating activities	(2,201,564)	(4,574,719)	(7,911,768)	(1,150,719)
Net cash provided by/(used in) investing activities	117,843	(1,190,273)	(7,940,843)	(1,154,949)
Net cash provided by financing activities	2,292,704	12,867,334	11,603,092	1,687,601
Effects of exchange rate changes on, cash equivalents and restricted cash	40,539	(168,120)	(56,947)	(8,283)
Net increase/(decrease) in cash, cash equivalents and restricted cash	249,522	6,934,222	(4,306,466)	(626,350)
Cash, cash equivalents and restricted cash at beginning of the year	347,109	596,631	7,530,853	1,095,317
Cash, cash equivalents and restricted cash at end of the year	596,631	7,530,853	3,224,387	468,967

### ***Operating Activities***

Net cash used in operating activities was RMB7,911.8 million (US\$1,150.7 million) in 2018, primarily attributable to a net loss of RMB9,639.0 million (US\$1,401.9 million), adjusted for (i) non-cash items of RMB1,221.6 million (US\$177.7 million), which primarily consisted of share-based compensation expenses of RMB679.5 million (US\$98.8 million) and depreciation and amortization of RMB474.2 million (US\$69.0 million) and (ii) a net decrease in operating assets and liabilities of RMB505.6 million (US\$73.5 million), which was primarily attributable to an increase in trade payables of RMB2,827.1 million (US\$411.2 million) consisting primarily of accounts payable relating to the purchase of inventory; an increase in accruals and other liabilities of RMB1,348.6 million (US\$196.1 million), consisting primarily of research and development services, advance payments from ES8 customers, salary and benefits payable and accounts payable in connection with marketing events; and an increase in other non-current liabilities of RMB291.1 million (US\$42.3 million) consisting primarily of rental payables, partially offset by, among others, an increase in inventory of RMB1,375.9 million (US\$200.1 million) primarily related to purchase of raw materials, works in progress and finished goods; an increase in prepayments and other current assets of RMB811.1 million (US\$118.0 million) consisting primarily of deductible value-added tax and prepaid expenses; an increase in trade receivables of RMB756.5 million (US\$110.0 million) primarily consisting of an increase in the government subsidies relating to our vehicle sales and an increase in long-term receivables of RMB574.7 million (US\$83.6 million) primarily resulting from battery payment installment arrangement with customers, and an increase in other non-current assets of RMB658.0 million (US\$95.7 million).

Net cash used in operating activities was RMB4,574.7 million (US\$665.4 million) in 2017, primarily attributable to a net loss of RMB5,021.2 million (US\$730.3 million), adjusted for (i) non-cash items of RMB315.7 million (US\$46.0 million), which primarily consisted of depreciation and amortization of RMB167.9 million (US\$24.4 million), foreign exchange losses of RMB49.5 million (US\$7.2 million) and share-based compensation expenses of RMB90.3 million (US\$13.1 million) and (ii) a net decrease in operating assets and liabilities of RMB130.7 million (US\$19.0 million), which was primarily attributable to an increase in accruals and other liabilities of RMB603.4 million (US\$87.8 million), consisting primarily of payables for research and development expenses, accrued expenses and salaries and benefits payables, and an increase in other non-current liabilities of RMB78.6 million (US\$11.4 million), consisting primarily of rental payables and deferred government grants, offset partially by, among others, an increase in prepayment and other current assets of RMB404.8 million (US\$58.9 million), which primarily related to deductible value-added tax, prepaid expenses and deposits; an increase in inventories of RMB89.5 million (US\$13.0 million), primarily related to purchases of raw materials, works in progress and finished goods, as we began trial production of the ES8; and an increase in other non-current assets of RMB66.7 million (US\$9.7 million).

Net cash used in operating activities was RMB2,201.6 million in 2016, primarily attributable to a net loss of RMB2,573.3 million, adjusted for (i) non-cash items of RMB114.8 million, which primarily consisted of depreciation and amortization of RMB46.1 million and share-based compensation expenses of RMB76.7 million and (ii) a net decrease in operating assets and liabilities of RMB256.9 million, which was primarily attributable to an increase in accruals and other liabilities of RMB410.1 million, consisting primarily of payables for research and development expenses, accrued expenses and salaries and benefits payables, and an increase in other non-current liabilities of RMB61.2 million, consisting primarily of deferred rent and deferred government grants, offset partially by, among others, an increase in prepayment and other current assets of RMB209.8 million, primarily related to deductible value-added taxes and an increase in other non-current assets.

### ***Investing Activities***

Net cash used in investing activities was RMB7,940.8 million (US\$1,154.9 million) in 2018, primarily attributable to (i) purchases of short-term investments of RMB8,090.7 million (US\$1,176.7 million), (ii) purchases of property, plant and equipment and intangible assets of RMB2,644.0 million (US\$384.5 million) and (iii) acquisition of equity investees of RMB110.9 million (US\$16.1 million), partially offset by the proceeds from sale of short-term investments of RMB2,936.0 million (US\$427.0 million).

Net cash used in investing activities was RMB1,190.3 million (US\$173.1 million) in 2017, which was primarily attributable to (i) purchases of property, plant and equipment and intangible assets of RMB1,113.9 million (US\$162.0 million), relating to the roll-out of our NIO House network and strengthening of research and development capabilities and (ii) purchases of held for trading securities of RMB1,337.4 million (US\$194.5 million), consisting of certain short-term liquid investments, which were partially offset by proceeds from sales of securities held for trading of RMB1,340.9 million (US\$195.0 million).

Net cash generated from investing activities was RMB117.8 million in 2016, which was primarily attributable to proceeds from sales of held for trading securities of RMB3,118.6 million, consisting of certain short-term liquid investments, partially offset by, among others, purchases of held for trading securities of RMB2,346.3 million and purchases of property, plant and equipment and intangible assets of RMB654.5 million, relating to the expansion of our research and development capabilities.

#### ***Financing Activities***

Net cash provided by financing activities was RMB11,603.1 million (US\$1,687.6 million) in 2018, primarily attributable to (i) the proceeds from the issuance of ordinary shares in our initial public offering of RMB7,531.0 million (US\$1,095.3 million); (ii) the proceeds from the issuance of redeemable non-controlling interests of RMB1,265.9 million (US\$184.1 million) in connection with the issuance by a wholly-owned subsidiary of us of redeemable preferred shares to certain third party strategic investors and (iii) the proceeds from bank borrowings of RMB2,668.5 million (US\$388.1 million).

Net cash provided by financing activities was RMB12,867.3 million (US\$1,871.5 million) in 2017, which was attributable to the net proceeds from the issuance of our series A, series B, series C, and series D preferred shares, with a sum of RMB12,226.5 million (US\$1,778.3 million), and, to a lesser extent, the proceeds from borrowings of RMB633.7 million (US\$92.2 million), and capital injections from non-controlling interests of RMB13.4 million (US\$1.9 million).

Net cash provided by financing activities was RMB2,292.7 million in 2016, which was attributable to the net proceeds from the issuance of our series A and series B preferred shares of RMB2,263.6 million.

#### **Capital Expenditures**

We made capital expenditures of RMB654.5 million, RMB1,113.9 million and RMB2,644.0 million (US\$384.5 million) in 2016, 2017 and 2018, respectively. In these periods, our capital expenditures were mainly used for the acquisition of property, plant and equipment and intangible assets which consisted primarily of mold and tooling, IT equipment, research and development equipment, leasehold improvements, consisting primarily of office space, NIO Houses and laboratory improvements as well as the roll-out of our power solutions. We currently estimate that our capital expenditures for the next three years, including for research and development and the expansion of our sales and service network, will be approximately US\$1.7 billion, with approximately US\$600 million incurred over the twelve months starting from January 2019. Through December 2018, we incurred capital expenditures of RMB180.4 million (US\$26.3 million) in connection with the roll-out of our network of power solutions, including NIO Power Home, Power Express and other solutions. As of December 31, 2018, we had 28 swap stations covering expressway and 84 swap stations located in major cities. We also had 485 charging trucks serving our users. We expect that our level of capital expenditures will be significantly affected by user demand for our products and services. The fact that we have a limited operating history means we have limited historical data on the demand for our products and services. As a result, our future capital requirements may be uncertain and actual capital requirements may be different from those we currently anticipate. To the extent the proceeds of the 2024 Notes and cash flows from our business activities are insufficient to fund future capital requirements, we may need to seek equity or debt financing. We will continue to make capital expenditures to support the expected growth of our business.

## **Borrowings**

As of December 31, 2018, our total borrowings, including current borrowings and non-current borrowings, were RMB3,236.9 million (US\$470.8 million), primarily consisting of bank loans of RMB1,330.4 million (US\$193.5 million), bankers' acceptance of RMB1,505.0 million (US\$218.9 million) and loan from investors of RMB 401.4 million (US\$58.4 million).

## **Holding Company Structure**

NIO Inc. is a holding company with no material operations of its own. We conduct a portion of our operations through our PRC subsidiaries, and, to a lesser extent, our variable interest entities and their subsidiaries in China. As a result, our ability to pay dividends depends significantly upon dividends paid by our PRC subsidiaries. If our existing PRC subsidiaries or any newly formed ones incur debt on their own behalf in the future, the instruments governing their debt may restrict their ability to pay dividends to us. In addition, our wholly foreign-owned subsidiaries in China are permitted to pay dividends to us only out of their retained earnings, if any, as determined in accordance with PRC accounting standards and regulations. Under PRC law, each of our subsidiaries and our variable interest entities and their subsidiaries in China is required to set aside at least 10% of its after-tax profits each year, if any, to fund certain statutory reserve funds until such reserve funds reach 50% of its registered capital. In addition, each of our wholly foreign-owned subsidiaries in China may allocate a portion of its after-tax profits based on PRC accounting standards to enterprise expansion funds, staff bonuses and welfare funds at its discretion, and each of our variable interest entities may allocate a portion of its after-tax profits based on PRC accounting standards to a discretionary surplus fund at its discretion. The statutory reserve funds and the discretionary funds are not distributable as cash dividends. Remittance of dividends by a wholly foreign-owned company out of China is subject to examination by the banks designated by the SAFE. Our PRC subsidiaries have not paid dividends and will not be able to pay dividends until they generate accumulated profits and meet the requirements for statutory reserve funds. Our VIEs did not have any material assets or liabilities as of December 31, 2018. In the future we expect Beijing NIO to focus on value-added telecommunications services, including, without limitation, performing internet services, operating our website and our mobile application as well as holding certain related licenses.

### **C. Research and Development, Patents and Licenses, etc.**

See "Item 4. Information on the Company—B. Business Overview—Our Technology—Worldwide Research and Development Footprint" and "—Intellectual Property."

### **D. Trend Information**

Other than as disclosed elsewhere in this annual report, we are not aware of any trends, uncertainties, demands, commitments or events for the period from January 1, 2018 to December 31, 2018 that are reasonably likely to have a material effect on our net revenues, income, profitability, liquidity or capital resources, or that would cause the disclosed financial information to be not necessarily indicative of future operating results or financial conditions.

### **E. Off-Balance Sheet Arrangements**

We have not entered into any off-balance sheet financial guarantees or other off-balance sheet commitments to guarantee the payment obligations of any third parties. We have not entered into any derivative contracts that are indexed to our shares and classified as shareholder's equity or that are not reflected in our consolidated financial statements. Furthermore, we do not have any retained or contingent interest in assets transferred to an unconsolidated entity that serves as credit, liquidity or market risk support to such entity. We do not have any variable interest in any unconsolidated entity that provides financing, liquidity, market risk or credit support to us or engages in leasing, hedging or product development services with us.



## F. Tabular Disclosure of Contractual Obligations

The following table sets forth our contractual obligations as of December 31, 2018:

	Payment due by period				
	Total	Less than 1 year	1-2 years	2-3 years	More than 3 years
	(in RMB thousands)				
Capital commitments	1,603,581.6	1,476,988.2	111,447.9	13,860.6	1,284.9
Operating lease obligations	2,388,446.2	393,734.3	457,892.0	444,909.2	1,091,910.7
Short-term and long-term borrowings	3,236,863.9	2,068,852.0	237,602.0	422,517.5	507,892.4
Interest on borrowings	127,853.5	59,461.3	39,104.4	27,375.7	1,912.1
Total	7,356,745.2	3,999,035.8	846,046.3	908,663.0	1,603,000.1

Capital commitments are commitments in relation to the purchase of property and equipment including leasehold improvements. Operating lease obligations consist of leases in relation to certain offices and buildings, NIO Houses and other property for our sales and after-sales network.

Other than those shown above, we did not have any significant capital and other commitments, long-term obligations, or guarantees as of December 31, 2018.

## G. Safe Harbor

See “Forward-Looking Statements” on page 2 of this annual report.

## ITEM 6. DIRECTORS, SENIOR MANAGEMENT AND EMPLOYEES

### A. Directors and Executive Officers

The following table sets forth information regarding our executive officers and directors as of the date of this annual report.

<u>Directors and Executive Officers</u>	<u>Age</u>	<u>Position/Title</u>
Bin Li	44	Chairman and Chief Executive Officer
Lihong Qin	45	Director and President
Louis T. Hsieh	54	Chief Financial Officer
Hsien Tsong Cheng	60	Executive Vice President
Xin Zhou	48	Vice President
Dongning Wang	47	Vice President
Feng Shen	55	Vice President
Hai Wu	50	Independent Director
Denny Ting Bun Lee	51	Independent Director
James Gordon Mitchell	45	Director

*Mr. Bin Li* is our founder and has served as chairman of the board since our inception and our chief executive officer since January 2018. Mr. Li currently also serves as chairman of the board of directors at Bitauto Holdings Limited, a NYSE-listed automobile service company and a leading automobile service provider in China. In 2000, Mr. Li co-founded Beijing Bitauto E-Commerce Co., Ltd. and served as its director and president until 2006. In 2002, Mr. Li co-founded Beijing Creative & Interactive Digital Technology Co., Ltd. and has served as its chairman of the board of directors and chief executive officer since its inception. In addition, Mr. Li currently serves as vice-chairman of China Automobile Dealers Association, or CADA, and was recognized by CADA in 2008 as one of the top 10 most influential and distinguished people in China’s automobile dealer industry in the past 20 years. Mr. Li received his bachelor’s degree in sociology from Peking University where he minored in Law.

*Mr. Lihong Qin* is our co-founder and has served as our director and our president since our inception. Prior to joining us, Mr. Qin served as chief marketing officer and executive director at Longfor Properties Co., Ltd., a leading company involved in property development and investment in China, from 2008 to 2014. He also served as deputy general manager at Anhui Chery Automobile Sales and Service Company from 2005 to 2008, as senior consultant and project manager at Roland Berger Strategy Consultants from 2003 to 2005, and as assistant brand manager at the Marketing Department of Procter & Gamble (Guangzhou) Ltd. from 2001 to 2003. Mr. Qin received his bachelor's degree and a master's degree in law from Peking University in 1996 and 1999, respectively, and a master's degree in public policy from Harvard University in 2001.

*Mr. Louis T. Hsieh* has served as our Chief Financial Officer since May 2017. Mr. Hsieh also serves as a non-executive director at New Oriental Education and Technology Group, or New Oriental, a NYSE-listed company providing private educational services in China. Mr. Hsieh joined New Oriental in 2005 and served as chief financial officer from 2005 to 2015, as President from 2008 to 2016, and director since 2007. He is also an independent director and chairman of the audit committee for each of JD.com, Inc., China's largest direct sales internet company; YUM China Holdings, a NYSE-listed restaurant company operating KFC, Pizza Hut, Little Sheep Hot Pot, and Taco Bell in China; and from 2016 to 2017 at Nord Anglia Education, Inc., a NYSE-listed education company, which was taken private in July 2017. Prior to joining New Oriental, Mr. Hsieh held senior executive positions in private equity and investment banking with UBS Capital (Managing Director and Asia Tech/Media/Telecom head), JP Morgan (vice president) and Credit Suisse, and served as a corporate and securities law attorney at White & Case LLP. Mr. Hsieh received a bachelor's degree in industrial engineering and engineering management from Stanford University, a master's degree in business administration from the Harvard Business School, and a juris doctor degree from the University of California at Berkeley.

*Mr. Hsien Tsong Cheng* is our co-founder and has served as our executive vice president and as chief executive officer of XPT since July 2015. Prior to joining us, Mr. Cheng served as chairman and chief executive officer at Magneti Marelli China from January 2013 to July 2015. Mr. Cheng served as chairman of Fiat Automotive Finance Co., Ltd. and chairman and chief executive officer of FIAT (China) Business Co., Ltd. from June 2014 to July 2015. Prior to that, Mr. Cheng served as general manager of GAC Fiat Automobiles Co., Ltd. from July 2010 to March 2013. Prior to joining Fiat, Mr. Cheng was a 26-year veteran in Ford Motor Company and served as the vice president for Global Purchasing based in China from 1997 to 2006, overseeing Ford Motor's regional supply chain and joint ventures sourcing for Changan Ford Motor Ltd., Jiangling Motor Ltd. and Ford Lioho Taiwan. Mr. Cheng received his bachelor's degree in mechanical engineering from National Cheng Kung University in Taiwan in 1980.

*Mr. Xin Zhou* has served as our vice president since April 2015. Mr. Zhou served as executive director at Qoros Automotive Co., Ltd. from September 2009 to April 2015. Prior to that, he was the engagement manager of McKinsey & Co. from April 2007 to September 2009, and executive director of Lear Corp. from May 1998 to April 2007. Mr. Zhou received a bachelor's degree in applied science from Fudan University in 1992 and a master's degree in business administration from China Europe International Business School in 2008.

*Mr. Dongning Wang* has served as our vice president since September 2015. Prior to joining us, Mr. Wang served as the executive vice president and chief financial officer at Jaguar Land Rover Greater China. Prior to joining Jaguar Land Rover Greater China, he held various senior financial management positions in Daimler Chrysler U.S. headquarters and Asia Pacific region for a total of seven years. From 1995 to 1999, he served as a senior project manager at State Power Corporation of China. Mr. Wang received a bachelor's degree in engineering mechanics from Tsinghua University in 1995 and a master's degree in business administration from Wharton Business School in 2002.

*Mr. Feng Shen* has served as our vice president and chairman of quality management committee since December 2017. Mr. Shen worked in several senior executive management roles, such as president of Polestar China and global chief technology officer at Polestar, president at Volvo Cars China R&D Company, vice president of Volvo Cars Asia-Pacific Operation, and chairman at China-Sweden Traffic Safety Research Center from 2010 to 2017. Prior to that, Mr. Shen worked as a powertrain manager, Six-Sigma Master Black Belt and technical expert at Ford Motor Company from 1999 to 2010 in the United States and China. Mr. Shen received a bachelor's degree in mathematics and mechanics and a master's degree in applied mechanics from Fudan University in 1984 and 1987, respectively. He also received a doctoral degree in mechanical engineering from Auburn University in 1996.

*Mr. Hai Wu* has served as our director since July 2016. Mr. Wu has been a managing director of China at Temasek Holdings Advisors (Beijing) Co., Ltd. since May 2014. Mr. Wu has extensive experience in investments and management. Prior to joining Temasek Holdings, Mr. Wu was the chief executive officer at Ramaxel Technology (Shenzhen) Limited from April 2012 to February 2014 and a managing director at CITIC Private Equity Funds Management Co., Ltd. from March 2010 to May 2012. Mr. Wu served as the global director and managing partner of the Beijing Branch office of McKinsey & Company from August 1999 to February 2010. He also served as a non-executive director of COFCO Meat Holdings Limited from September 2015 to December 2017. He received a bachelor's degree in physiology from Peking University, a master's degree in business administration from the Johnson School of Management, University of Cornell and a doctoral degree in neuroscience and cell biology from Rutgers University.

*Mr. Denny Ting Bun Lee* has served as our director since September 2018. Mr. Lee serves as an independent non-executive director on the board of NetEase, Inc., a leading internet and online game service provider in China listed on the Nasdaq Global Select Market. He was the chief financial officer of NetEase, Inc. from 2002 to 2007. Prior to joining NetEase, Inc., Mr. Lee worked in the Hong Kong office of KPMG for more than ten years. Mr. Lee currently serves as an independent non-executive director and the chairman of the audit committees of the following four companies: (1) Jianpu Technology Inc., a company listed on the NYSE, (2) New Oriental Education & Technology Group Inc., a provider of private education services in China listed on the NYSE, (3) Concord Medical Services Holdings Limited, a leading specialty hospital management solution provider and operator in China listed on the NYSE, and (4) China Metal Resources Utilization Ltd., a company principally engaged in the manufacture and sales of copper and related products in China listed on the main board of THE Hong Kong Stock Exchange. Mr. Lee graduated from the Hong Kong Polytechnic University and is a member of the Hong Kong Institute of Certified Public Accountants and The Chartered Association of Certified Accountants.

*Mr. James Gordon Mitchell* has served as our director commencing since September 2018. Currently, Mr. Mitchell serves as Senior Executive Vice President and Chief Strategy Officer of Tencent Holdings, where he has worked since July 2011. Mr. Mitchell has also served as the Chairman and non-executive director of the board of China Literature Limited since June 2017. He is also a non-executive director of certain other listed companies including TME Group Limited, a Chinese music entertainment company (stock code NYSE:TME); Yixin Group Limited, a Chinese automobile retail transaction platform company listed on the main board of Hong Kong Stock Exchange (stock code 2858) and Frontier Developments, a British video game development company listed on the London Stock Exchange (under the symbol AIM: FDEV), and a director of several unlisted companies. Prior to Tencent, Mr. Mitchell was a managing director at Goldman Sachs. He is a CFA® charterholder and received a degree from Oxford University.

## **B. Compensation of Directors and Executive Officers**

For the year ended December 31, 2018, we paid an aggregate of approximately US\$2.8 million in cash to our directors and executive officers. For share incentive grants to our directors and executive officers, see “—Stock Incentive Plans.” We have not set aside or accrued any amount to provide pension, retirement or other similar benefits to our directors and executive officers. Our PRC subsidiaries and VIEs are required by law to make contributions equal to certain percentages of each employee's salary for his or her pension insurance, medical insurance, unemployment insurance and other statutory benefits and a housing provident fund.

## **Employment Agreements and Indemnification Agreements**

We have entered into employment agreements with each of our executive officers. Under these agreements, each of our executive officers is employed for a specified time period. We may terminate employment for cause, at any time, without advance notice or remuneration, for certain acts of the executive officer, such as conviction or plea of guilty to a felony or any crime involving moral turpitude, negligent or dishonest acts to our detriment, or misconduct or a failure to perform agreed duties. In such case of termination by us, we will provide severance payments to the executive officer as expressly required by applicable law of the jurisdiction where the executive officer is based.

Each executive officer has agreed to hold, both during and after the termination or expiry of the executive officer's employment agreement, in strict confidence and not to use, except as required in the performance of the executive officer's duties in connection with the executive officer's employment or pursuant to applicable law, any of our confidential information or trade secrets, any confidential information or trade secrets of our clients or prospective clients, or the confidential or proprietary information of any third party received by us and for which we have confidential obligations. The executive officers have also agreed to disclose in confidence to us all inventions, designs and trade secrets which they conceive, develop or reduce to practice during the executive officer's employment with us and to assign all right, title and interest in them to us, and assist us in obtaining and enforcing patents, copyrights and other legal rights for these inventions, designs and trade secrets.

In addition, each executive officer has agreed to be bound by non-competition and non-solicitation restrictions during the term of the executive officer's employment and typically for one year following the last date of employment. Specifically, each executive officer has agreed not to (i) approach our suppliers, clients, customers or contacts or other persons or entities introduced to the executive officer in the executive officer's capacity as a representative of us for the purpose of doing business with such persons or entities that will harm our business relationships with these persons or entities; (ii) assume employment with or provide services to any of our competitors, or engage, whether as principal, partner, licensor or otherwise, with any of our competitors, without our express consent; or (iii) seek directly or indirectly, to solicit the services of any of our employees who is employed by us on or after the date of the executive officer's termination, or in the year preceding such termination, without our express consent.

We have also entered into indemnification agreements with each of our directors and executive officers. Under these agreements, we agree to indemnify our directors and executive officers against certain liabilities and expenses incurred by such persons in connection with claims made by reason of their being a director or officer of our company.

### **Stock Incentive Plans**

Our board of directors has approved and adopted share-based awards under three stock incentive plans, namely, the 2015 Stock Incentive Plan, or the 2015 Plan, the 2016 Stock Incentive Plan, or the 2016 Plan, the 2017 Stock Incentive Plan, or the 2017 Plan. The terms of the 2015 Plan, the 2016 Plan and the 2017 Plan are substantially similar. The purpose of those plans is to attract and retain the best available personnel, to provide additional incentives to our employees, directors and consultants and to promote the success of our business. Our board of directors believes that our long-term success is dependent upon our ability to attract and retain superior individuals who, by virtue of their ability and qualifications, make important contributions to our business.

Under the 2015 Plan, the 2016 Plan and the 2017 Plan, the maximum numbers of Class A ordinary shares which may be issued pursuant to all awards are 46,264,378, 18,000,000 and 33,000,000, respectively. As of December 31, 2018, awards to purchase an aggregate amount of 91,074,140 Class A ordinary shares under our three stock incentive plans have been granted and are outstanding, excluding awards that were forfeited or cancelled after the relevant grant dates.

The following paragraphs describe the principal terms of the 2015 Plan, the 2016 Plan and the 2017 Plan.

*Types of Awards.* Our stock incentive plans permit the awards of options, restricted shares, restricted share units, share appreciation rights, dividend equivalent right or other right or benefit under each plan.

*Plan Administration.* Our board of directors or a committee of one or more members of the board of directors or officers will administer our stock incentive plans. The committee or the full board of directors, as applicable, will determine the grantees to receive awards, the type and number of awards to be granted to each grantee, and the terms and conditions of each award grant.

*Award Agreement.* Awards granted under our stock incentive plans are evidenced by an award agreement that sets forth terms, conditions and limitations for each award, which may include the term of the award, the provisions applicable in the event that the grantee's employment or service terminates, and our authority to unilaterally or bilaterally amend the award.

*Eligibility.* We may grant awards to our employees, consultants and directors.

*Vesting Schedule.* Except as approved by the plan administrator, options to be issued to the grantees under the stock incentive plans shall be subject to a minimum four (4) year vesting schedule calling for vesting no earlier than the following, counting from the applicable grant date or vesting commencement date (as determined by the plan administrator) with respect to the total issued options: the option representing 25% of the Class A ordinary shares under the option shall vest at the end of the first twelve (12) months commencing from the vesting commencement date, with remaining portions vesting in equal monthly installments over the next thirty-six (36) months.

*Exercise of Options.* The plan administrator determines the exercise price for each award, which is stated in the relevant award agreement. Options that are vested and exercisable will terminate if they are not exercised prior to the time as the plan administrator determines at the time of grant. However, In the case of an option granted to an employee who, at the time the option is granted, owns (or, pursuant to Section 424(d) of the U.S. Code, is deemed to own) stock representing more than 10% of the total combined voting power of all classes of shares of us or our subsidiary or affiliate, the term of the option will not be longer than seven to ten years from the date of grant under the 2017 Plan, or five years from the date of grant under the 2015 Plan and the 2016 Plan.

*Drag-Along Events.* Except as provided in the applicable award agreement or sub-plan, in the event of a drag-along event specified under the stock incentive plans, the grantees who hold any Class A ordinary shares upon exercise of the award shall sell, transfer, convey or assign all of their shares pursuant to, and so as to give effect to, the drag-along event, and each of such grantees shall grant to the board of directors or a person authorized by the board of directors, a power of attorney to transfer, sell, convey and assign the grantee's shares and to do and carry out all acts and to execute all documents that are necessary or advisable to complete the drag-along event.

*Initial Public Offering.* In the case of the initial public offering of our ADSs in September 2018, the grantees could enter into any agreements with any underwriter, coordinator, bankers or sponsor elected by us for the purpose of the offering, and each of such grantees would grant to the board of directors or a person authorized by the board of directors, a power of attorney to enter into any agreements with any underwriter, coordinator, bankers or sponsor elected by us and to do and carry out all the acts and to execute all the documents that are necessary or advisable to complete the offering.

*Transfer Restrictions.* Awards shall be transferable, subject to applicable laws, (i) by will and by the laws of descent and distribution and (ii) during the lifetime of the grantee, to the extent and in the manner authorized by the plan administrator. Notwithstanding the foregoing, the grantee may designate one or more beneficiaries of the grantee's award in the event of the grantee's death on a beneficiary designation form provided by the plan administrator.

*Termination and Amendment of the Plan.* Unless terminated earlier or extended before expiration, each of our stock incentive plans has a term of ten years. The board of directors has the authority to terminate, amend or modify the stock incentive plans; *provided, however*, that no such amendment shall be made without the approval of our shareholders to the extent such approval is required by applicable laws or provisions of the stock incentive plans. However, without the prior written consent of the grantee, no such action may adversely affect any outstanding award previously granted pursuant to the stock incentive plan.

The following table summarizes, as of December 31, 2018, the awards granted under the 2015 Plan, the 2016 Plan and the 2017 Plan to several of our executive officers, excluding awards that were forfeited or cancelled after the relevant grant dates.

Name	Class A Ordinary Shares Underlying Options and Restricted Share Units	Exercise Price (US\$/Share**)	Date of Grant	Date of Expiration
Bin Li	15,000,000	2.55	March 1, 2018	February 28, 2028
Louis T. Hsieh	*	0.1-2.55	February 1, 2018	January 31, 2028
			February 28, 2018	February 27, 2028
		N/A	November 8, 2018	
Lihong Qin	*	2.55	February 1, 2018	January 31, 2028
			February 28, 2018	February 27, 2028
Xin Zhou	*	2.55	February 1, 2018	January 31, 2028
			February 28, 2018	February 27, 2028
Dongning Wang	*	0.1-2.55	December 1, 2015	November 30, 2025
			February 1, 2018	January 31, 2028
			February 28, 2018	February 27, 2028
Ting Bun Denny Lee		N/A	September 12, 2018	
Hsien Tsong Cheng	*	0.1-2.55	December 1, 2015	November 30, 2025
			February 28, 2018	February 27, 2028
Feng Shen	*	1.80-2.55	December 31, 2017	December 30, 2027
			February 1, 2018	January 31, 2028
Total	26,037,453			

\* Less than one percent of our total outstanding shares.

\*\* Applicable to options only.

As of December 31, 2018, other employees as a group held awards of 441,513 restricted share units and awards of options to purchase 66,772,088 Class A ordinary shares of our company. The exercise prices of the options range from US\$0.10 to US\$6.74 per share.

#### 2018 Share Incentive Plan

In August 2018, our board of directors approved the 2018 Share Incentive Plan to attract and retain the best available personnel, provide additional incentives to employees, directors and consultants and promote the success of our business. Under the 2018 Share Incentive Plan, or the 2018 Plan, the maximum number of shares available for issuance shall be 23,000,000 ordinary shares, which should automatically increase each year by the number of shares representing 1.5% of the then total issued and outstanding share capital of our company as of the end of each preceding year. The 2018 Plan became effective as of January 1, 2019 with a term of five years.

As of February 28, 2019, no share incentive award has been granted under the 2018 Plan.

The following paragraphs describe the principal terms of the 2018 Plan.

**Types of Awards.** The 2018 Plan permits the awards of options, restricted shares or any other type of awards that the committee grants.

**Plan Administration.** Our board of directors or a committee of one or more members of our board of directors will administer the 2018 Plan. The committee or the full board of directors, as applicable, will determine the participants to receive awards, the type and number of awards to be granted to each participant, and the terms and conditions of each award grant.

**Award Agreement.** Awards granted under the 2018 Plan are evidenced by an award agreement that sets forth terms, conditions and limitations for each award, which may include the term of the award, the provisions applicable in the event that the grantee's employment or service terminates, and our authority to unilaterally or bilaterally amend, modify, suspend, cancel or rescind the award.

**Eligibility.** We may grant awards to the employees, directors and consultants of our company. However, we may grant incentive share options only to our employees, parent and subsidiaries.

**Vesting Schedule.** In general, the plan administrator determines the vesting schedule, which is specified in the relevant award agreement.

**Exercise of Options.** The plan administrator determines the exercise price for each award, which is stated in the award agreement. The vested portion of an option will expire if not exercised prior to the time as the plan administrator determines at the time of its grant. However, the maximum exercisable term is five years from the date of a grant.

**Transfer Restrictions.** Awards may not be transferred in any manner by the recipient other than by will or the laws of descent and distribution, except as otherwise provided by the plan administrator.

**Termination and amendment of the 2018 Plan.** Unless terminated earlier, the 2018 Plan has a term of five years. Our board of directors has the authority to amend or terminate the plan. However, no such action may adversely affect in any material way any awards previously granted unless agreed by the recipient.

### **C. Board Practices**

The board of directors of our company, or the board, consists of five directors. A director is not required to hold any shares in our company by way of qualification. A director may vote with respect to any contract, proposed contract or arrangement in which he is interested provided (a) such director has declared the nature of his interest at the earliest meeting of the board at which it is practicable for him to do so, either specifically or by way of a general notice and (b) if such contract or arrangement is a transaction with a related party, such transaction has been approved by the audit committee. The directors may exercise all the powers of our company to borrow money, mortgage our company's undertaking, property and uncalled capital, and issue debentures or other securities whenever money is borrowed or as security for any obligation of our company or of any third party. None of our non-executive directors has a service contract with us that provides for benefits upon termination of service.

### **Committees of the Board of Directors**

We have established three committees under the board: an audit committee, a compensation committee and a nominating and corporate governance committee. We will adopt a charter for each of the three committees. Each committee's members and functions are described below.

**Audit Committee.** Our audit committee consists of Denny Ting Bun Lee, Hai Wu and James Gordon Mitchell. Denny Ting Bun Lee is the chairman of our audit committee. We have determined that Denny Ting Bun Lee and Hai Wu satisfy the "independence" requirements of Section 303A of the Corporate Governance Rules of the New York Stock Exchange and Rule 10A-3 under the Exchange Act. We have determined that Denny Ting Bun Lee qualifies as an "audit committee financial expert." The audit committee oversees our accounting and financial reporting processes and the audits of the financial statements of our company. The audit committee is responsible for, among other things:

- appointing the independent auditors and pre-approving all auditing and non-auditing services permitted to be performed by the independent auditors;
- reviewing with the independent auditors any audit problems or difficulties and management's response;
- discussing the annual audited financial statements with management and the independent auditors;
- reviewing the adequacy and effectiveness of our accounting and internal control policies and procedures and any steps taken to monitor and control major financial risk exposures;
- reviewing and approving all proposed related party transactions;
- meeting separately and periodically with management and the independent auditors; and
- monitoring compliance with our code of business conduct and ethics, including reviewing the adequacy and effectiveness of our procedures to ensure proper compliance.

**Compensation Committee.** Our compensation committee consists of Hai Wu, James Gordon Mitchell and Bin Li. Hai Wu is the chairman of our compensation committee. We have determined that Hai Wu satisfies the "independence" requirements of Section 303A of the Corporate Governance Rules of the New York Stock Exchange. The compensation committee assists the board in reviewing and approving the compensation structure, including all forms of compensation, relating to our directors and executive officers. Our chief executive officer may not be present at any committee meeting during which his compensation is deliberated. The compensation committee is responsible for, among other things:

- reviewing and approving, or recommending to the board for its approval, the compensation for our chief executive officer and other executive officers;
- reviewing and recommending to the board for determination with respect to the compensation of our non-employee directors;
- reviewing periodically and approving any incentive compensation or equity plans, programs or similar arrangements; and
- selecting any compensation consultant, legal counsel or other adviser only after taking into consideration all factors relevant to that person's independence from management.

*Nominating and Corporate Governance Committee.* Our nominating and corporate governance committee consists of Bin Li, Hai Wu and Denny Ting Bun Lee. Bin Li is the chairperson of our nominating and corporate governance committee. Hai Wu and Denny Ting Bun Lee satisfy the "independence" requirements of Section 303A of the Corporate Governance Rules of the New York Stock Exchange. The nominating and corporate governance committee assists the board in selecting individuals qualified to become our directors and in determining the composition of the board and its committees. The nominating and corporate governance committee is responsible for, among other things:

- selecting and recommending to the board nominees for election by the shareholders or appointment by the board;
- reviewing annually with the board the current composition of the board with regards to characteristics such as independence, knowledge, skills, experience and diversity;
- making recommendations on the frequency and structure of board meetings and monitoring the functioning of the committees of the board; and
- advising the board periodically with regard to significant developments in the law and practice of corporate governance as well as our compliance with applicable laws and regulations, and making recommendations to the board on all matters of corporate governance and on any remedial action to be taken.

#### **Duties of Directors**

Under Cayman Islands law, our directors owe fiduciary duties to our company, including a duty to act honestly, and a duty to act in good faith. The directors must act bona fide in what they consider to be in our best interests. Our directors must also exercise their powers only for a proper purpose. Our directors also have a duty to act with skills they actually possess and exercise the care and diligence that would be displayed by a reasonable director in comparable circumstances. It was previously considered that a director need not exhibit in the performance of his duties a greater degree of skill than may reasonably be expected from a person of his knowledge and experience. However, English and Commonwealth courts have moved towards an objective standard with regard to the required skill and care and these authorities are likely to be followed in the Cayman Islands. In fulfilling their duty of care to us, our directors must ensure compliance with our memorandum and articles of association, as amended and restated from time to time, and the class rights vested thereunder in the holders of the shares. Our directors owe their fiduciary duties to our company and not to our company's individual shareholders, and it is our company which has the right to seek damages if a duty owed by our directors is breached. In certain limited exceptional circumstances, a shareholder may have the right to seek damages in our name if a duty owed by our directors is breached.

Our board of directors has all the powers necessary for managing, and for directing and supervising, our business affairs. The functions and powers of our board of directors include, among others:

- convening shareholders' annual and extraordinary general meetings and reporting its work to shareholders at such meetings;



- declaring dividends and other distributions;
- appointing officers and determining the term of office of the officers;
- exercising the borrowing powers of our company and mortgaging the property of our company; and
- approving the transfer of shares in our company, including the registration of such shares in our share register.

#### **Terms of Directors and Officers**

Our officers are elected by and serve at the discretion of the board of directors. Our directors are not subject to a term of office (unless there is any written agreement between our Company and such director) and hold office until such time as they are removed from office by ordinary resolution of the shareholders or by the board pursuant to our eleventh amended and restated memorandum and articles of association. The office of a director shall be vacated if, among other things, the director (i) becomes bankrupt or makes any arrangement or composition with his creditors; or (ii) is found to be or becomes of unsound mind.

#### **D. Employees**

As of December 31, 2018, we had 9,834 full-time employees. The following table sets forth the numbers of our employees categorized by function and region as of December 31, 2018.

	<u>As of December 31, 2018</u>
<b>China:</b>	
User experience (sales and marketing and service)	4,308
Product and software development	2,667
Manufacturing	1,096
General administration	822
<b>Northern California:</b>	
Product and software development	598
General administration	42
<b>Munich:</b>	
Product and software development	165
General administration	33
<b>United Kingdom:</b>	
Product and software development	81
General administration	22
<b>Total number of employees</b>	<u><u>9,834</u></u>

Our employees have set up a labor union in China according to the related Chinese labor law. However, no collective bargaining agreement has been put in place. To date we have not experienced any work stoppages, and we consider our relationship with our employees to be good.

#### **E. Share Ownership**

Except as specifically noted, the following table sets forth information with respect to the beneficial ownership of our ordinary shares as of February 28, 2019 with respect to:

- each of our directors and executive officers; and
- each person known to us to own beneficially more than 5% of our ordinary shares.

The calculations in the table below are based on 1,052,662,271 ordinary shares outstanding as of February 28, 2019, comprising of 772,132,049 Class A ordinary shares, 132,030,222 Class B ordinary shares and 148,500,000 Class C ordinary shares.

Beneficial ownership is determined in accordance with the rules and regulations of the SEC. In computing the number of shares beneficially owned by a person and the percentage ownership of that person, we have included shares that the person has the right to acquire within 60 days, including through the exercise of any option, warrant, or other right or the conversion of any other security. These shares, however, are not included in the computation of the percentage ownership of any other person.

	Class A ordinary shares beneficially owned	Class B ordinary shares beneficially owned	Class C ordinary shares beneficially owned	Total ordinary shares beneficially owned	% of beneficial ownership	% of aggregate voting power†
<b>Directors and Executive Officers**:</b>						
Bin Li <sup>(1)</sup>	3,189,253	—	148,500,000	151,689,253	14.4	48.0
Lihong Qin <sup>(2)</sup>	10,538,699	—	—	10,538,699	1.0	0.4
Louis T. Hsieh <sup>(3)</sup>	*	—	—	*	*	*
Hsien Tsong Cheng	*	—	—	*	*	*
Xin Zhou	*	—	—	*	*	*
Feng Shen	*	—	—	*	*	*
Dongning Wang	*	—	—	*	*	*
Hai Wu <sup>(4)</sup>	—	—	—	—	—	—
Denny Ting Bun Lee	—	—	—	—	—	—
James Gordon Mitchell	—	—	—	—	—	—
All Directors and Executive Officers as a Group	21,215,704	—	148,500,000	169,715,704	16.1	48.6
<b>Principal Shareholders:</b>						
Founder vehicles <sup>(5)</sup>	189,253	—	148,500,000	148,689,253	14.1	47.9
Tencent entities <sup>(6)</sup>	8,404,077	132,030,222	—	140,434,299	13.3	21.6
Baillie Gifford & Co <sup>(7)</sup>	102,215,194	—	—	102,215,194	9.7	4.1
Hillhouse entities <sup>(8)</sup>	65,368,424	—	—	65,368,424	6.2	2.6

\* Less than 1% of our total outstanding shares.

\*\* Except where otherwise disclosed in the footnotes below, the business address of all the directors and executive officers is Building 16, 20 and 22, No. 56 AnTuo Road, Anting Town, Jiading District, Shanghai 201804, People's Republic of China.

† For each person and group included in this column, percentage of voting power is calculated by dividing the voting power beneficially owned by such person or group by the voting power of all of our Class A, Class B and Class C ordinary shares as a single class. Each holder of our Class A ordinary shares is entitled to one vote per share, each holder of our Class B ordinary shares is entitled to four votes per share and each holder of our Class C ordinary shares is entitled to eight votes per share on all matters submitted to them for a vote. Our Class A ordinary shares, Class B ordinary shares and Class C ordinary shares vote together as a single class on all matters submitted to a vote of our shareholders, except as may otherwise be required by law.

- (1) Represents (i) 3,000,000 Class A ordinary shares issuable to Mr. Bin Li upon exercise of options within 60 days of the date of this annual report, (ii) 72,234,928 Class C ordinary shares held by Originalwish Limited, a British Virgin Islands company wholly owned by Mr. Bin Li, (iii) 26,454,325 Class C ordinary shares held by mobike Global Ltd., a British Virgin Islands company wholly owned by Mr. Bin Li, (iv) 189,253 Class A ordinary shares and 49,810,747 Class C ordinary shares held by NIO Users Limited, a holding company controlled by NIO Users Trust, which is under the control of Mr. Bin Li.
- (2) Represents (i) 38,700 Class A ordinary shares issuable to Mr. Lihong Qin upon exercise of options within 60 days of the date of this annual report and (ii) 10,499,999 Class A ordinary shares held by DX Mix Limited, a holding company controlled by DX One Trust, which is under the control of Mr. Lihong Qin. The business address of Mr. Lihong Qin is Room 1401, No. 82, 1980 Nong, Luoxiu Road, Minhang District, Shanghai, People's Republic of China.
- (3) The business address of Mr. Louis T. Hsieh is Tower 2, 37-B, 1 Austin Road West, Kowloon, Hong Kong.
- (4) The business address of Mr. Hai Wu is Unit 06, 55F, Fortune Financial Center, No. 5 Dong San Huan Zhong Road, Chaoyang District, Beijing, People's Republic of China.

- (5) Represents (i) 72,234,928 Class C ordinary shares held by Originalwish Limited, (ii) 26,454,325 Class C ordinary shares held by mobike Global Ltd., and (iii) 189,253 Class A ordinary shares and 49,810,747 Class C ordinary shares held by NIO Users Limited, which are collectively referred to in offering memorandum as Founder Vehicles. Each of Originalwish Limited and mobike Global Ltd. is a company incorporated in the British Virgin Islands and beneficially owned by Mr. Bin Li. NIO Users Limited is a holding company controlled by NIO Users Trust, which is under the control of Mr. Bin Li. The registered address of Originalwish Limited and mobike Global Ltd. is Sertus Chambers, P.O. Box 905, Quastisky Building, Road Town, Tortola, British Virgin Islands. The registered address of NIO Users Limited is Maples Corporate Services (BVI) Limited, Kingston Chambers, PO Box 173, Road Town, Tortola, British Virgin Islands.
- (6) Based on the statement on Schedule 13G filed on February 1, 2019 jointly by (i) Mount Putuo Investment Limited, (ii) Image Frame Investment (HK) Limited and (iii) Tencent Holdings Limited, pursuant to which Mount Putuo Investment Limited holds 40,905,125 Class B ordinary shares, Image Frame Investment (HK) Limited holds 87,388,807 Class B ordinary shares, TPP Follow-on I Holding D Limited, an entity controlled by Tencent Holdings Limited, holds 3,736,290 Class B ordinary shares, and Huang River Investment Limited, a wholly-owned subsidiary of Tencent Holdings Limited, holds 5,250,000 ADSs representing 5,250,000 Class A ordinary shares, and 3,154,077 ADSs representing 3,154,077 Class A ordinary shares, issuable upon the full conversion of the US\$30 million 2024 Notes held by Huang River Investment Limited based on a conversion rate of 105.1359 ADSs per US\$1,000 principal amount of the 2024 Notes. Mount Putuo Investment Limited, Image Frame Investment (HK) Limited, TPP Follow-on I Holding D Limited and Huang River Investment Limited are collectively referred to in this annual report as the Tencent entities. Mount Putuo Investment Limited is a company incorporated in the British Virgin Islands, Image Frame Investment (HK) Limited is a company incorporated in Hong Kong, and TPP Follow-on I Holding D Limited is a company incorporated in the Cayman Islands. The sole member of Image Frame Investment (HK) Limited is Tencent Holdings Limited, a company listed on the Main Board of The Stock Exchange of Hong Kong Limited. The registered address of Mount Putuo Investment Limited is P.O. Box 957, Offshore Incorporations Centre, Road Town, Tortola, British Virgin Islands. The registered address of Image Frame Investment (HK) Limited is 29/F, Three Pacific Place, No. 1 Queen's Road East, Wanchai, Hong Kong. The registered address of TPP Follow-on I Holding D Limited is PO Box 309, Uglund House, Grand Cayman, KY1-1104, Cayman Islands.
- (7) Based on information provided by Baillie Gifford & Co., Baillie Gifford & Co. and/or one or more of its investment adviser subsidiaries own 5,137,398 Class A ordinary shares and 97,077,796 ADSs representing 97,077,796 Class A ordinary shares. The registered address of Baillie Gifford & Co. is Calton Square, 1 Greenside Row, Edinburgh EH1 3AN, Scotland, UK.
- (8) Based on the information provided by Hillhouse Capital Management, Ltd., the 65,368,424 Class A ordinary shares are held by Hillhouse NEV Holdings Limited, HH RSV-X Holdings Limited and HH DYU Holdings Limited (collectively, the "Hillhouse entities"). Hillhouse NEV Holdings Limited is wholly owned by Hillhouse Fund II, L.P. Hillhouse Capital Management, Ltd. acts as the sole management company of Hillhouse Fund II, L.P.

To our knowledge, as of the date of this annual report, 600,000 of our Class A ordinary shares were held by one record holder in the United States, which was Deutsche Bank Trust Company Americas, the depository of our ADS program. The number of beneficial owners of our ADSs in the United States is likely to be much larger than the number of record holders of our ordinary shares in the United States. We are not aware of any arrangement that may, at a subsequent date, result in a change of control of our company.

Our ordinary shares are divided into Class A ordinary shares, Class B ordinary shares and Class C ordinary shares. Holders of Class A ordinary shares are entitled to one vote per share, holders of Class B ordinary shares are entitled to four votes per share, and holders of Class C ordinary shares are entitled to eight votes per share. We issued Class A ordinary shares represented by our ADSs in our initial public offering in September 2018. Holders of our Class B ordinary shares and Class C ordinary shares may choose to convert their respective Class B ordinary shares and Class C ordinary shares into the same number of Class A ordinary shares at any time. Class A ordinary shares are not convertible into Class B ordinary shares or Class C ordinary shares under any circumstance. See "Item 10. Additional Information—B. Memorandum and Articles of Association" for a more detailed description of our Class A ordinary shares and Class B ordinary shares.

## **ITEM 7. MAJOR SHAREHOLDERS AND RELATED PARTY TRANSACTIONS**

### **A. Major Shareholders**

See "Item 6. Directors, Senior Management and Employees—E. Share Ownership."

### **B. Related Party Transactions**

#### **Contractual Arrangements with Our VIEs and Their Respective Shareholders**

See "Item 4. Information on the Company—C. Organizational Structure."

## Shareholders Agreement and Registration Rights

We entered into a shareholders agreement and a right of first refusal and co-sale agreement on November 10, 2017 with our shareholders, which consist of holders of ordinary shares and preferred shares.

The shareholders agreement and right of first refusal and co-sale agreement (i) provide for certain special rights, including right of first refusal, co-sale rights and preemptive rights and (ii) contain provisions governing board of directors and other corporate governance matters. Those special rights, as well as the corporate governance provisions, automatically terminated upon the closing of the initial public offering of our ADSs on September 12, 2018.

Pursuant to our shareholders agreement dated November 10, 2017, we have granted certain registration rights to our shareholders. Set forth below is a description of the registration rights granted under the agreement.

*Demand Registration Rights.* Holders holding 10% or more of the voting power of the then outstanding registrable securities held by all holders are entitled to request in writing that we effect a registration statement for any or all of the registrable securities of the initiating holders. We have the right to defer filing of a registration statement for a period of not more than 90 days if our board of directors determines in good faith judgment that filing of a registration statement in the near future will be materially detrimental to us or our shareholders, but we cannot exercise the deferral right on any one occasion or more than once during any twelve-month period and cannot register any other securities during such period. We are not obligated to effect more than two demand registrations. Further, if the registrable securities are offered by means of an underwritten offering, and the managing underwriter advises us that marketing factors require a limitation of the number of securities to be underwritten, the underwriters may decide to exclude up to 75% of the registrable securities requested to be registered but only after first excluding all other equity securities from the registration and underwritten offering, provided that the number of shares to be included in the registration on behalf of the non-excluded holders is allocated among all holders in proportion to the respective amounts of registrable securities requested by such holders to be included.

*Registration on Form F-3 or Form S-3.* Any holder is entitled to request us to file a registration statement on Form F-3 or Form S-3 if we qualify for registration on Form F-3 or Form S-3. The holders are entitled to an unlimited number of registrations on Form F-3 or Form S-3 so long as such registration offerings are in excess of US\$5,000,000. We have the right to defer filing of a registration statement for a period of not more than 60 days if our board of directors determines in good faith judgment that filing of a registration statement in the near future will be materially detrimental to us or our shareholders, but we cannot exercise the deferral right on any one occasion or more than once during any twelve-month period and cannot register any other securities during such period.

*Piggyback Registration Rights.* If we propose to register for our own account any of our equity securities, or for the account of any holder, other than current shareholders, of such equity securities, in connection with the public offering, we shall offer holders of our registrable securities an opportunity to be included in such registration. If the underwriters advise in writing that market factors require a limitation of the number of registrable securities to be underwritten, the underwriters may exclude up to 75% of the registrable securities requested to be registered but only after first excluding all other equity securities (except for securities sold for the account of our company) from the registration and underwriting, provided that the number of shares to be included in the registration on behalf of the non-excluded holders is allocated among all holders in proportion to the respective amounts of registrable securities requested by such holders to be included.

*Expenses of Registration.* We will bear all registration expenses, other than the underwriting discounts and selling commissions applicable to the sale of registrable securities, incurred in connection with registrations, filings or qualification pursuant to the shareholders agreement.

*Termination of Obligations.* We have no obligation to effect any demand, piggyback, Form F-3 or Form S-3 registration upon the earlier of (i) the tenth anniversary from the date of closing of a Qualified IPO as defined in the shareholders agreement, and (ii) with respect to any holder, the date on which such holder may sell without registration, all of such holder's registrable securities under Rule 144 of the Securities Act in any 90-day period.

## Employment Agreements and Indemnification Agreements

See "Item 6. Directors, Senior Management and Employees—B. Compensation of Directors and Executive Officers—Employment Agreements and Indemnification Agreements."

## Share Option Grants

See "Item 6. Directors, Senior Management and Employees—B. Compensation of Directors and Executive Officers—Stock Incentive Plans."

## **Other Transactions with Related Parties**

In 2018, we granted two interest free loans to NIO Capital, an entity affiliated with our founder Bin Li, with the principal amount of US\$5.0 million each. The loans mature in six months. One of the loans can be converted into ordinary shares of a subsidiary of NIO Capital upon maturity at our option. The other loan was fully repaid before the initial public offering of our ADSs.

In 2017 and 2018, we received marketing and advertising services from Beijing Xinyi Hudong Guanggao Co., Ltd., Bite Shijie (Beijing) Keji Co., Ltd., or Bite, Beijing Chehui Hudong Guanggao Co., Ltd., and Beijing Bitauto Information Technology Co., Ltd. In 2017 and 2018, we incurred expenses of marketing and advertising services RMB15.6 million and RMB38.1 million, respectively. Beijing Chehui Hudong Guanggao Co., Ltd., Beijing Xinyi Hudong Guanggao Co., Ltd., Bite, and Beijing Bitauto Information Technology Co., Ltd are controlled by our principal shareholders.

In 2017 and 2018, we provided property management, administrative support, design and research and development services to companies controlled by our principal shareholders, including Hubei Changjiang Nextev New Energy Investment Management Co., Ltd., Beijing CHJ Information Technology Co., Ltd., Hubei Changjiang Nextev New Energy Industry Development Capital Partnership (Limited Partnership), Jiangsu Xindian Automotive Co., Ltd., Shanghai NIO Hongling Investment Management Co., Ltd., and Shanghai Weishang Business Consulting Co., Ltd. In 2017 and 2018, we received total service income of RMB21.5 million and RMB3.6 million, respectively.

In 2017 and 2018, we paid a total of RMB18.3 million and RMB132.2 million, respectively, for the cost of manufacturing consignment to Suzhou Zenlead XPT New Energy Technologies Co., Ltd., or Suzhou Zenlead. Suzhou Zenlead is an affiliate of ours.

In 2017, we paid a total of RMB3.0 million to Bite for the purchase of property and equipment. In 2018, we paid a total of RMB11.1 million to Kunshan Siwopu Intelligent Equipment Co., Ltd, or Kushan Siwopu, an affiliate of ours, for purchase of property and equipment.

In 2017, we granted interest-free loans to Ningbo Meishan Bonded Port Area Weilan Investment Co., Ltd., a company controlled by our principal shareholders. As of December 31, 2018, the loans remained outstanding.

In 2018, we paid a total of RMB8.1 million on behalf of Baidu Capital L.P., a shareholder of our company, to a third party.

In 2018, we made a payment of RMB2.8 million to a supplier on behalf of Weibang Transmission Technology Co., Ltd., one of our affiliates. As of December 31, 2018, the amount receivable remained outstanding.

In 2018, we received research and development and maintenance services from Kunshan Siwopu and Suzhou Zenlead, and paid a total of RMB17.2 million.

In 2016, we granted an interest-free, unsecured and payable on demand loan in the total amount of RMB1.7 million to Bin Li, our founder and chief executive officer. As of the date of this annual report, the loan has been fully repaid.

### **C. Interests of Experts and Counsel**

Not applicable.

## **ITEM 8. FINANCIAL INFORMATION**

### **A. Consolidated Statements and Other Financial Information**

We have appended consolidated financial statements filed as part of this annual report.

## Legal Proceedings

From time to time, we may be involved in legal proceedings in the ordinary course of our business. On March 12, 2019, two putative securities class action lawsuits were filed against us and certain of our officers in the U.S. District Court for the Eastern District of New York: *Tan v. NIO Inc. et al.*, Case No. 1:19-cv-01424, and in the U.S. District Court for the Northern District of California: *Sidoli v. NIO Inc. et al.*, Case No. 5:19-cv-1320. On March 14, 2019, a putative securities class action was filed against us, certain of our directors and officers, and underwriters in the Supreme Court of the State of New York, County of Kings: *Sumit Agarwal v. NIO Inc. et al.*, Index No. 505647/2019. On March 29, 2019, another putative securities class action was filed against us and certain of our officers in the U.S. District Court for the Northern District of California: *Jeon v. NIO Inc. et al.*, Case NO. 5:19-cv-01644. The plaintiffs in these cases allege, in sum and substance, that our statements in the Registration Statement and/or other public statements were false or misleading and in violation of the U.S. federal securities laws. These actions remain in their preliminary stages. We are currently unable to estimate the potential loss, if any, associated with the resolution of such lawsuits, if they proceed. Additional complaints related to these claims may be filed in the coming months. These actions remain in their preliminary stages. We believe these cases are without merit and intend to defend the actions vigorously. For risks and uncertainties relating to the pending cases against us, please see “Item 3. Key Information—D. Risk Factors—Risks Related to Our Business—We and certain of our directors and officers have been named as defendants in several shareholder class action lawsuits, which could have a material adverse impact on our business, financial condition, results of operation, cash flows and reputation.”

## Dividend Policy

The payment of dividends is at the discretion of our board of directors, subject to our eleventh amended and restated memorandum and articles of association. In addition, our shareholders may by ordinary resolution declare a dividend, but no dividend may exceed the amount recommended by our board of directors. In either case, all dividends are subject to certain restrictions under Cayman Islands law, namely that our company may only pay dividends out of profits or the share premium account, and provided that in no circumstances may a dividend be paid if this would result in our company being unable to pay its debts as they fall due in the ordinary course of business. Even if we decide to pay dividends, the form, frequency and amount will depend upon our future operations and earnings, capital requirements and surplus, general financial condition, contractual restrictions and other factors that the board of directors may deem relevant.

We do not have any present plan to pay any cash dividends on our ordinary shares in the foreseeable future. We currently intend to retain most, if not all, of our available funds and any future earnings to operate and expand our business.

We are a holding company incorporated in the Cayman Islands. We may rely on dividends paid by our subsidiaries in China for our cash requirements, including any payment of dividends to our shareholders. PRC regulations may restrict the ability of our PRC subsidiaries to pay dividends to us. See “Item 3. Key Information—D. Risk Factors—Risks Related to Doing Business in China—We may rely on dividends and other distributions on equity paid by our PRC subsidiaries to fund any cash and financing requirements we may have, and any limitation on the ability of our PRC subsidiaries to make payments to us could have a material and adverse effect on our ability to conduct our business.”

If we pay any dividends on our ordinary shares, we will pay those dividends which are payable in respect of the ordinary shares underlying our ADSs to the depositary, as the registered holder of such ordinary shares, and the depositary then will pay such amounts to our ADS holders in proportion to the ordinary shares underlying the ADSs held by such ADS holders, subject to the terms of the deposit agreements, including the fees and expenses payable thereunder. Cash dividends on our ordinary shares, if any, will be paid in U.S. dollars.

## B. Significant Changes

Except as disclosed elsewhere in this annual report, we have not experienced any significant changes since the date of our audited consolidated financial statements included in this annual report.

**ITEM 9. THE OFFER AND LISTING**

**A. Offering and Listing Details**

Our ADSs, each representing one Class A ordinary share, have been listed on the NYSE since September 12, 2018 under the symbol “NIO.”

**B. Plan of Distribution**

Not applicable.

**C. Markets**

Our ADSs, each representing one Class A ordinary share, have been listed on the NYSE since September 12, 2018 under the symbol “NIO.”

**D. Selling Shareholders**

Not applicable.

**E. Dilution**

Not applicable.

**F. Expenses of the Issue**

Not applicable.

**ITEM 10. ADDITIONAL INFORMATION**

**A. Share Capital**

Not applicable.

**B. Memorandum and Articles of Association**

We are an exempted company incorporated under the laws of the Cayman Islands and our affairs are governed by our current eleventh amended and restated memorandum and articles of association, the Companies Law (2018 Revision) of the Cayman Islands, which we refer to as the Companies Law below, and the common law of the Cayman Islands.

The following are summaries of material provisions of our eleventh amended and restated memorandum and articles of association which became effective upon the completion of the initial public offering of our ADSs in September 2018, insofar as they relate to the material terms of our ordinary shares.

***Objects of Our Company***

Under our eleventh amended and restated memorandum and articles of association, the objects of our company are unrestricted and we have the full power and authority to carry out any object not prohibited by the law of the Cayman Islands.

### ***Ordinary Shares***

Our authorized share capital is US\$1,000,000 divided into 4,000,000,000 shares comprising of (i) 2,500,000,000 Class A ordinary shares of a par value of US\$0.00025 each, (ii) 132,030,222 Class B ordinary shares of a par value of US\$0.00025 each (iii) 148,500,000 Class C ordinary shares of a par value of US\$0.00025 each and (iv) 1,219,469,778 shares of a par value of US\$0.00025 each of such class or classes (however designated) as our board of directors may determine in accordance with our eleventh amended and restated memorandum and articles of association. All of our issued and outstanding ordinary shares are fully paid and non-assessable. Our ordinary shares are issued in registered form, and are issued when registered in our register of members. Our shareholders who are non-residents of the Cayman Islands may freely hold and vote their ordinary shares. Under our eleventh amended and restated memorandum and articles of association, our company may not issue bearer shares.

#### *Class of ordinary shares*

Holders of Class A ordinary shares, Class B ordinary shares and Class C ordinary shares shall at all times vote together as one class on all resolutions submitted to a vote by the holders of ordinary shares. Each Class A ordinary share shall entitle the holder thereof to one (1) vote on all matters subject to vote at general meetings of our company, each Class B ordinary share shall entitle the holder thereof to four (4) votes on all matters subject to vote at general meetings of our company, and each Class C ordinary share shall entitle the holder thereof to eight (8) votes on all matters subject to vote at general meetings of our company.

#### *Conversion*

Each Class B ordinary share is convertible into one (1) Class A ordinary share at any time at the option of the holder thereof. Each Class C ordinary share is convertible into one (1) Class A ordinary share at any time at the option of the holder thereof. In no event shall Class A ordinary shares be convertible into Class B ordinary shares or Class C ordinary shares. Upon any sale, transfer, assignment or disposition of any Class B ordinary share or Class C ordinary share by a shareholder to any person who is not an affiliate of such shareholder, or upon a change of ultimate beneficial ownership of any Class B ordinary share or Class C ordinary share to any person who is not an affiliate of the registered shareholder of such share, each such Class B ordinary share and Class C ordinary share, as applicable, shall be automatically and immediately converted into one (1) Class A ordinary share.

### ***Dividends***

The holders of our ordinary shares are entitled to such dividends as may be declared by our board of directors, subject to our eleventh amended and restated memorandum articles of association. In addition, our shareholders may by ordinary resolution declare a dividend, but no dividend may exceed the amount recommended by our directors. In either case, under the laws of the Cayman Islands, our company may pay a dividend out of either profits or share premium account, provided that in no circumstances may a dividend be paid if this would result in our company being unable to pay its debts as they fall due in the ordinary course of business.

### ***Voting Rights***

Voting at any shareholders' meeting is by show of hands unless a poll is demanded. Each Class A ordinary share shall entitle the holder thereof to one (1) vote on all matters subject to vote at general meetings of our company, each Class B ordinary share shall entitle the holder thereof to four (4) votes on all matters subject to vote at general meetings of our company, and each Class C ordinary share shall entitle the holder thereof to eight (8) votes on all matters subject to vote at general meetings of our company. A poll may be demanded by the chairman of such meeting or any one or more shareholders present in person or by proxy at the meeting.

An ordinary resolution to be passed at a meeting by the shareholders requires the affirmative vote of a simple majority of the votes attaching to the ordinary shares cast at a meeting, while a special resolution requires the affirmative vote of no less than two-thirds of the votes cast attaching to the outstanding ordinary shares at a meeting. A special resolution will be required for important matters such as a change of name or making changes to our eleventh amended and restated memorandum and articles of association. Holders of our ordinary shares may effect certain changes by ordinary resolution, including increasing the amount of our authorized share capital, consolidating all or any of our share capital into shares of larger amount than our existing shares, sub-dividing our shares or any of them into shares of an amount smaller than that fixed by our eleventh amended and restated memorandum and articles of association, and cancelling any unissued shares. Both ordinary resolution and special resolution may also be passed by a unanimous written resolution signed by all the shareholders of our company, as permitted by the Companies Law and our eleventh amended and restated memorandum and articles of association.



### ***Appointment and Removal of Directors***

Our board of directors may, by the affirmative vote of a simple majority of the directors present and voting at a board meeting, appoint any person as a director, to fill a casual vacancy on the board or as an addition to the existing board. Directors may be removed by ordinary resolution of our shareholders.

### ***General Meetings of Shareholders***

As a Cayman Islands exempted company, we are not obliged by the Companies Law to call shareholders' annual general meetings. Our eleventh amended and restated memorandum and articles of association provide that we may (but are not obliged to) in each year hold a general meeting as our annual general meeting in which case we shall specify the meeting as such in the notices calling it, and the annual general meeting shall be held at such time and place as may be determined by our directors.

Shareholders' general meetings may be convened by the chairman of board of directors or a majority of our board of directors. Advance notice of at least ten calendar days is required for the convening of our annual general shareholders' meeting (if any) and any other general meeting of our shareholders. A quorum required for any general meeting of shareholders consists of at least one shareholder present or by proxy, representing not less than one-third of all votes attaching to all of our shares in issue and entitled to vote.

The Companies Law provides shareholders with only limited rights to requisition a general meeting, and does not provide shareholders with any right to put any proposal before a general meeting. However, these rights may be provided in a company's articles of association. Our eleventh amended and restated memorandum and articles of association provide that upon the requisition of shareholders representing in aggregate not less than one-third of the votes attaching to the outstanding shares of our company entitled to vote at general meetings, our board will convene an extraordinary general meeting and put the resolutions so requisitioned to a vote at such meeting. However, our eleventh amended and restated memorandum and articles of association do not provide our shareholders with any right to put any proposals before annual general meetings or extraordinary general meetings not called by such shareholders.

### ***Transfer of Ordinary Shares***

Subject to the restrictions in our eleventh amended and restated memorandum and articles of association set out below, any of our shareholders may transfer all or any of his or her ordinary shares by an instrument of transfer in the usual or common form or any other form approved by our board of directors.

Our board of directors may, in its absolute discretion, decline to register any transfer of any ordinary share which is not fully paid up or on which we have a lien. Our board of directors may also decline to register any transfer of any ordinary share unless:

- the instrument of transfer is lodged with us, accompanied by the certificate for the ordinary shares to which it relates and such other evidence as our board of directors may reasonably require to show the right of the transferor to make the transfer;
- the instrument of transfer is in respect of only one class of ordinary shares;
- the instrument of transfer is properly stamped, if required;
- in the case of a transfer to joint holders, the number of joint holders to whom the ordinary share is to be transferred does not exceed four; and
- a fee of such maximum sum as the New York Stock Exchange may determine to be payable or such lesser sum as our directors may from time to time require is paid to us in respect thereof.

If our directors refuse to register a transfer they shall, within three months after the date on which the instrument of transfer was lodged, send to each of the transferor and the transferee notice of such refusal.

The registration of transfers may, after compliance with any notice required of the New York Stock Exchange, be suspended and the register closed at such times and for such periods as our board of directors may from time to time determine, *provided, however*, that the registration of transfers shall not be suspended nor the register closed for more than 30 days in any year as our board of directors may determine.

#### ***Liquidation***

On the winding-up of our company, if the assets available for distribution among our shareholders shall be more than sufficient to repay the whole of the share capital at the commencement of the winding-up, the surplus shall be distributed amongst our shareholders in proportion to the par value of the shares held by them at the commencement of the winding-up, subject to a deduction from those shares in respect of which there are monies due, of all monies payable to our company for unpaid calls or otherwise. If our assets available for distribution are insufficient to repay all of the paid-up capital, the assets will be distributed so that the losses are borne by our shareholders in proportion to the par value of the shares held by them.

#### ***Calls on Shares and Forfeiture of Shares***

Our board of directors may from time to time make calls upon shareholders for any amounts unpaid on their shares in a notice served to such shareholders at least 14 days prior to the specified time and place of payment. The shares that have been called upon and remain unpaid are subject to forfeiture.

#### ***Redemption, Repurchase and Surrender of Shares***

We may issue shares on terms that such shares are subject to redemption, at our option or at the option of the holders of these shares, on such terms and in such manner as may be determined by our board of directors or by special resolution of our shareholders. Our company may also repurchase any of our shares on such terms and in such manner as have been approved by our board of directors or by an ordinary resolution of our shareholders. Under the Companies Law, the redemption or repurchase of any share may be paid out of our company's profits or out of the proceeds of a new issue of shares made for the purpose of such redemption or repurchase, or out of capital (including share premium account and capital redemption reserve) if our company can, immediately following such payment, pay its debts as they fall due in the ordinary course of business. In addition, under the Companies Law no such share may be redeemed or repurchased (a) unless it is fully paid up, (b) if such redemption or repurchase would result in there being no shares outstanding or (c) if the company has commenced liquidation. In addition, our company may accept the surrender of any fully paid share for no consideration.

#### ***Variations of Rights of Shares***

If at any time, our share capital is divided into different classes of shares, the rights attached to any class of shares (unless otherwise provided by the terms of issue of the shares of that class), whether or not our company is being wound-up, may be varied with the consent in writing of holders of not less than two-thirds of the issued shares of that class or with the sanction of a special resolution passed at a separate meeting of the holders of the shares of that class. The rights conferred upon the holders of the shares of any class issued shall not, subject to any rights or restrictions for the time being attached to the shares of that class, be deemed to be materially adversely varied by, inter alia, the creation, allotment or issue of further shares ranking *pari passu* with such existing class of shares.

#### ***Issuance of Additional Shares***

Our eleventh amended and restated memorandum of association authorizes our board of directors to issue additional ordinary shares from time to time as our board of directors shall determine, to the extent of available authorized but unissued shares.

Our eleventh amended and restated memorandum of association also authorizes our board of directors to establish from time to time one or more series of preference shares and to determine, with respect to any series of preference shares, the terms and rights of that series, including:

- the designation of the series;
- the number of shares of the series;
- the dividend rights, dividend rates, conversion rights and voting rights; and
- the rights and terms of redemption and liquidation preferences.

Our board of directors may issue preference shares without action by our shareholders to the extent authorized but unissued. Issuance of these shares may dilute the voting power of holders of ordinary shares.

#### ***Inspection of Books and Records***

Holders of our ordinary shares will have no general right under Cayman Islands law to inspect or obtain copies of our list of shareholders or our corporate records. However, we will provide our shareholders with annual audited financial statements. See “Item 10 Additional Information— H. Documents on Display.”

#### ***Changes in Capital***

Our shareholders may from time to time by ordinary resolution:

- increase our share capital by such sum, to be divided into shares of such classes and amount, as the resolution shall prescribe;
- consolidate and divide all or any of our share capital into shares of a larger amount than our existing shares;
- sub-divide our existing shares, or any of them into shares of a smaller amount, provided that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in case of the share from which the reduced share is derived; or
- cancel any shares that, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person and diminish the amount of our share capital by the amount of the shares so cancelled.

Our shareholders may, by special resolution and subject to confirmation by the Grand Court of the Cayman Islands on an application by our company for an order confirming such reduction, reduce our share capital and any capital redemption reserve in any manner authorized by law.

#### ***Anti-Takeover Provisions***

Some provisions of our eleventh amended and restated memorandum and articles of association may discourage, delay or prevent a change of control of our company or management that shareholders may consider favorable, including provisions that:

- authorize our board of directors to issue preference shares in one or more series and to designate the price, rights, preferences, privileges and restrictions of such preference shares without any further vote or action by our shareholders; and
- limit the ability of shareholders to requisition and convene general meetings of shareholders.

However, under Cayman Islands law, our directors may only exercise the rights and powers granted to them under our eleventh amended and restated memorandum and articles of association for a proper purpose and for what they believe in good faith to be in the best interests of our company.

### ***Exempted Company***

We are an exempted company with limited liability under the Companies Law. The Companies Law distinguishes between ordinary resident companies, ordinary non-resident companies and exempted companies. Any company that is registered in the Cayman Islands but conducts business mainly outside of the Cayman Islands may apply to be registered as an exempted company. The requirements for an exempted company are essentially the same as for an ordinary resident/non-resident company except that an exempted company:

- does not have to file an annual return detailing its shareholders with the Registrar of Companies of the Cayman Islands;
- is not required to open its register of members for inspection;
- does not have to hold an annual general meeting;
- may issue negotiable or bearer shares or shares with no par value;
- may obtain an undertaking against the imposition of any future taxation (such undertakings are usually given for 20 years in the first instance);
- may register by way of continuation in another jurisdiction and be deregistered in the Cayman Islands;
- may register as a limited duration company; and
- may register as a segregated portfolio company.

“Limited liability” means that the liability of each shareholder is limited to the amount unpaid by the shareholder on the shares of the company (except in exceptional circumstances, such as involving fraud, the establishment of an agency relationship or an illegal or improper purpose or other circumstances in which a court may be prepared to pierce or lift the corporate veil).

### **C. Material Contracts**

We have not entered into any material contracts other than in the ordinary course of business and other than those described in “Item 4. Information on the Company,” “Item 7. Major Shareholders and Related Party Transactions—B. Related Party Transactions” or elsewhere in this annual report.

### **D. Exchange Controls**

See “Item 4. Information on the Company—B. Business Overview—Regulation—Regulations on Foreign Exchange.”

### **E. Taxation**

The following discussion of Cayman Islands, PRC and United States federal income tax consequences of an investment in our ADSs or ordinary shares is based upon laws and relevant interpretations thereof in effect as of the date of this annual report, all of which are subject to change or differing interpretation, possibly with retroactive effect. This summary does not deal with all possible tax consequences relating to an investment in our ADSs or ordinary shares, such as the tax consequences under U.S. state and local tax laws or under the tax laws of jurisdictions other than the Cayman Islands, the People’s Republic of China and the United States.

## **Cayman Islands Taxation**

The Cayman Islands currently have no form of income, corporate or capital gains tax and no estate duty, inheritance tax or gift tax. There are no other taxes likely to be material to us levied by the government of the Cayman Islands except for stamp duties which may be applicable on instruments executed in, or, after execution, brought within the jurisdiction of the Cayman Islands. The Cayman Islands are not party to any double tax treaties that are applicable to any payments made to or by our company. There are no exchange control regulations under Cayman Islands law.

Payments of dividends and capital in respect of our Class A ordinary shares and ADSs will not be subject to taxation in the Cayman Islands and no withholding will be required on the payment of a dividend or capital to any holder of our Class A ordinary shares or ADSs, nor will gains derived from the disposal of our Class A ordinary shares or ADSs be subject to Cayman Islands income or corporation tax.

## **People's Republic of China Taxation**

Under the PRC Enterprise Income Tax Law and its implementation rules, an enterprise established outside of the PRC with a “de facto management body” within the PRC is considered a resident enterprise and will be subject to the enterprise income tax at the rate of 25% on its global income. The implementation rules define the term “de facto management body” as the body that exercises full and substantial control over and overall management of the business, productions, personnel, accounts and properties of an enterprise. In April 2009, the State Administration of Taxation issued a circular, known as Circular 82, which provides certain specific criteria for determining whether the “de facto management body” of a PRC-controlled enterprise that is incorporated offshore is located in China. Although this circular only applies to offshore enterprises controlled by PRC enterprises or PRC enterprise groups, not those controlled by PRC individuals or foreigners, the criteria set forth in the circular may reflect the State Administration of Taxation’s general position on how the “de facto management body” test should be applied in determining the tax resident status of all offshore enterprises. According to Circular 82, an offshore incorporated enterprise controlled by a PRC enterprise or a PRC enterprise group will be regarded as a PRC tax resident by virtue of having its “de facto management body” in China only if all of the following conditions are met: (i) the primary location of the day-to-day operational management is in the PRC; (ii) decisions relating to the enterprise’s financial and human resource matters are made or are subject to approval by organizations or personnel in the PRC; (iii) the enterprise’s primary assets, accounting books and records, company seals, and board and shareholder resolutions, are located or maintained in the PRC; and (iv) at least 50% of voting board members or senior executives habitually reside in the PRC. Further to Circular 82, the State Administration of Taxation issued the SAT Bulletin 45, which took effect in September 2011, to provide more guidance on the implementation of Circular 82. SAT Bulletin 45 provides for procedures and administration details of determination on resident status and administration on post-determination matters.

We believe that NIO Inc. is not a PRC resident enterprise for PRC tax purposes. NIO Inc. is not controlled by a PRC enterprise or PRC enterprise group and we do not believe that NIO Inc. meets all of the conditions above. NIO Inc. is a company incorporated outside the PRC. As a holding company, its key assets are its ownership interests in its subsidiaries, and its key assets are located, and its records (including the resolutions of its board of directors and the resolutions of its shareholders) are maintained, outside the PRC. For the same reasons, we believe our other entities outside of China are not PRC resident enterprises either. However, the tax resident status of an enterprise is subject to determination by the PRC tax authorities and uncertainties remain with respect to the interpretation of the term “de facto management body.” There can be no assurance that the PRC government will ultimately take a view that is consistent with us.

If the PRC tax authorities determine that NIO Inc. is a PRC resident enterprise for enterprise income tax purposes, we may be required to withhold a 10% withholding tax from dividends we pay to our shareholders that are non-resident enterprises, including the holders of our ADSs. In addition, non-resident enterprise shareholders (including our ADS holders) may be subject to a 10% PRC tax on gains realized on the sale or other disposition of ADSs or Class A ordinary shares, if such income is treated as sourced from within the PRC. It is unclear whether our non-PRC individual shareholders (including our ADS holders) would be subject to any PRC tax on dividends or gains obtained by such non-PRC individual shareholders in the event we are determined to be a PRC resident enterprise. If any PRC tax were to apply to such dividends or gains, it would generally apply at a rate of 20% unless a reduced rate is available under an applicable tax treaty. It is also unclear whether non-PRC shareholders of NIO Inc. would be able to claim the benefits of any tax treaties between their country of tax residence and the PRC in the event that NIO Inc. is treated as a PRC resident enterprise. Pursuant to the EIT Law and its implementation rules, if a non-resident enterprise has not set up an organization or establishment in China, or has set up an organization or establishment but the income derived has no actual connection with such organization or establishment, it will be subject to a withholding tax on its PRC-sourced income at a rate of 10%. Pursuant to the *Arrangement between Mainland China and the Hong Kong Special Administrative Region for the Avoidance of Double Taxation and Tax Evasion on Income*, the tax rate in respect to dividends paid by a PRC enterprise to a Hong Kong enterprise is reduced to 5% from a standard rate of 10% if the Hong Kong enterprise directly holds at least 25% of the PRC enterprise. Pursuant to SAT Circular 81, a Hong Kong resident enterprise must meet the following conditions, among others, in order to enjoy the reduced tax rate: (i) it must directly own the required percentage of equity interests and voting rights in the PRC resident enterprise; and (ii) it must have directly owned such percentage in the PRC resident enterprise throughout the 12 months prior to receiving the dividends. Furthermore, the Administrative Measures for Non-Resident Enterprises to Enjoy Treatments under Tax Treaties, which became effective in November 2015, require that non-resident enterprises must obtain approval from the relevant tax authority in order to enjoy the reduced tax rate. There are also other conditions for enjoying the reduced tax rate according to other relevant tax rules and regulations. Accordingly, our subsidiaries may be able to enjoy the 5% tax rate for the dividends it receives from its PRC incorporated subsidiaries if they satisfy the conditions prescribed under SAT Circular 81 and other relevant tax rules and regulations and obtain the approvals as required. However, according to SAT Circular 81, if the relevant tax authorities determine our transactions or arrangements are for the primary purpose of enjoying a favorable tax treatment, the relevant tax authorities may adjust the favorable tax rate on dividends in the future.

Provided that our Cayman Islands holding company, NIO Inc., is not deemed to be a PRC resident enterprise, holders of our ADSs and Class A ordinary shares who are not PRC residents will not be subject to PRC income tax on dividends distributed by us or gains realized from the sale or other disposition of our shares or ADSs. Circular 7 further clarifies that, if a non-resident enterprise derives income by acquiring and selling shares in an offshore listed enterprise in the public market, such income will not be subject to PRC tax. However, there is uncertainty as to the application of Circular 7, we and our non-PRC resident investors may be at risk of being required to file a return and being taxed under Circular 7 and we may be required to expend valuable resources to comply with Circular 7 or to establish that we should not be taxed under Circular 7. See “Item 3. Key Information—D. Risk Factors—Risks Related to Doing Business in China—We face uncertainty with respect to indirect transfers of equity interests in PRC resident enterprises by their non-PRC holding companies.”

#### **United States Federal Income Taxation**

The following discussion is a summary of U.S. federal income tax considerations generally applicable to the ownership and disposition of our ADSs or Class A ordinary shares by a U.S. Holder (as defined below) that acquires our ADSs and holds our ADSs as “capital assets” (generally, property held for investment) under the U.S. Internal Revenue Code of 1986, as amended (the “Code”). This discussion is based upon existing U.S. federal tax law, which is subject to differing interpretations or change, possibly with retroactive effect. No ruling has been sought from the Internal Revenue Service (the “IRS”) with respect to any U.S. federal income tax consequences described below, and there can be no assurance that the IRS or a court will not take a contrary position. This discussion, moreover, does not address the U.S. federal estate, gift, Medicare, alternative minimum tax, and other non-income tax considerations or any state, local and non-U.S. tax considerations, relating to the ownership or disposition of our ADSs or Class A ordinary shares. The following summary does not address all aspects of U.S. federal income taxation that may be important to particular investors in light of their individual circumstances or to persons in special tax situations such as:

- banks and other financial institutions;
- insurance companies;
- pension plans;

- cooperatives;
- regulated investment companies;
- real estate investment trusts;
- broker-dealers;
- traders that elect to use a mark-to-market method of accounting;
- certain former U.S. citizens or long-term residents;
- tax-exempt entities (including private foundations);
- holders who acquire their ADSs or Class A ordinary shares pursuant to any employee share option or otherwise as compensation;
- investors that will hold their ADSs or Class A ordinary shares as part of a straddle, hedge, conversion, constructive sale or other integrated transaction for U.S. federal income tax purposes;
- investors that have a functional currency other than the U.S. dollar;
- investors required to accelerate the recognition of any item of gross income with respect to ADSs or Class A ordinary shares “as a result of such income being recognized on an applicable financial statement”;
- persons that actually or constructively own 10% or more of our stock (by vote or value); or
- partnerships or other entities taxable as partnerships for U.S. federal income tax purposes, or persons holding ADSs or Class A ordinary shares through such entities.

All of the foregoing may be subject to tax rules that differ significantly from those discussed below.

Each U.S. Holder is urged to consult its tax advisor regarding the application of U.S. federal taxation to its particular circumstances, and the state, local, non-U.S. and other tax considerations of the ownership and disposition of our ADSs or Class A ordinary shares.

#### ***General***

For purposes of this discussion, a “U.S. Holder” is a beneficial owner of our ADSs or Class A ordinary shares that is, for U.S. federal income tax purposes:

- an individual who is a citizen or resident of the United States;
- a corporation (or other entity treated as a corporation for U.S. federal income tax purposes) created in, or organized under the law of the United States or any state thereof or the District of Columbia;
- an estate the income of which is includible in gross income for U.S. federal income tax purposes regardless of its source; or
- a trust (A) the administration of which is subject to the primary supervision of a U.S. court and which has one or more U.S. persons who have the authority to control all substantial decisions of the trust or (B) that has otherwise validly elected to be treated as a U.S. person under the Code.

If a partnership (or other entity treated as a partnership for U.S. federal income tax purposes) is a beneficial owner of our ADSs or Class A ordinary shares, the tax treatment of a partner in the partnership will generally depend upon the status of the partner and the activities of the partnership. Partnerships holding our ADSs or Class A ordinary shares and their partners are urged to consult their tax advisors regarding an investment in our ADSs or Class A ordinary shares.

For U.S. federal income tax purposes, a U.S. Holder of ADSs will generally be treated as the beneficial owner of the underlying shares represented by the ADSs. The remainder of this discussion assumes that a U.S. Holder of our ADSs will be treated in this manner. Accordingly, deposits or withdrawals of Class A ordinary shares for ADSs will generally not be subject to U.S. federal income tax.

#### ***Passive Foreign Investment Company Considerations***

A non-U.S. corporation, such as our company, will be classified as a PFIC for U.S. federal income tax purposes for any taxable year, if either (i) 75% or more of its gross income for such year consists of certain types of “passive” income or (ii) 50% or more of the value of its assets (determined on the basis of a quarterly average) during such year is attributable to assets that produce or are held for the production of passive income. For this purpose, cash and assets readily convertible into cash are categorized as passive assets and the company’s goodwill and other unbooked intangibles are taken into account. Passive income generally includes, among other things, dividends, interest, rents, royalties, and gains from the disposition of passive assets. We will be treated as owning a proportionate share of the assets and earning a proportionate share of the income of any other corporation in which we own, directly or indirectly, 25% or more (by value) of the stock.

Although the law in this regard is not entirely clear, we treat our VIEs as being owned by us for U.S. federal income tax purposes because we control their management decisions and are entitled to substantially all of the economic benefits associated with these entities, and as a result, we consolidate their results of operations in our consolidated U.S. GAAP financial statements. If it were determined, however, that we do not own the VIEs for U.S. federal income tax purposes, we may be treated as a PFIC for the current taxable year and any subsequent taxable year.

Assuming that we are the owner of our VIEs for U.S. federal income tax purposes, and based upon our current income and assets, we do not expect to be a PFIC for the current taxable year ended December 31, 2018 or the foreseeable future. While we do not expect to be or to become a PFIC in the current or foreseeable taxable years, no assurance can be given in this regard because the determination of whether we will be or become a PFIC is a factual determination made annually that will depend, in part, upon the composition of our income and assets. Fluctuations in the market price of our ADSs may cause us to be classified as a PFIC for the current or future taxable years because the value of our assets for purposes of the asset test, including the value of our goodwill and other unbooked intangibles, may be determined by reference to the market price of our ADSs from time to time (which may be volatile). Furthermore, the composition of our income and assets may also be affected by how, and how quickly, we use our liquid assets. Under circumstances where our passive income significantly increases relative to our non-passive income, or where we determine not to deploy significant amounts of cash for active purposes, our risk of becoming classified as a PFIC may substantially increase.

If we are classified as a PFIC for any year during which a U.S. Holder holds our ADSs or Class A ordinary shares, the PFIC rules discussed below under “—Passive Foreign Investment Company Rules” generally will apply to such U.S. Holder for such taxable year, and unless the U.S. Holder makes certain elections, will apply in future years even if we cease to be a PFIC.

The discussion below under “—Dividends” and “—Sale or Other Disposition” is written on the basis that we will not be or become classified as a PFIC for U.S. federal income tax purposes. The U.S. federal income tax rules that apply generally if we are treated as a PFIC are discussed below under “—Passive Foreign Investment Company Rules.”



## ***Dividends***

Subject to the discussion below under “Passive Foreign Investment Company Rules,” any cash distributions (including the amount of any PRC tax withheld) paid on our ADSs or Class A ordinary shares out of our current or accumulated earnings and profits, as determined under U.S. federal income tax principles, will generally be includible in the gross income of a U.S. Holder as dividend income on the day actually or constructively received by the U.S. Holder, in the case of Class A ordinary shares, or by the depository, in the case of ADSs. Because we do not intend to determine our earnings and profits on the basis of U.S. federal income tax principles, any distribution we pay will generally be treated as a “dividend” for U.S. federal income tax purposes. Dividends received on our ADSs or Class A ordinary shares will not be eligible for the dividends received deduction allowed to corporations. A non-corporate U.S. Holder will be subject to tax at the lower capital gain tax rate applicable to “qualified dividend income,” provided that certain conditions are satisfied, including that (1) our ADSs are readily tradeable on an established securities market in the United States, or, in the event that we are deemed to be a PRC resident enterprise under the PRC tax law, we are eligible for the benefit of the United States-PRC income tax treaty, (2) we are neither a PFIC nor treated as such with respect to such a U.S. Holder (as discussed below) for the taxable year in which the dividend was paid and the preceding taxable year, and (3) certain holding period requirements are met. We expect our ADSs (but not our Class A ordinary shares) will be considered to be readily tradeable on the New York Stock Exchange, which is an established securities market in the United States. There can be no assurance, however, that our ADSs will be considered readily tradeable on an established securities market in later years.

In the event that we are deemed to be a PRC resident enterprise under the PRC Enterprise Income Tax Law (see “—People’s Republic of China Taxation” above), we may be eligible for the benefits of the United States-PRC income tax treaty. If we are eligible for such benefits, dividends we pay on our Class A ordinary shares, regardless of whether such shares are represented by the ADSs, would be eligible for the reduced rates of taxation described in the preceding paragraph.

Dividends will generally be treated as income from foreign sources for U.S. foreign tax credit purposes and will generally constitute passive category income. Depending on the U.S. Holder’s individual facts and circumstances, a U.S. Holder may be eligible, subject to a number of complex limitations, to claim a foreign tax credit in respect of any foreign withholding taxes imposed on dividends received on our ADSs or Class A ordinary shares. A U.S. Holder who does not elect to claim a foreign tax credit for foreign tax withheld may instead claim a deduction, for U.S. federal income tax purposes, in respect of such withholding, but only for a year in which such holder elects to do so for all creditable foreign income taxes. The rules governing the foreign tax credit are complex and their outcome depends in large part on the U.S. Holder’s individual facts and circumstances. Accordingly, U.S. Holders are urged to consult their tax advisors regarding the availability of the foreign tax credit under their particular circumstances.

## ***Sale or Other Disposition***

Subject to the discussion below under “—Passive Foreign Investment Company Rules,” a U.S. Holder will generally recognize capital gain or loss upon the sale or other disposition of ADSs or Class A ordinary shares in an amount equal to the difference between the amount realized upon the disposition and the holder’s adjusted tax basis in such ADSs or Class A ordinary shares. Any capital gain or loss will be long-term if the ADSs or Class A ordinary shares have been held for more than one year and will generally be U.S.-source gain or loss for U.S. foreign tax credit purposes. Long-term capital gain of non-corporate U.S. Holders is generally eligible for a reduced rate of taxation. In the event that gain from the disposition of the ADSs or Class A ordinary shares is subject to tax in the PRC, such gain may be treated as PRC-source gain under the United States-PRC income tax treaty. If a U.S. Holder is not eligible for the benefits of the income tax treaty or fails to make the election to treat any gain as foreign source, then such U.S. Holder may not be able to use the foreign tax credit arising from any PRC tax imposed on the disposition of the ADSs or Class A ordinary shares unless such credit can be applied (subject to applicable limitations) against U.S. federal income tax due on other income derived from foreign sources in the same income category (generally, the passive category). The deductibility of a capital loss may be subject to limitations. U.S. Holders are urged to consult their tax advisors regarding the tax consequences if a foreign tax is imposed on a disposition of our ADSs or Class A ordinary shares, including the availability of the foreign tax credit under their particular circumstances.

### *Passive Foreign Investment Company Rules*

If we are classified as a PFIC for any taxable year during which a U.S. Holder holds our ADSs or Class A ordinary shares, and unless the U.S. Holder makes a mark-to-market election (as described below), the U.S. Holder will generally be subject to special tax rules on (i) any excess distribution that we make to the U.S. Holder (which generally means any distribution paid during a taxable year to a U.S. Holder that is greater than 125 percent of the average annual distributions paid in the three preceding taxable years or, if shorter, the U.S. Holder's holding period for the ADSs or Class A ordinary shares), and (ii) any gain realized on the sale or other disposition of ADSs or Class A ordinary shares. Under the PFIC rules:

- the excess distribution or gain will be allocated ratably over the U.S. Holder's holding period for the ADSs or Class A ordinary shares;
- the amount allocated to the current taxable year and any taxable years in the U.S. Holder's holding period prior to the first taxable year in which we are classified as a PFIC (each, a "pre-PFIC year"), will be taxable as ordinary income;
- the amount allocated to each prior taxable year, other than a pre-PFIC year, will be subject to tax at the highest tax rate in effect for individuals or corporations, as appropriate, for that year; and
- an additional tax equal to the interest charge generally applicable to underpayments of tax will be imposed on the tax attributable to each prior taxable year, other than a pre-PFIC year.

If we are a PFIC for any taxable year during which a U.S. Holder holds our ADSs or Class A ordinary shares and any of our subsidiaries, our variable interest entities or any of the subsidiaries of our variable interest entities is also a PFIC, such U.S. Holder would be treated as owning a proportionate amount (by value) of the shares of the lower-tier PFIC for purposes of the application of these rules. U.S. Holders are urged to consult their tax advisors regarding the application of the PFIC rules to any of our subsidiaries, our variable interest entities or any of the subsidiaries of our variable interest entities.

As an alternative to the foregoing rules, a U.S. Holder of "marketable stock" in a PFIC may make a mark-to-market election with respect to such stock, provided that such stock is regularly traded. For those purposes, our ADSs, but not our Class A ordinary shares, will be treated as marketable stock upon their listing on the New York Stock Exchange. We anticipate that our ADSs should qualify as being regularly traded, but no assurances may be given in this regard. If a U.S. Holder makes this election, the holder will generally (i) include as ordinary income for each taxable year that we are a PFIC the excess, if any, of the fair market value of ADSs held at the end of the taxable year over the adjusted tax basis of such ADSs and (ii) deduct as an ordinary loss the excess, if any, of the adjusted tax basis of the ADSs over the fair market value of such ADSs held at the end of the taxable year, but such deduction will only be allowed to the extent of the amount previously included in income as a result of the mark-to-market election. The U.S. Holder's adjusted tax basis in the ADSs would be adjusted to reflect any income or loss resulting from the mark-to-market election. If a U.S. Holder makes a mark-to-market election in respect of a corporation classified as a PFIC and such corporation ceases to be classified as a PFIC, the holder will not be required to take into account the gain or loss described above during any period that such corporation is not classified as a PFIC. If a U.S. Holder makes a mark-to-market election, any gain such U.S. Holder recognizes upon the sale or other disposition of our ADSs in a year when we are a PFIC will be treated as ordinary income and any loss will be treated as ordinary loss, but such loss will only be treated as ordinary loss to the extent of the net amount previously included in income as a result of the mark-to-market election.

Because a mark-to-market election cannot be made for any lower-tier PFICs that we may own, a U.S. Holder may continue to be subject to the PFIC rules with respect to such U.S. Holder's indirect interest in any investments held by us that are treated as an equity interest in a PFIC for U.S. federal income tax purposes.

We do not intend to provide information necessary for U.S. Holders to make qualified electing fund elections which, if available, would result in tax treatment different from (and generally less adverse than) the general tax treatment for PFICs described above.

If a U.S. Holder owns our ADSs or Class A ordinary shares during any taxable year that we are a PFIC, the holder must generally file an annual IRS Form 8621. You should consult your tax advisors regarding the U.S. federal income tax consequences of owning and disposing of our ADSs or Class A ordinary shares if we are or become a PFIC.

**F. Dividends and Paying Agents**

Not applicable.

**G. Statement by Experts**

Not applicable.

**H. Documents on Display**

We are subject to the periodic reporting and other informational requirements of the Exchange Act. Under the Exchange Act, we are required to file reports and other information with the SEC. Specifically, we are required to file annually a Form 20-F no later than four months after the close of each fiscal year. Copies of reports and other information, when so filed, may be inspected without charge and may be obtained at prescribed rates at the public reference facilities maintained by the SEC at 100 F Street, N.E., Room 1580, Washington, D.C. 20549. The public may obtain information regarding the Washington, D.C. Public Reference Room by calling the SEC at 1-800-SEC-0330. The SEC also maintains a web site at [www.sec.gov](http://www.sec.gov) that contains reports, proxy and information statements, and other information regarding registrants that make electronic filings with the SEC using its EDGAR system. As a foreign private issuer, we are exempt from the rules under the Exchange Act prescribing the furnishing and content of quarterly reports and proxy statements, and officers, directors and principal shareholders are exempt from the reporting and short-swing profit recovery provisions contained in Section 16 of the Exchange Act.

We will furnish Deutsche Bank Trust Company Americas, the depository of our ADSs, with our annual reports, which will include a review of operations and annual audited consolidated financial statements prepared in conformity with U.S. GAAP, and all notices of shareholders' meetings and other reports and communications that are made generally available to our shareholders. The depository will make such notices, reports and communications available to holders of ADSs and, upon our request, will mail to all record holders of ADSs the information contained in any notice of a shareholders' meeting received by the depository from us.

In accordance with NYSE Rule 203.01, we will post this annual report on our website [ir.nio.com](http://ir.nio.com). In addition, we will provide hardcopies of our annual report to shareholders, including ADS holders, free of charge upon request.

**I. Subsidiary Information**

Not applicable.

**ITEM 11. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

***Foreign Exchange Risk***

As we have begun sales of the ES8 and plan to deliver the ES6 in June 2019, we expect that substantially all of our revenues will be denominated in RMB while our expenses are denominated in RMB and other currencies including the U.S. dollar, the pound sterling and the Euro. As a result, we are exposed to risk related to movements between the Renminbi and such other currencies. In addition, the value of our ADSs will be affected by the exchange rate between U.S. dollar and RMB because the value of our business is effectively denominated in RMB, while our ADSs will be traded in U.S. dollars.

The value of the Renminbi against the U.S. dollar and other currencies is affected by changes in China's political and economic conditions and by China's foreign exchange policies, among other things. In July 2005, the PRC government changed its decades-old policy of pegging the value of the Renminbi to the U.S. dollar, and the Renminbi appreciated more than 20% against the U.S. dollar over the following three years. Between July 2008 and June 2010, this appreciation subsided and the exchange rate between the Renminbi and the U.S. dollar remained within a narrow band. Since June 2010, the Renminbi has fluctuated against the U.S. dollar, at times significantly and unpredictably. While appreciating approximately by 7% against the U.S. dollar in 2017, the Renminbi in 2018 depreciated approximately by 5% against the U.S. dollar. Since October 1, 2016, the Renminbi has joined the International Monetary Fund (IMF)'s basket of currencies that make up the Special Drawing Right (SDR), along with the U.S. dollar, the Euro, the Japanese yen and the British pound. With the development of the foreign exchange market and progress towards interest rate liberalization and Renminbi internationalization, the PRC government may in the future announce further changes to the exchange rate system and there is no guarantee that the Renminbi will not appreciate or depreciate significantly in value against the U.S. dollar in the future. It is difficult to predict how market forces or PRC or U.S. government policy may impact the exchange rate between the Renminbi and the U.S. dollar in the future.

To the extent that we need to convert U.S. dollars into Renminbi for our operations, appreciation of the Renminbi against the U.S. dollar would have an adverse effect on the RMB amount we receive from the conversion. Conversely, if we decide to convert Renminbi into U.S. dollars for the purpose of making payments for dividends on our ordinary shares or ADSs or for other business purposes, appreciation of the U.S. dollar against the Renminbi would have a negative effect on the U.S. dollar amounts available to us.

Any significant depreciation of the Renminbi may materially and adversely affect our revenues, earnings and financial position as reported in U.S. dollars. To the extent that we need to convert U.S. dollars we receive from any financing outside China into Renminbi for our operations, appreciation of the Renminbi against the U.S. dollar would have an adverse effect on the RMB amount we would receive from the conversion. Conversely, if we decide to convert our RMB amounts into U.S. dollars for the purpose of making payments for dividends on our ordinary shares or ADSs or for other business purposes, appreciation of the U.S. dollar against the Renminbi would have a negative effect on the U.S. dollar amount available to us.

### ***Interest Rate Risk***

Our cash balance as of December 31, 2018 primarily consists of bank deposits, so our exposure to market risk for changes in interest rates is limited. In February 2019, we issued 4.50% convertible senior notes due 2024. The convertible notes bear interest at a fixed rate, so we have no financial statement impact from changes in interest rates. However, changes in market interest rates impact the fair value of the convertible notes along with other variables such as our credit spreads and the market price and volatility of our ADSs and ordinary shares.

We may from time to time invest in interest-earning instruments. Investments in both fixed rate and floating rate interest earning instruments carry a degree of interest rate risk. Fixed rate securities may have their fair market value adversely impacted due to a rise in interest rates, while floating rate securities may produce less income than expected if interest rates fall.

### ***Inflation***

To date, inflation in the PRC has not materially impacted our results of operations. According to the National Bureau of Statistics of China, the year-over-year percent changes in the consumer price index for December 2016, 2017 and 2018 were increases of 2.1%, 1.8% and 1.9%, respectively. Although we have not been materially affected by inflation in the past, we may be affected in the future by higher rates of inflation in the PRC. For example, certain operating costs and expenses, such as employee compensation and office operating expenses may increase as a result of higher inflation. Additionally, because a substantial portion of our assets consists of cash and cash equivalents and short-term investments, high inflation could significantly reduce the value and purchasing power of these assets. We are not able to hedge our exposure to higher inflation in China.

### *Seasonality*

Demand for new cars in the automotive industry fluctuates by season, and sales for the NEVs typically experience a more significant fluctuation in the first quarter of each year. Our limited operating history makes it difficult for us to judge the exact nature or extent of the seasonality of our business. Also, any unusually severe weather conditions in some markets may impact demand for our vehicles.

### **ITEM 12. DESCRIPTION OF SECURITIES OTHER THAN EQUITY SECURITIES**

#### **A. Debt Securities**

Not applicable.

#### **B. Warrants and Rights**

Not applicable.

#### **C. Other Securities**

Not applicable.

#### **D. American Depositary Shares**

#### **Fees and Charges Our ADS holders May Have to Pay**

Holders of our ADSs will be required to pay the following service fees to the depository bank and certain taxes and governmental charges (in addition to any applicable fees, expenses, taxes and other governmental charges payable on the deposited securities represented by any of ADSs held):

<b>Service</b>	<b>Fees</b>
• To any person to which ADSs are issued or to any person to which a distribution is made in respect of ADS distributions pursuant to stock dividends or other free distributions of stock, bonus distributions, stock splits or other distributions (except where converted to cash)	Up to US\$0.05 per ADS issued
• Cancellation of ADSs, including the case of termination of the deposit agreement	Up to US\$0.05 per ADS cancelled
• Distribution of cash dividends	Up to US\$0.05 per ADS held
• Distribution of cash entitlements (other than cash dividends) and/or cash proceeds from the sale of rights, securities and other entitlements	Up to US\$0.05 per ADS held
• Distribution of ADSs pursuant to exercise of rights.	Up to US\$0.05 per ADS held
• Distribution of securities other than ADSs or rights to purchase additional ADSs	Up to US\$0.05 per ADS held
• Depository services	Up to US\$0.05 per ADS held on the applicable record date(s) established by the depository bank

Holders of our ADSs will also be responsible to pay certain fees and expenses incurred by the depository bank and certain taxes and governmental charges (in addition to any applicable fees, expenses, taxes and other governmental charges payable on the deposited securities represented by any of your ADSs) such as:

- Fees for the transfer and registration of ordinary shares charged by the registrar and transfer agent for the ordinary shares in Cayman Islands (i.e., upon deposit and withdrawal of ordinary shares).

- Expenses incurred for converting foreign currency into U.S. dollars.
- Expenses for cable, telex and fax transmissions and for delivery of securities.
- Taxes and duties upon the transfer of securities, including any applicable stamp duties, any stock transfer charges or withholding taxes (i.e., when ordinary shares are deposited or withdrawn from deposit).
- Fees and expenses incurred in connection with the delivery or servicing of ordinary shares on deposit.
- Fees and expenses incurred in connection with complying with exchange control regulations and other regulatory requirements applicable to ordinary shares, deposited securities, ADSs and ADRs.
- Any applicable fees and penalties thereon.

The depositary fees payable upon the issuance and cancellation of ADSs are typically paid to the depositary bank by the brokers (on behalf of their clients) receiving the newly issued ADSs from the depositary bank and by the brokers (on behalf of their clients) delivering the ADSs to the depositary bank for cancellation. The brokers in turn charge these fees to their clients. Depositary fees payable in connection with distributions of cash or securities to ADS holders and the depositary services fee are charged by the depositary bank to the holders of record of ADSs as of the applicable ADS record date.

The depositary fees payable for cash distributions are generally deducted from the cash being distributed or by selling a portion of distributable property to pay the fees. In the case of distributions other than cash (i.e., share dividends, rights), the depositary bank charges the applicable fee to the ADS record date holders concurrent with the distribution. In the case of ADSs registered in the name of the investor (whether certificated or uncertificated in direct registration), the depositary bank sends invoices to the applicable record date ADS holders. In the case of ADSs held in brokerage and custodian accounts (via DTC), the depositary bank generally collects its fees through the systems provided by DTC (whose nominee is the registered holder of the ADSs held in DTC) from the brokers and custodians holding ADSs in their DTC accounts. The brokers and custodians who hold their clients' ADSs in DTC accounts in turn charge their clients' accounts the amount of the fees paid to the depositary banks.

In the event of refusal to pay the depositary fees, the depositary bank may, under the terms of the deposit agreements, refuse the requested service until payment is received or may set off the amount of the depositary fees from any distribution to be made to the ADS holder.

The depositary may make payments to us or reimburse us for certain costs and expenses, by making available a portion of the ADS fees collected in respect of the ADR program or otherwise, upon such terms and conditions as we and the depositary bank agree from time to time.

#### **Fees and Other Payments Made by the Depositary to Us**

Deutsche Bank Trust Company Americas, as the depositary, has agreed to reimburse us for certain expenses we incur that are related to establishment and maintenance of the ADR program upon such terms and conditions as we and the depositary may agree from time to time. The depositary may make available to us a set amount or a portion of the depositary fees charged in respect of the ADR program or otherwise upon such terms and conditions as we and the depositary may agree from time to time. In 2018, we received an after-tax reimbursement payment of US\$7,728,000 from the depositary.

## PART II.

### ITEM 13. DEFAULTS, DIVIDEND ARREARAGES AND DELINQUENCIES

None.

### ITEM 14. MATERIAL MODIFICATIONS TO THE RIGHTS OF SECURITY HOLDERS AND USE OF PROCEEDS

#### Material Modifications to the Rights of Security Holders

See “Item 10—Additional Information—B. Memorandum and Articles of Association—Ordinary Shares” for a description of the rights of securities holders, which remain unchanged.

#### Use of Proceeds

The following “Use of Proceeds” information relates to the registration statement on Form F-1, as amended (File number: 333-226822) in relation to the initial public offering of 160,000,000 ADSs representing 160,000,000 of our Class A ordinary shares, at an initial offering price of US\$6.26 per ADS. Our initial public offering closed in September 2018. Morgan Stanley & Co. LLC, Goldman Sachs (Asia) L.L.C., J.P. Morgan Securities LLC, Merrill Lynch, Pierce, Fenner & Smith Incorporated, Deutsche Bank Securities Inc., Citigroup Global Markets Inc., Credit Suisse Securities (USA) LLC, and UBS Securities LLC were the representatives of the underwriters for our initial public offering. Counting in the ADSs sold upon the exercise of the over-allotment option by our underwriters, we offered and sold 184,000,000 ADSs and received net proceeds of approximately US\$1,099.1 million, after deducting underwriting discounts and commissions and estimated offering expenses payable by us. The registration statement was declared effective by the SEC on September 11, 2018. The total expenses incurred for our company’s account in connection with our initial public offering was approximately US\$46.7 million, which included US\$40.1 million in underwriting discounts and commissions for the initial public offering and approximately US\$6.7 million in other costs and expenses for our initial public offering. None of the transaction expenses included payments to directors or officers of our company or their associates, persons owning more than 10% or more of our equity securities or our affiliates. None of the net proceeds we received from the initial public offering were paid, directly or indirectly, to any of our directors or officers or their associates, persons owning 10% or more of our equity securities or our affiliates. We still intend to use the proceeds from our initial public offering as disclosed in our registration statement on Form F-1.

### ITEM 15. CONTROLS AND PROCEDURES

#### Evaluation of Disclosure Controls and Procedures

Our chief executive officer and chief financial officer have performed an evaluation of the effectiveness of our disclosure controls and procedures (as defined in Rule 13a-15(e) under the Securities Exchange Act of 1934, as amended) as of the end of the period covered by this annual report. Based upon that evaluation, our chief executive officer and chief financial officer concluded that our disclosure controls and procedures were ineffective as of December 31, 2018 and as of the date that the evaluation of the effectiveness of our disclosure controls and procedures was completed, because of the material weakness in our internal control over financial reporting described below. Our disclosure controls and procedures were not effective to satisfy the objectives for which they are intended.

Notwithstanding management’s assessment that our internal control over financial reporting was ineffective as of December 31, 2018 due to the material weakness described below, we believe that the consolidated financial statements included in this annual report correctly present our financial position, results of operations and cash flows for the fiscal years covered thereby in all material respects.

## **Management's Annual Report on Internal Control over Financial Reporting and Attestation Report of the Registered Public Accounting Firm**

This annual report does not include a report of management's assessment regarding internal control over financial reporting or an attestation report by our independent registered public accounting firm due to a transition period established by rules of the SEC for newly public companies.

### **Internal Control Over Financial Reporting**

In connection with the preparation and external audit of our consolidated financial statements as of and for the year ended December 31, 2018, we and our independent registered public accounting firm identified one material weakness in our internal control over financial reporting. The material weakness identified was that we do not have sufficient competent financial reporting and accounting personnel with an appropriate understanding of U.S. GAAP to (i) design and implement formal period-end financial reporting policies and procedures to address complex U.S. GAAP technical accounting issues and (ii) prepare and review our consolidated financial statements and related disclosures in accordance with U.S. GAAP and the financial reporting requirements set forth by the SEC. The material weakness resulted in a significant number of adjustments and amendments to our consolidated financial statements and related disclosures under U.S. GAAP.

We have implemented and plan to implement a number of measures to address the material weakness. We have hired additional qualified financial and accounting staff with working experience with U.S. GAAP and SEC reporting requirements. We have also established clear roles and responsibilities for accounting and financial reporting staff to address accounting and financial reporting issues. Furthermore, we plan to expedite and streamline our reporting process and develop our compliance process, including: (i) hiring more qualified personnel equipped with relevant U.S. GAAP and SEC reporting experience and qualifications to strengthen the financial reporting function and setting up a financial and system control framework, (ii) implementing regular and consistent U.S. GAAP accounting and financial reporting training programs for our accounting and financial reporting personnel, (iii) establishing effective oversight and clarifying reporting requirements for non-recurring and complex transactions to ensure consolidated financial statements and related disclosures are accurate, complete and in compliance with U.S. GAAP and SEC reporting requirements, and (iv) enhancing our internal audit function as well as engaging an external consulting firm to assist us in assessing our compliance readiness under Rule 13a-15 of the Exchange Act and improve overall internal control. However, we cannot assure you that we will be able to continue implementing these measures in the future, or that we will not identify additional material weaknesses in the future.

We will continue to implement measures to remediate our internal control deficiencies in order to meet the deadline imposed by Section 404 of the Sarbanes-Oxley Act. We may incur significant costs in the implementation of such measures. However, the implementation of these measures may not fully address the deficiencies in our internal control over financial reporting. See "Item 3. Key Information—D. Risk Factors—Risks Related to Our Business and Industry—If we fail to maintain an effective system of internal control over financial reporting, we may be unable to accurately report our financial results or prevent fraud, and investor confidence in our company and the market price of our ADSs may be adversely affected."

As a company with less than US\$1.07 billion in revenue for our last fiscal year, we qualify as an "emerging growth company" pursuant to the JOBS Act. An emerging growth company may take advantage of specified reduced reporting and other requirements that are otherwise applicable generally to public companies. These provisions include exemption from the auditor attestation requirement under Section 404 of the Sarbanes-Oxley Act, in the assessment of the emerging growth company's internal control over financial reporting.

### **Changes in Internal Control over Financial Reporting**

Other than as described above, there were no changes in our internal controls over financial reporting that occurred during the period covered by this annual report that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.



#### ITEM 16.A. AUDIT COMMITTEE FINANCIAL EXPERT

Our board of directors has determined that Mr. Denny Ting Bun Lee, a member of our audit committee and independent director (under the standards set forth in Section 303A of the Corporate Governance Rules of the NYSE and Rule 10A-3 under the Securities Exchange Act of 1934), is an audit committee financial expert.

#### ITEM 16.B. CODE OF ETHICS

Our board of directors has adopted a code of ethics that applies to all of the directors, officers and employees of us and our subsidiaries, whether they work for us on a full-time, part-time, consultative, or temporary basis. Certain provisions of the code apply specifically to our chief executive officer, chief financial officer, senior finance officer, controller, senior vice presidents, vice presidents and any other persons who perform similar functions for us. We have posted a copy of our code of business conduct and ethics on our website at <https://www.nio.io/code-of-business-conduct-and-ethics>

#### ITEM 16.C. PRINCIPAL ACCOUNTANT FEES AND SERVICES

The following table sets forth the aggregate fees by the categories specified below in connection with certain professional services rendered by PricewaterhouseCoopers Zhong Tian LLP and its affiliates, our principal external auditors, for the years indicated. We did not pay any other fees to our principal external auditors during the years indicated below.

	For the Year Ended December 31,	
	2017	2018
	(in thousands of RMB)	
Audit fees <sup>(1)</sup>	6,499	11,906
Tax fees <sup>(2)</sup>	1,315	2,805
Other fees <sup>(3)</sup>	2,047	3,251

Note:

- (1) "Audit fees" means the aggregate fees billed for professional services rendered by our principal external auditors for the audits of our annual financial statements and the quarterly reviews of our condensed consolidated financial information, including audit fees relating to our initial public offering in 2018.
- (2) "Tax fees" means the aggregate fees billed in each of the fiscal years listed for professional services rendered by our principal external auditors for tax compliance, tax advice, and tax planning.
- (3) "All other fees" means the aggregate fees billed for professional services rendered by our principal external auditors associated with other advisory services.

The policy of our audit committee is to pre-approve all audit and other service provided by PricewaterhouseCoopers Zhong Tian LLP and its affiliates, including audit services, tax services and other services described above, other than those for *de minimis* services which are approved by the Audit Committee prior to the completion of the audit.

#### ITEM 16.D. EXEMPTIONS FROM THE LISTING STANDARDS FOR AUDIT COMMITTEES

Not applicable.

#### ITEM 16.E. PURCHASES OF EQUITY SECURITIES BY THE ISSUER AND AFFILIATED PURCHASERS

None.

#### ITEM 16.F. CHANGE IN REGISTRANT'S CERTIFYING ACCOUNTANT

Not applicable.

## ITEM 16.G. CORPORATE GOVERNANCE

As a Cayman Islands company listed on the New York Stock Exchange, we are subject to the NYSE corporate governance listing standards. However, NYSE rules permit a foreign private issuer like us to follow the corporate governance practices of its home country. Certain corporate governance practices in the Cayman Islands, which is our home country, may differ significantly from the NYSE corporate governance listing standards. Currently, we do not plan to rely on home country exemption for corporate governance matters. However, if we choose to follow home country practice in the future, our shareholders may be afforded less protection than they otherwise would under the NYSE corporate governance listing standards applicable to U.S. domestic issuers.

## ITEM 16.H. MINE SAFETY DISCLOSURE

Not applicable.

## PART III.

## ITEM 17. FINANCIAL STATEMENTS

We have elected to provide financial statements pursuant to Item 18.

## ITEM 18. FINANCIAL STATEMENTS

The consolidated financial statements of NIO Inc. and its subsidiaries and the related notes are included at the end of this annual report.

## ITEM 19. EXHIBITS

Exhibit Number	Description of Document
<a href="#">1.1</a>	<a href="#">Eleventh Amended and Restated Memorandum and Articles of Association of the Registrant (incorporated herein by reference to Exhibit 3.2 to the registration statement on Form F-1 (File No. 333-226822), as amended, initially filed with the SEC on August 13, 2018)</a>
<a href="#">2.1</a>	<a href="#">Registrant's Specimen American Depositary Receipt (included in Exhibit 2.3)</a>
<a href="#">2.2</a>	<a href="#">Registrant's Specimen Certificate for Class A ordinary shares (incorporated herein by reference to Exhibit 4.2 to the registration statement on Form F-1 (File No. 333-226822), as amended, initially filed with the SEC on August 13, 2018)</a>
<a href="#">2.3</a>	<a href="#">Deposit Agreement, dated as of September 11, 2018, among the Registrant, Deutsche Bank Trust Company Americas, as the depository, and all holders and beneficial owners of the American Depositary Shares issued thereunder (incorporated herein by reference to Exhibit 4.3 to the registration statement on Form S-8 (File No. 333-229952), filed with the SEC on February 28, 2019)</a>
<a href="#">2.4</a>	<a href="#">Fifth Amended and Restated Shareholders' Agreement, dated as of November 10, 2017, among the Registrant and the other signatories thereto (incorporated herein by reference to Exhibit 4.4 to the registration statement on Form F-1 (File No. 333-226822), as amended, initially filed with the SEC on August 13, 2018)</a>
<a href="#">4.1</a>	<a href="#">2015 Share Incentive Plan (incorporated herein by reference to Exhibit 10.1 to the registration statement on Form F-1 (File No. 333-226822), as amended, initially filed with the SEC on August 13, 2018)</a>
<a href="#">4.2</a>	<a href="#">2016 Share Incentive Plan (incorporated herein by reference to Exhibit 10.2 to the registration statement on Form F-1 (File No. 333-226822), as amended, initially filed with the SEC on August 13, 2018)</a>
<a href="#">4.3</a>	<a href="#">2017 Share Incentive Plan (incorporated herein by reference to Exhibit 10.3 to the registration statement on Form F-1 (File No. 333-226822), as amended, initially filed with the SEC on August 13, 2018)</a>

- [4.4](#) [2018 Share Incentive Plan \(incorporated herein by reference to Exhibit 10.4 to the registration statement on Form F-1 \(File No. 333-226822\), as amended, initially filed with the SEC on August 13, 2018\)](#)
- [4.5](#) [Form of Indemnification Agreement, between the Registrant and its directors and executive officers \(incorporated herein by reference to Exhibit 10.5 to the registration statement on Form F-1 \(File No. 333-226822\), as amended, initially filed with the SEC on August 13, 2018\)](#)
- [4.6††](#) [English translation of Manufacture Cooperation Agreement, dated as of May 23, 2016, between the registrant and Anhui Jianghuai Automobile Co., Ltd., \(incorporated herein by reference to Exhibit 10.6 to the registration statement on Form F-1 \(File No. 333-226822\), as amended, initially filed with the SEC on August 13, 2018\)](#)
- [4.7](#) [Form of Employment Agreement, between the Registrant and its executive officers \(Non-PRC citizens\) \(incorporated herein by reference to Exhibit 10.7 to the registration statement on Form F-1 \(File No. 333-226822\), as amended, initially filed with the SEC on August 13, 2018\)](#)
- [4.8](#) [Form of Employment Agreement, between the Registrant and its executive officers \(PRC citizens\) \(incorporated herein by reference to Exhibit 10.8 to the registration statement on Form F-1 \(File No. 333-226822\), as amended, initially filed with the SEC on August 13, 2018\)](#)
- [4.9](#) [Employment Agreement, dated as of September 25, 2017, between the Registrant and Louis T. Hsieh \(incorporated herein by reference to Exhibit 10.9 to the registration statement on Form F-1 \(File No. 333-226822\), as amended, initially filed with the SEC on August 13, 2018\)](#)
- [4.10](#) [Employment Agreement and Severance Agreement, between the Registrant and Padmasree Warrior, dated as of November 23, 2015 and December 16, 2015, respectively \(incorporated herein by reference to Exhibit 10.10 to the registration statement on Form F-1 \(File No. 333-226822\), as amended, initially filed with the SEC on August 13, 2018\)](#)
- [4.11](#) [English translation of Power of Attorney, dated as of April 19, 2018, among shareholders of Shanghai Anbin, Shanghai Anbin and NIO Co., Ltd. \(incorporated herein by reference to Exhibit 10.11 to the registration statement on Form F-1 \(File No. 333-226822\), as amended, initially filed with the SEC on August 13, 2018\)](#)
- [4.12](#) [English translation of Loan Agreements, dated as of April 19, 2018, among shareholders of Shanghai Anbin, Shanghai Anbin and NIO Co., Ltd. \(incorporated herein by reference to Exhibit 10.12 to the registration statement on Form F-1 \(File No. 333-226822\), as amended, initially filed with the SEC on August 13, 2018\)](#)
- [4.13](#) [English translation of Equity Interest Pledge Agreements, dated as of April 19, 2018, among shareholders of Shanghai Anbin, Shanghai Anbin and NIO Co., Ltd. \(incorporated herein by reference to Exhibit 10.13 to the registration statement on Form F-1 \(File No. 333-226822\), as amended, initially filed with the SEC on August 13, 2018\)](#)
- [4.14](#) [English translation of Exclusive Business Cooperation Agreements, dated as of April 19, 2018, among shareholders of Shanghai Anbin, Shanghai Anbin and NIO Co., Ltd. \(incorporated herein by reference to Exhibit 10.14 to the registration statement on Form F-1 \(File No. 333-226822\), as amended, initially filed with the SEC on August 13, 2018\)](#)
- [4.15](#) [English translation of Exclusive Option Agreements, dated as of April 19, 2018, among shareholders of Shanghai Anbin, Shanghai Anbin and NIO Co., Ltd. \(incorporated herein by reference to Exhibit 10.15 to the registration statement on Form F-1 \(File No. 333-226822\), as amended, initially filed with the SEC on August 13, 2018\)](#)
- [4.16](#) [English translation of Power of Attorney, dated as of April 19, 2018, among shareholders of Beijing NIO, Beijing NIO and NIO Co., Ltd. \(incorporated herein by reference to Exhibit 10.16 to the registration statement on Form F-1 \(File No. 333-226822\), as amended, initially filed with the SEC on August 13, 2018\)](#)
- [4.17](#) [English translation of Loan Agreements, dated April 19, 2018, among shareholders of Beijing NIO, Beijing NIO and NIO Co., Ltd. \(incorporated herein by reference to Exhibit 10.17 to the registration statement on Form F-1 \(File No. 333-226822\), as amended, initially filed with the SEC on August 13, 2018\)](#)
- [4.18](#) [English translation of Equity Interest Pledge Agreements, dated as of April 19, 2018, among shareholders of Beijing NIO, Beijing NIO and NIO Co., Ltd. \(incorporated herein by reference to Exhibit 10.18 to the registration statement on Form F-1 \(File No. 333-226822\), as amended, initially filed with the SEC on August 13, 2018\)](#)

<a href="#">4.19</a>	<a href="#">English translation of Exclusive Business Cooperation Agreements, dated as of April 19, 2018, among shareholders of Beijing NIO, Beijing NIO and NIO Co., Ltd. (incorporated herein by reference to Exhibit 10.19 to the registration statement on Form F-1 (File No. 333-226822), as amended, initially filed with the SEC on August 13, 2018)</a>
<a href="#">4.20</a>	<a href="#">English translation of Exclusive Option Agreements, dated as of April 19, 2018, among shareholders of Beijing NIO, Beijing NIO and NIO Co., Ltd. (incorporated herein by reference to Exhibit 10.20 to the registration statement on Form F-1 (File No. 333-226822), as amended, initially filed with the SEC on August 13, 2018)</a>
<a href="#">4.21*</a>	<a href="#">Purchase Agreement, dated January 30, 2019, among the Registrant and the representatives of the initial purchasers named therein</a>
<a href="#">4.22*</a>	<a href="#">Indenture, dated as of February 4, 2019, by and between the Registrant, as issuer, and The Bank of New York Mellon, as trustee</a>
<a href="#">4.23*</a>	<a href="#">Form of 4.50% Convertible Senior Notes due 2024 (included in Exhibit 4.22)</a>
<a href="#">4.24*</a>	<a href="#">Deposit Agreement for Restricted Securities, dated as of February 4, 2019, among the Registrant, Deutsche Bank Trust Company Americas, as the depository, and all holders and beneficial owners of the American Depositary Shares issued thereunder</a>
<a href="#">4.25*</a>	<a href="#">Letter agreement re: Base Call Option Transaction, dated January 30, 2019, between Goldman Sachs International, as dealer, and the Registrant, as counterparty</a>
<a href="#">4.26*</a>	<a href="#">Letter agreement re: Base Call Option Transaction, dated January 30, 2019, between Credit Suisse Capital LLC, as dealer, and the Registrant, as counterparty</a>
<a href="#">4.27*</a>	<a href="#">Letter agreement re: Base Call Option Transaction, dated January 30, 2019, between Morgan Stanley &amp; Co. LLC, as dealer, and the Registrant, as counterparty</a>
<a href="#">4.28*</a>	<a href="#">Letter agreement re: Zero Strike Call Option Transaction, dated January 30, 2019, between JPMorgan Chase Bank, National Association, as dealer, and the Registrant, as counterparty</a>
<a href="#">4.29*</a>	<a href="#">Letter agreement re: Zero Strike Call Option Transaction, dated January 30, between Goldman Sachs International, as dealer, and the Registrant, as counterparty</a>
<a href="#">4.30*</a>	<a href="#">Letter agreement re: Zero Strike Call Option Transaction, dated January 30, between Morgan Stanley &amp; Co. LLC, as dealer, and the Registrant, as counterparty</a>
<a href="#">4.31*</a>	<a href="#">Letter agreement re: Zero Strike Call Option Transaction, dated January 30, between Credit Suisse Capital LLC, as dealer, and the Registrant, as counterparty</a>
<a href="#">4.32*</a>	<a href="#">Letter agreement re: Additional Call Option Transaction, dated February 13, 2019, between Credit Suisse Capital LLC, as dealer, and the Registrant, as counterparty</a>
<a href="#">4.33*</a>	<a href="#">Letter agreement re: Additional Call Option Transaction, dated February 13, 2019, between Goldman Sachs International, as dealer, and the Registrant, as counterparty</a>
<a href="#">4.34*</a>	<a href="#">Letter agreement re: Additional Call Option Transaction, dated February 13, 2019, between Morgan Stanley &amp; Co. LLC, as dealer, and the Registrant, as counterparty</a>
<a href="#">4.35*</a>	<a href="#">Letter agreement re: Second Additional Call Option Transaction, dated February 26, 2019, between Credit Suisse Capital LLC, as dealer, and the Registrant, as counterparty</a>
<a href="#">4.36*</a>	<a href="#">Letter agreement re: Second Additional Call Option Transaction, dated February 26, 2019, between Goldman Sachs International, as dealer, and the Registrant, as counterparty</a>
<a href="#">4.37*</a>	<a href="#">Letter agreement re: Second Additional Call Option Transaction, dated February 26, 2019, between Morgan Stanley &amp; Co. LLC, as dealer, and the Registrant, as counterparty</a>
<a href="#">8.1*</a>	<a href="#">List of Principal Subsidiaries and Consolidated Variable Interest Entities</a>
<a href="#">11.1</a>	<a href="#">Code of Business Conduct and Ethics of the Registrant (incorporated herein by reference to Exhibit 99.1 to the registration statement on Form F-1 (File No. 333-226822), as amended, initially filed with the SEC on August 13, 2018)</a>
<a href="#">12.1*</a>	<a href="#">CEO Certification Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</a>
<a href="#">12.2*</a>	<a href="#">CFO Certification Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</a>
<a href="#">13.1**</a>	<a href="#">CEO Certification Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</a>
<a href="#">13.2**</a>	<a href="#">CFO Certification Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</a>
<a href="#">15.1*</a>	<a href="#">Consent of PricewaterhouseCoopers Zhong Tian LLP</a>
<a href="#">15.2*</a>	<a href="#">Consent of Han Kun Law Offices</a>
101.INS*	XBRL Instance Document

101.SCH*	XBRL Taxonomy Extension Schema Document
101.CAL*	XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF*	XBRL Taxonomy Extension Definition Linkbase Document
101.LAB*	XBRL Taxonomy Extension Label Linkbase Document
101.PRE*	XBRL Taxonomy Extension Presentation Linkbase Document

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\* Filed herewith.

\*\* Furnished herewith.'

†† Confidential treatment has been requested for certain portions of this exhibit pursuant to Rule 406 under the Securities Act and Division of Corporation Finance Staff Legal Bulletin No. 1. In accordance with Rule 406 and Staff Legal Bulletin No. 1, these confidential portions have been omitted and filed separately with the SEC.

**SIGNATURES**

The registrant hereby certifies that it meets all of the requirements for filing its annual report on Form 20-F and that it has duly caused and authorized the undersigned to sign this annual report on its behalf.

NIO Inc.

By: /s/ Bin Li  
Name: Bin Li  
Title: Chairman of the Board of Directors  
and Chief Executive Officer

Date: April 2, 2019

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## Report of Independent Registered Public Accounting Firm

To the Board of Directors and Shareholders of NIO Inc.

### *Opinion on the Financial Statements*

We have audited the accompanying consolidated balance sheets of NIO Inc. and its subsidiaries (the “Company”) as of December 31, 2018 and 2017, and the related consolidated statements of comprehensive loss, of shareholders’ (deficit)/equity and of cash flows for each of the three years in the period ended December 31, 2018, including the related notes (collectively referred to as the “consolidated financial statements”). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2018 and 2017, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2018 in conformity with accounting principles generally accepted in the United States of America.

### *Basis for Opinion*

These consolidated financial statements are the responsibility of the Company’s management. Our responsibility is to express an opinion on the Company’s consolidated financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (PCAOB) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits of these consolidated financial statements in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud.

Our audits included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that our audits provide a reasonable basis for our opinion.

/s/PricewaterhouseCoopers LLP Zhong Tian LLP  
Shanghai, the People’s Republic of China  
April 2, 2019

We have served as the Company's auditor since 2015.



**NIO INC.**  
**CONSOLIDATED BALANCE SHEETS**  
(All amounts in thousands, except for share and per share data)

	As of December 31,		
	2017 RMB	2018 RMB	2018 US\$ Note 2(e)
<b>ASSETS</b>			
Current assets:			
Cash and cash equivalents	7,505,954	3,133,847	455,799
Restricted cash	10,606	57,012	8,292
Short-term investment	—	5,154,703	749,720
Trade receivable	—	756,508	110,030
Amounts due from related parties	29,556	88,066	12,809
Inventory	89,464	1,465,239	213,110
Prepayments and other current assets	674,425	1,514,257	220,240
<b>Total current assets</b>	<b>8,310,005</b>	<b>12,169,632</b>	<b>1,770,000</b>
Non-current assets:			
Long-term restricted cash	14,293	33,528	4,876
Property, plant and equipment, net	1,911,013	4,853,157	705,862
Intangible assets, net	4,457	3,470	505
Land use rights, net	—	213,662	31,076
Long-term investments	47,125	148,303	21,570
Amounts due from related parties	50,000	7,970	1,159
Other non-current assets	131,141	1,412,830	205,488
<b>Total non-current assets</b>	<b>2,158,029</b>	<b>6,672,920</b>	<b>970,536</b>
<b>Total assets</b>	<b>10,468,034</b>	<b>18,842,552</b>	<b>2,740,536</b>
<b>LIABILITIES</b>			
Current liabilities:			
Short-term borrowings	28,787	1,870,000	271,980
Trade payable	234,011	2,869,953	417,417
Amounts due to related parties	40,069	219,583	31,937
Taxes payable	30,055	51,317	7,464
Current portion of long-term borrowings	—	198,852	28,922
Accruals and other liabilities	1,285,592	3,383,681	492,136
<b>Total current liabilities</b>	<b>1,618,514</b>	<b>8,593,386</b>	<b>1,249,856</b>
Non-current liabilities:			
Long-term borrowings	642,401	1,168,012	169,880
Other non-current liabilities	141,113	930,812	135,382
<b>Total non-current liabilities</b>	<b>783,514</b>	<b>2,098,824</b>	<b>305,262</b>
<b>Total liabilities</b>	<b>2,402,028</b>	<b>10,692,210</b>	<b>1,555,118</b>

Commitments and contingencies (Note 28)

**NIO INC.**  
**CONSOLIDATED BALANCE SHEETS**  
(All amounts in thousands, except for share and per share data)

	As of December 31,		
	2017 RMB	2018 RMB	2018 US\$ Note 2(e)
<b>MEZZANINE EQUITY</b>			
<b>Series A-1 and A-2 convertible redeemable preferred shares</b> (US\$0.00025 par value; 295,000,000 and nil authorized, issued and outstanding as of December 31, 2017 and 2018, respectively)	5,011,731	—	—
<b>Series A-3 convertible redeemable preferred shares</b> (US\$0.00025 par value; 31,720,364 and nil authorized, 24,210,431 and nil issued and outstanding as of December 31, 2017 and 2018, respectively)	427,129	—	—
<b>Series B convertible redeemable preferred shares</b> (US\$0.00025 par value; 114,867,321 and nil authorized, issued and outstanding as of December 31, 2017 and 2018, respectively)	2,294,980	—	—
<b>Series C convertible redeemable preferred shares</b> (US\$0.00025 par value; 167,142,990 and nil authorized, 166,205,830 and nil issued and outstanding as of December 31, 2017 and 2018, respectively)	4,454,596	—	—
<b>Series D convertible redeemable preferred shares</b> (US\$0.00025 par value; 240,000,000 and nil authorized, 213,585,003 and nil issued and outstanding as of December 31, 2017 and 2018, respectively)	7,547,760	—	—
Receivable from a holder of Series D convertible redeemable preferred shares	(78,410)	—	—
Redeemable non-controlling interests	—	1,329,197	193,324
<b>Total mezzanine equity</b>	<b>19,657,786</b>	<b>1,329,197</b>	<b>193,324</b>
<b>SHAREHOLDERS' (DEFICIT)/EQUITY</b>			
<b>Ordinary shares</b> (US\$0.00025 par value; 1,151,269,325 and 1,219,469,778 shares authorized; 36,727,350 and nil shares issued and 23,850,343 and nil shares outstanding as of December 31, 2017 and 2018, respectively)	60	—	—
<b>Class A Ordinary Shares</b> (US\$0.00025 par value; nil and 2,500,000,000 shares authorized; nil and 777,200,790 shares issued; nil and 770,268,810 shares outstanding as of December 31, 2017 and 2018, respectively)	—	1,329	193
<b>Class B Ordinary Shares</b> (US\$0.00025 par value; nil and 132,030,222 shares authorized, issued and outstanding as of December 31, 2017 and 2018, respectively)	—	226	33
<b>Class C Ordinary Shares</b> (US\$0.00025 par value; nil and 148,500,000 shares authorized, issued and outstanding as of December 31, 2017 and 2018, respectively)	—	254	37
Treasury shares	(9,186)	(9,186)	(1,336)
Additional paid in capital	131,907	41,918,936	6,096,856
Accumulated other comprehensive loss	(13,922)	(34,708)	(5,048)
Accumulated deficit	(11,711,948)	(35,039,810)	(5,096,329)
<b>Total NIO Inc. shareholders' (deficit)/equity</b>	<b>(11,603,089)</b>	<b>6,837,041</b>	<b>994,406</b>
Non-controlling interests	11,309	(15,896)	(2,312)
<b>Total shareholders' (deficit)/equity</b>	<b>(11,591,780)</b>	<b>6,821,145</b>	<b>992,094</b>
<b>Total liabilities, mezzanine equity and shareholders' equity</b>	<b>10,468,034</b>	<b>18,842,552</b>	<b>2,740,536</b>

The accompanying notes are an integral part of these consolidated financial statements.

**NIO INC.**  
**CONSOLIDATED STATEMENTS OF COMPREHENSIVE LOSS**  
(All amounts in thousands, except for share and per share data)

	For the Year Ended December 31,			
	2016 RMB	2017 RMB	2018 RMB	2018 US\$ Note 2(e)
<b>Revenues:</b>				
Vehicle sales	—	—	4,852,470	705,762
Other sales	—	—	98,701	14,355
<b>Total revenues</b>	<u>—</u>	<u>—</u>	<u>4,951,171</u>	<u>720,117</u>
<b>Cost of sales:</b>				
Vehicle sales	—	—	(4,930,135)	(717,058)
Other sales	—	—	(276,912)	(40,275)
<b>Total cost of sales</b>	<u>—</u>	<u>—</u>	<u>(5,207,047)</u>	<u>(757,333)</u>
Gross loss	<u>—</u>	<u>—</u>	<u>(255,876)</u>	<u>(37,216)</u>
<b>Operating expenses:</b>				
Research and development	(1,465,353)	(2,602,889)	(3,997,942)	(581,477)
Selling, general and administrative	(1,137,187)	(2,350,707)	(5,341,790)	(776,931)
<b>Total operating expenses</b>	<u>(2,602,540)</u>	<u>(4,953,596)</u>	<u>(9,339,732)</u>	<u>(1,358,408)</u>
<b>Loss from operations</b>	<u>(2,602,540)</u>	<u>(4,953,596)</u>	<u>(9,595,608)</u>	<u>(1,395,624)</u>
Interest income	27,556	18,970	133,384	19,400
Interest expenses	(55)	(18,084)	(123,643)	(17,983)
Share of losses of equity investees	—	(5,375)	(9,722)	(1,414)
Investment income	2,670	3,498	—	—
Other income/(loss), net	3,429	(58,681)	(21,346)	(3,105)
<b>Loss before income tax expense</b>	<u>(2,568,940)</u>	<u>(5,013,268)</u>	<u>(9,616,935)</u>	<u>(1,398,726)</u>
Income tax expense	(4,314)	(7,906)	(22,044)	(3,206)
<b>Net loss</b>	<u>(2,573,254)</u>	<u>(5,021,174)</u>	<u>(9,638,979)</u>	<u>(1,401,932)</u>
Accretion on convertible redeemable preferred shares to redemption value	(981,233)	(2,576,935)	(13,667,291)	(1,987,825)
Accretion on redeemable non-controlling interests to redemption value	—	—	(63,297)	(9,206)
Net loss attributable to non-controlling interests	36,938	36,440	41,705	6,066
<b>Net loss attributable to ordinary shareholders of NIO Inc.</b>	<u>(3,517,549)</u>	<u>(7,561,669)</u>	<u>(23,327,862)</u>	<u>(3,392,897)</u>
<b>Net loss</b>	<u>(2,573,254)</u>	<u>(5,021,174)</u>	<u>(9,638,979)</u>	<u>(1,401,932)</u>
<b>Other comprehensive income/(loss)</b>				
Foreign currency translation adjustment, net of nil tax	55,493	(124,374)	(20,786)	(3,023)
<b>Total other comprehensive income/(loss)</b>	<u>55,493</u>	<u>(124,374)</u>	<u>(20,786)</u>	<u>(3,023)</u>
<b>Total comprehensive loss</b>	<u>(2,517,761)</u>	<u>(5,145,548)</u>	<u>(9,659,765)</u>	<u>(1,404,955)</u>
Accretion on convertible redeemable preferred shares to redemption value	(981,233)	(2,576,935)	(13,667,291)	(1,987,825)
Accretion on redeemable non-controlling interests to redemption value	—	—	(63,297)	(9,206)
Net loss attributable to non-controlling interests	36,938	36,440	41,705	6,066
<b>Comprehensive loss attributable to ordinary shareholders of NIO Inc.</b>	<u>(3,462,056)</u>	<u>(7,686,043)</u>	<u>(23,348,648)</u>	<u>(3,395,920)</u>
<b>Weighted average number of ordinary shares used in computing net loss per share</b>				
Basic and diluted	16,697,527	21,801,525	332,153,211	332,153,211
<b>Net loss per share attributable to ordinary shareholders</b>				
Basic and diluted	(210.66)	(346.84)	(70.23)	(10.21)
<b>Weighted average number of ADS used in computing net loss per ADS</b>				
Basic and diluted	—	—	332,153,211	332,153,211
<b>Net loss per ADS attributable to ordinary shareholders</b>				
Basic and diluted	—	—	(70.23)	(10.21)

The accompanying notes are an integral part of these consolidated financial statements.

**NIO INC.**  
**CONSOLIDATED STATEMENTS OF SHAREHOLDERS' (DEFICIT)/EQUITY**  
(All amounts in thousands, except for share and per share data)

	Ordinary Shares		Treasury Shares		Additional Paid in Capital	Accumulated Other Comprehensive Income	Accumulated Deficit	Total Shareholders' Deficit	Non- Controlling Interests	Total Equity
	Shares	Par Value	Shares	Amount						
<b>Balance as of December 31, 2015</b>	28,900,001	47	(18,400,000)	(9,186)	13,748	54,959	(559,396)	(499,828)	—	(499,828)
Accretion on Series A-1 and A-2 convertible redeemable preferred shares to redemption value	—	—	—	—	—	—	(798,481)	(798,481)	—	(798,481)
Accretion on Series A-3 convertible redeemable preferred shares to redemption value	—	—	—	—	—	—	(29,983)	(29,983)	—	(29,983)
Accretion on Series B convertible redeemable preferred shares to redemption value	—	—	—	—	—	—	(152,769)	(152,769)	—	(152,769)
Grant of restricted shares	3,103,809	5	(3,103,809)	—	—	—	—	5	—	5
Vesting of restricted shares	—	—	7,273,458	—	39,104	—	—	39,104	—	39,104
Vesting of share options	—	—	—	—	17,998	—	—	17,998	—	17,998
Capital injection by non- controlling interests	—	—	—	—	—	—	—	—	25,355	25,355
Foreign currency translation adjustment	—	—	—	—	—	55,493	—	55,493	—	55,493
Net loss	—	—	—	—	—	—	(2,536,316)	(2,536,316)	(36,938)	(2,573,254)
<b>Balance as of December 31, 2016</b>	<u>32,003,810</u>	<u>52</u>	<u>(14,230,351)</u>	<u>(9,186)</u>	<u>70,850</u>	<u>110,452</u>	<u>(4,076,945)</u>	<u>(3,904,777)</u>	<u>(11,583)</u>	<u>(3,916,360)</u>

**NIO INC.**  
**CONSOLIDATED STATEMENTS OF SHAREHOLDERS' (DEFICIT)/EQUITY**  
(All amounts in thousands, except for share and per share data)

	Ordinary Shares		Treasury Shares		Additional Paid in Capital	Accumulated Other Comprehensive Income/(Loss)	Accumulated Deficit	Total Shareholders' Deficit	Non- Controlling Interests	Total Equity
	Shares	Par Value	Shares	Amount						
<b>Balance as of December 31, 2016</b>	32,003,810	52	(14,230,351)	(9,186)	70,850	110,452	(4,076,945)	(3,904,777)	(11,583)	(3,916,360)
Accretion on Series A-1 and A-2 convertible redeemable preferred shares to redemption value	—	—	—	—	—	—	(2,205,227)	(2,205,227)	—	(2,205,227)
Accretion on Series A-3 convertible redeemable preferred shares to redemption value	—	—	—	—	—	—	(120,451)	(120,451)	—	(120,451)
Accretion on Series B convertible redeemable preferred shares to redemption value	—	—	—	—	—	—	(40,011)	(40,011)	—	(40,011)
Accretion on Series C convertible redeemable preferred shares to redemption value	—	—	—	—	—	—	(56,283)	(56,283)	—	(56,283)
Accretion on Series D convertible redeemable preferred shares to redemption value	—	—	—	—	—	—	(154,963)	(154,963)	—	(154,963)
Grant of restricted shares	2,000,000	3	(2,000,000)	—	—	—	—	3	—	3
Exercise of share options	2,723,540	5	—	—	6,207	—	—	6,212	—	6,212
Vesting of restricted shares	—	—	3,353,344	—	24,723	—	—	24,723	—	24,723
Vesting of share options	—	—	—	—	30,127	—	—	30,127	—	30,127
Capital injection by non- controlling interests	—	—	—	—	—	—	—	—	13,376	13,376
Acquisition of additional interests in subsidiaries from non-controlling interests	—	—	—	—	—	—	(73,334)	(73,334)	45,956	(27,378)
Foreign currency translation adjustment	—	—	—	—	—	(124,374)	—	(124,374)	—	(124,374)
Net loss	—	—	—	—	—	—	(4,984,734)	(4,984,734)	(36,440)	(5,021,174)
<b>Balance as of December 31, 2017</b>	<u>36,727,350</u>	<u>60</u>	<u>(12,877,007)</u>	<u>(9,186)</u>	<u>131,907</u>	<u>(13,922)</u>	<u>(11,711,948)</u>	<u>(11,603,089)</u>	<u>11,309</u>	<u>(11,591,780)</u>

**NIO INC.**  
**CONSOLIDATED STATEMENTS OF SHAREHOLDERS' (DEFICIT)/EQUITY**  
(All amounts in thousands, except for share and per share data)

	Ordinary Shares		Treasury Shares		Additional Paid in Capital	Accumulated Other Comprehensive Loss	Accumulated Deficit	Total Shareholders' (Deficit)/Equity	Non- Controlling Interests	Total Equity
	Shares	Par Value	Shares	Amount						
<b>Balance as of December 31, 2017</b>	36,727,350	60	(12,877,007)	(9,186)	131,907	(13,922)	(11,711,948)	(11,603,089)	11,309	(11,591,780)
Accretion on Series A- 1 and A-2 convertible redeemable preferred shares to redemption value	—	—	—	—	—	—	(7,091,163)	(7,091,163)	—	(7,091,163)
Accretion on Series A- 3 convertible redeemable preferred shares to redemption value	—	—	—	—	—	—	(565,979)	(565,979)	—	(565,979)
Accretion on Series B convertible redeemable preferred shares to redemption value	—	—	—	—	—	—	(2,417,979)	(2,417,979)	—	(2,417,979)
Accretion on Series C convertible redeemable preferred shares to redemption value	—	—	—	—	—	—	(2,375,943)	(2,375,943)	—	(2,375,943)
Accretion on Series D convertible redeemable preferred shares to redemption value	—	—	—	—	—	—	(1,216,227)	(1,216,227)	—	(1,216,227)
Accretion on redeemable non- controlling interests to redemption value	—	—	—	—	—	—	(63,297)	(63,297)	—	(63,297)
Issuance of ordinary shares	184,000,000	315	—	—	7,526,681	—	—	7,526,996	—	7,526,996
Conversion of preferred shares	821,378,518	1,408	—	—	33,724,621	—	—	33,726,029	—	33,726,029
Exercise of share options	16,026,060	27	(2,176,570)	—	42,224	—	—	42,251	—	42,251
Vesting of restricted shares	—	—	7,720,681	—	56,183	—	—	56,183	—	56,183
Vesting of share options	—	—	—	—	437,320	—	—	437,320	—	437,320
Grant of restricted shares	509,001	1	(509,001)	—	—	—	—	1	—	1
Cancellation of restricted shares	(909,917)	(2)	909,917	—	—	—	—	(2)	—	(2)
Capital injection by non-controlling interests	—	—	—	—	—	—	—	—	14,500	14,500
Foreign currency translation adjustment	—	—	—	—	—	(20,786)	—	(20,786)	—	(20,786)
Net loss	—	—	—	—	—	—	(9,597,274)	(9,597,274)	(41,705)	(9,638,979)
<b>Balance as of December 31, 2018</b>	<u>1,057,731,012</u>	<u>1,809</u>	<u>(6,931,980)</u>	<u>(9,186)</u>	<u>41,918,936</u>	<u>(34,708)</u>	<u>(35,039,810)</u>	<u>6,837,041</u>	<u>(15,896)</u>	<u>6,821,145</u>

The accompanying notes are an integral part of these consolidated financial statements.

**NIO INC.**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(All amounts in thousands, except for share and per share data)

	For the Year Ended December 31,			
	2016 RMB	2017 RMB	2018 RMB	2018 US\$ Note 2(e)
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>				
Net loss	(2,573,254)	(5,021,174)	(9,638,979)	(1,401,932)
Adjustments to reconcile net loss to net cash used in operating activities:				
Depreciation and amortization	46,087	167,858	474,223	68,973
Foreign exchange (gain)/loss	(5,540)	49,503	36,597	5,323
Share-based compensation expenses	76,684	90,296	679,468	98,825
Investment income	(2,670)	(3,498)	—	—
Share of losses of equity investee	—	5,375	9,722	1,414
Loss on disposal of property, plant and equipment	267	6,192	21,547	3,134
Changes in operating assets and liabilities:				
Prepayments and other current assets	(209,784)	(404,762)	(811,138)	(117,975)
Inventory	—	(89,464)	(1,375,862)	(200,111)
Other non-current assets	(20,286)	(66,698)	(657,986)	(95,700)
Taxes payable	15,633	9,650	21,398	3,112
Trade receivable	—	—	(756,508)	(110,030)
Trade payable	—	—	2,827,144	411,191
Long-term receivables	—	—	(574,677)	(83,583)
Non-current deferred revenue	—	—	193,524	28,147
Accruals and other liabilities	410,100	603,374	1,348,622	196,149
Other non-current liabilities	61,199	78,629	291,137	42,344
Net cash used in operating activities	(2,201,564)	(4,574,719)	(7,911,768)	(1,150,719)
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>				
Purchase of property, plant and equipment and intangible assets	(654,455)	(1,113,893)	(2,643,964)	(384,549)
Purchases of short-term investments	—	—	(8,090,703)	(1,176,744)
Proceeds from sale of short-term investments	—	—	2,936,000	427,023
Purchase of held for trading securities	(2,346,261)	(1,337,413)	—	—
Sale of held for trading securities	3,118,559	1,340,911	—	—
Loan to related parties	—	—	(65,342)	(9,504)
Loan repayment from related parties	—	—	34,066	4,955
Acquisitions of equity investees	—	(52,500)	(110,900)	(16,130)
Acquisition of additional interests in subsidiaries from non-controlling interests	—	(27,378)	—	—
Net cash provided by/(used in) investing activities	117,843	(1,190,273)	(7,940,843)	(1,154,949)
<b>CASH FLOWS FROM FINANCING ACTIVITIES</b>				
Repurchase of ordinary shares	(8,408)	—	—	—
Proceeds from exercise of stock options	—	6,207	42,251	6,145
Proceeds from issuance of series A convertible redeemable preferred shares, net of issuance costs	401,478	273,686	—	—
Proceeds from issuance of series B convertible redeemable preferred shares, net of issuance costs	1,862,134	240,066	—	—
Proceeds from issuance of series C convertible redeemable preferred shares, net of issuance costs	—	4,398,313	—	—
Proceeds from collection of receivable from a holder of Series D convertible redeemable preferred shares	—	7,314,387	78,651	11,439
Capital injection from non-controlling interests	—	13,376	14,500	2,109
Deposit from non-controlling interest	—	—	47,124	6,854
Proceeds from issuance of redeemable non-controlling interests	—	—	1,265,900	184,118
Repayment of non-recourse loan	—	—	82,863	12,052
Repurchase of restricted shares	—	—	(7,490)	(1,089)
Proceeds from issuance of convertible promissory note	—	312,624	—	—
Repayment of convertible promissory note	—	(325,013)	—	—
Proceeds from borrowings	37,500	633,688	2,668,461	388,112
Repayments of borrowings	—	—	(120,205)	(17,483)
Proceeds from issuance of ordinary share, net	—	—	7,531,037	1,095,344
Net cash provided by financing activities	2,292,704	12,867,334	11,603,092	1,687,601
Effects of exchange rate changes on cash, cash equivalents and restricted cash	40,539	(168,120)	(56,947)	(8,283)
<b>NET INCREASE/(DECREASE) IN CASH, CASH EQUIVALENTS AND RESTRICTED CASH</b>				
	249,522	6,934,222	(4,306,466)	(626,350)
Cash, cash equivalents and restricted cash at beginning of the year	347,109	596,631	7,530,853	1,095,317
Cash, cash equivalents and restricted cash at end of the year	596,631	7,530,853	3,224,387	468,967
<b>NON-CASH FINANCING ACTIVITIES</b>				

Issuance of series D convertible redeemable preferred shares	—	85,553	—	—
Capital injection from non-controlling interests in the form of net assets	25,355	—	—	—
Accrual related to purchase of property and equipment	190,681	410,726	1,027,377	149,426
	<u>216,036</u>	<u>496,279</u>	<u>1,027,377</u>	<u>149,426</u>
<b>Supplemental Disclosure</b>				
Interest paid	55	15,434	112,682	16,389
Income taxes paid	—	1,129	11,157	1,623

The accompanying notes are an integral part of these consolidated financial statements.



**NIO INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**(All amounts in thousands, except for share and per share data)**

**1. Organization and Nature of Operations**

NIO Inc. (“NIO”, or “the Company”) was incorporated under the laws of the Cayman Islands in November, 2014, as an exempted company with limited liability. The Company was formerly known as NextCar Inc.. It changed its name to NextEV Inc. in December, 2014, and then changed to NIO Inc. in July, 2017. The Company, its subsidiaries and consolidated variable interest entities (“VIEs”) are collectively referred to as the “Group”.

The Group designs and develops high-performance fully electric vehicles. It launched the first volume manufactured electric vehicle, the ES8, to the public in December 2017. The Group jointly manufactures ES8 through strategic collaboration with other Chinese vehicle manufacturers. The Group also offers Energy and Service packages to its users. As of December 31, 2017 and 2018, its primary operations are conducted in the People’s Republic of China (“PRC”). The Group began to sell its first vehicles in June 2018. The Company’s principal subsidiaries and VIEs are as follows:

<b>Subsidiaries</b>	<b>Equity interest held</b>	<b>Place and date of incorporation or date of acquisition</b>	<b>Principal activities</b>
NIO NextEV Limited (“NIO HK”) (formerly known as NextEV Limited)	100%	Hong Kong, February 2015	Investment holding
NIO GmbH (formerly known as NextEV GmbH)	100%	Germany, May 2015	Design and technology development
NIO Co., Ltd. (“NIO SH”) (formerly known as NextEV Co., Ltd.)	100%	Shanghai, PRC, May 2015	Headquarter and technology development
NIO USA, Inc. (“NIO US”) (formerly known as NextEV USA, Inc.)	100%	United States, November 2015	Technology development
XPT Limited (“XPT”)	100%	Hong Kong, December 2015	Investment holding
NIO NextEV (UK) Limited (formerly known as NextEV (UK) Limited)	100%	United Kingdom, February 2016	Marketing and technology development
NIO Sport Limited (“NIO Sport”) (formerly known as NextEV NIO Sport Limited)	100%	Hong Kong, April 2016	Racing management
XPT Technology Limited (“XPT Technology”)	100%	Hong Kong, April 2016	Investment holding
XPT Inc. (“XPT US”)	100%	United States, April 2016	Technology development
XPT (Jiangsu) Investment Co., Ltd. (“XPT Jiangsu”)	100%	Jiangsu, PRC, May 2016	Investment holding
Shanghai XPT Technology Limited	100%	Shanghai, PRC, May 2016	Technology development
XPT (Nanjing) E-Powertrain Technology Co., Ltd. (“XPT NJEP”)	100%	Nanjing, PRC, July 2016	Manufacturing of E-Powertrain
XPT (Nanjing) Energy Storage System Co., Ltd. (“XPT NJES”)	100%	Nanjing, PRC, October 2016	Manufacturing of battery pack
NIO Power Express Limited (“PE HK”)	100%	Hong Kong, January 2017	Investment holding
NextEV User Enterprise Limited (“UE HK”)	100%	Hong Kong, February 2017	Investment holding
Shanghai NIO Sales and Services Co., Ltd. (“UE CNHC”)	100%	Shanghai, PRC, March 2017	Investment holding and sales and after sales management
NIO Energy Investment (Hubei) Co., Ltd. (“PE CNHC”)	100%	Wuhan PRC, April 2017	Investment holding
Wuhan NIO Energy Co., Ltd. (“PE WHJV”)	100%	Wuhan, PRC, May 2017	Investment holding
XTRONICS (Nanjing) Automotive Intelligent Technologies Co. Ltd. (“XPT NJWL”)	50%	Nanjing, PRC, June 2017	Manufacturing of components
XPT (Jiangsu) Automotive Technology Co., Ltd. (“XPT AUTO”)	100%	Nanjing, PRC, May 2018	Investment holding

**NIO INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**(All amounts in thousands, except for share and per share data)**

<b>VIE and VIE's subsidiaries</b>	<b>Economic interest held</b>	<b>Place and Date of incorporation or date of acquisition</b>
Prime Hubs Limited ("Prime Hubs")	100%	BVI, October 2014
NIO Technology Co., Ltd. ("NIO SHTECH") (formerly known as Shanghai NextEV Technology Co., Ltd.)	100%	Shanghai, PRC, November 2014
Beijing NIO Network Technology Co., Ltd. ("NIO BJTECH")	100%	Beijing, PRC, July 2017
Shanghai Anbin Technology Co., Ltd. ("NIO ABTECH")	100%	Shanghai, PRC, April 2018

In accordance with the Article of Association of XPT NJWL, the Company has the power to control the board of directors of XPT NJWL to unilaterally govern the financial and operating policies of XPT NJWL and the non-controlling shareholder does not have substantive participating rights, therefore, the Group consolidates this entity.

***Initial Public Offering***

On September 12, 2018, the Company consummated its initial public offering (the "IPO") on the New York Stock Exchange, where 160,000,000 ordinary shares were newly issued with the total net proceeds of RMB6,568,291 (US\$956,362). Subsequently on October 12, 2018, over-allotment option were fully exercised and the Company received a net proceeds of RMB962,746 (US\$138,982) associated with issuing additional 24,000,000 ordinary shares.

***Variable interest entity***

NIO SHTECH was established by Li Bin and Qin Lihong (the "Nominee Shareholders") in November, 2014. In 2015, NIO SH, NIO SHTECH, and the Nominee Shareholders of NIO SHTECH entered into a series of contractual agreements, including a loan agreement, an equity pledge agreement, exclusive call option agreement and power of attorney that irrevocably authorized the Nominee Shareholders designated by NIO SH to exercise the equity owner's rights over NIO SHTECH. These agreements provide the Company, as the only shareholder of NIO SH, with effective control over NIO SHTECH to direct the activities that most significantly impact NIO SHTECH's economic performance and enable the Company to obtain substantially all of the economic benefits arising from NIO SHTECH. Management concluded that NIO SHTECH is a variable interest entity of the Company and the Company is the ultimate primary beneficiary of NIO SHTECH and shall consolidate the financial results of NIO SHTECH in the Group's consolidated financial statements. In April 2018, the above mentioned contractual agreements were terminated. On the same date, NIO SHTECH became a subsidiary wholly owned by NIO ABTECH, who also became a VIE of the Group on that day. As of December 31, 2017 and 2018, NIO SHTECH did not have significant operations, nor any material assets or liabilities.

In October 2014, Prime Hubs, a British Virgin Islands ("BVI") incorporated company and a consolidated variable interest entity of the Group, was established by the shareholders of the Group to facilitate the adoption of the Company's employee stock incentive plans. The Company entered into a management agreement with Prime Hubs and Li Bin. The agreement provides the company with effective control over Prime Hubs and enables the Company to obtain substantially all of the economic benefits arising from Prime Hubs. As of December 31, 2017 and 2018, Prime Hubs held 26,900,001 ordinary shares and 4,250,002 Class A Ordinary Shares of the Company, respectively.

In April 2018, NIO SH entered into a series of contractual arrangements with the Nominee Shareholders as well as NIO ABTECH and NIO BJTECH separately, each including a loan agreement, an equity pledge agreement, exclusive call option agreement and power of attorney that irrevocably authorized the Nominee Shareholders designated by NIO SH to exercise the equity owner's rights over NIO ABTECH and NIO BJTECH. These agreements provide the Company, as the only shareholder of NIO SH, with effective control over NIO ABTECH and NIO BJTECH to direct the activities that most significantly impact their economic performance and enable the Company to obtain substantially all of the economic benefits arising from them. Management concluded that NIO ABTECH and NIO BJTECH are variable interest entities of the Company and the Company is the ultimate primary beneficiary of them and shall consolidate the financial results of NIO ABTECH and NIO BJTECH in the Group's consolidated financial statements. As of December 31, 2018, NIO ABTECH and NIO BJTECH did not have significant operations, nor any material assets or liabilities.

***Liquidity***

The Group has been incurring losses from operations since inception. The Group incurred net losses of RMB2,573,254, RMB5,021,174 and RMB9,638,979 for the years ended December 31, 2016, 2017 and 2018, respectively. Accumulated deficit amounted to RMB11,711,948 and RMB35,039,810 as of December 31, 2017 and 2018, respectively. Net cash used in operating activities was approximately RMB2,201,564, RMB4,574,719 and RMB7,911,768 for the years ended December 31, 2016, 2017 and 2018, respectively. As of December 31, 2017 and 2018, the Group's working capital was RMB6,691,491 and RMB3,576,246.

**NIO INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
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The Group's liquidity is based on its ability to generate cash from operating activities, obtain capital financing from equity interest investors and borrow funds on favorable economic terms to fund its general operations and capital expansion needs. The Group's ability to continue as a going concern is dependent on management's ability to successfully execute its business plan, which includes increasing revenue while controlling operating cost and expenses to generate positive operating cash flows and obtaining funds from outside sources of financing to generate positive financing cash flows. As of December 31, 2017 and 2018, the Group's balance of cash and cash equivalents was RMB7,505,954 and RMB3,133,847. In addition, up to the date of this report, the Company has entered into loan facility agreements with several banks in China for a total principal amount of RMB 7,095,000, with respective expiration date from April 27, 2019 to December 15, 2025. Moreover, the Group can adjust the pace of its operation expansion and control the operating expenses of the Group.

Based on cash flows projection from operating and financing activities and existing balance of cash and cash equivalents, management is of the opinion that the Group has sufficient funds for sustainable operations and it will be able to meet its payment obligations from operations and debt related commitments for the next twelve months from the issuance of the consolidated financial statements. Based on the above considerations, the Group's consolidated financial statements have been prepared on a going concern basis, which contemplates the realization of assets and liquidation of liabilities during the normal course of operations.

## **2. Summary of Significant Accounting Policies**

### ***(a) Basis of presentation***

The consolidated financial statements of the Group have been prepared in accordance with accounting principles generally accepted in the United States of America ("US GAAP"). Significant accounting policies followed by the Group in the preparation of the accompanying consolidated financial statements are summarized below.

### ***(b) Principles of consolidation***

The consolidated financial statements include the financial statements of the Company, its subsidiaries and the VIE for which the Company is the ultimate primary beneficiary.

A subsidiary is an entity in which the Company, directly or indirectly, controls more than one half of the voting power; has the power to appoint or remove the majority of the members of the board of directors (the "Board"); to cast majority of votes at the meeting of the Board or to govern the financial and operating policies of the investee under a statute or agreement among the shareholders or equity holders.

A VIE is an entity in which the Company, or its subsidiary, through contractual arrangements, bears the risks of, and enjoys the rewards normally associated with, ownership of the entity, and therefore the Company or its subsidiary is the primary beneficiary of the entity.

All significant transactions and balances between the Company, its subsidiaries and the VIE have been eliminated upon consolidation. The non-controlling interests in consolidated subsidiaries are shown separately in the consolidated financial statements.

### ***(c) Use of estimates***

The preparation of the consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, related disclosures of contingent assets and liabilities at the balance sheet date, and the reported revenue and expenses during the reported period in the consolidated financial statements and accompanying notes. Significant accounting estimates reflected in the Group's consolidated financial statements mainly include, but are not limited to, standalone selling price of each distinct performance obligation in revenue recognition, the valuation and recognition of share-based compensation arrangements, depreciable lives of property, equipment and software, assessment for impairment of long-lived assets, inventory valuation for excess and obsolete inventories, lower of cost and net realizable value of inventories, valuation of deferred tax assets as well as redemption value of the convertible redeemable preferred shares. Actual results could differ from those estimates.

**NIO INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**(All amounts in thousands, except for share and per share data)**

***(d) Functional currency and foreign currency translation***

The Group's reporting currency is the Renminbi ("RMB"). The functional currency of the Company and its subsidiaries which are incorporated in HK is United States dollars ("US\$"), except NIO Sport which operates mainly in United Kingdom and uses Great Britain pounds ("GBP"). The functional currencies of the other subsidiaries and the VIE are their respective local currencies. The determination of the respective functional currency is based on the criteria set out by ASC 830, *Foreign Currency Matters*.

Transactions denominated in currencies other than in the functional currency are translated into the functional currency using the exchange rates prevailing at the transaction dates. Monetary assets and liabilities denominated in foreign currencies are translated into functional currency using the applicable exchange rates at the balance sheet date. Non-monetary items that are measured in terms of historical cost in foreign currency are re-measured using the exchange rates at the dates of the initial transactions. Exchange gains or losses arising from foreign currency transactions are included in the consolidated statements of comprehensive loss.

The financial statements of the Group's entities of which the functional currency is not RMB are translated from their respective functional currency into RMB. Assets and liabilities denominated in foreign currencies are translated into RMB at the exchange rates at the balance sheet date. Equity accounts other than earnings generated in current period are translated into RMB at the appropriate historical rates. Income and expense items are translated into RMB using the periodic average exchange rates. The resulting foreign currency translation adjustments are recorded in other comprehensive income/(loss) in the consolidated statements of comprehensive gain or loss, and the accumulated foreign currency translation adjustments are presented as a component of accumulated other comprehensive loss in the consolidated statements of shareholders' (deficit)/equity. Total foreign currency translation adjustment (gains)/losses were RMB(55,493), RMB124,374 and RMB20,786 for the years ended December 31, 2016, 2017 and 2018, respectively. The grant-date fair value of the Group's share-based compensation expenses is reported in US\$ as the respective valuation is conducted in US\$ as the shares are denominated in US\$.

***(e) Convenience translation***

Translations of balances in the consolidated balance sheets, consolidated statements of comprehensive loss and consolidated statements of cash flows from RMB into US\$ as of and for the year ended December 31, 2018 are solely for the convenience of the reader and were calculated at the rate of US\$1.00 = RMB6.8755, representing the noon buying rate in The City of New York for cable transfers of RMB as certified for customs purposes by the Federal Reserve Bank of New York on December 31, 2018. No representation is made that the RMB amounts represent or could have been, or could be, converted, realized or settled into US\$ at that rate on December 31, 2018, or at any other rate.

***(f) Fair value***

Fair value is defined as the price that would be received from selling an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. When determining the fair value measurements for assets and liabilities required or permitted to be either recorded or disclosed at fair value, the Group considers the principal or most advantageous market in which it would transact, and it also considers assumptions that market participants would use when pricing the asset or liability.

Accounting guidance establishes a fair value hierarchy that requires an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value. A financial instrument's categorization within the fair value hierarchy is based upon the lowest level of input that is significant to the fair value measurement. Accounting guidance establishes three levels of inputs that may be used to measure fair value:

Level 1—Quoted prices (unadjusted) in active markets for identical assets or liabilities.

Level 2—Observable, market-based inputs, other than quoted prices, in active markets for identical assets or liabilities.

Level 3—Unobservable inputs to the valuation methodology that are significant to the measurement of the fair value of the assets or liabilities.

Financial assets and liabilities of the Group primarily consist of cash and cash equivalents, restricted cash, short-term investments, trade receivable, amounts due from related parties, prepayments and other current assets, trade payable, amounts due to related parties, short-term borrowings, taxes payable, accruals and other liabilities, long-term receivables and long-term borrowings. As of December 31, 2017 and 2018, the carrying values of these financial instruments except for long-term receivables and long-term borrowings are approximated to their fair values due to the short-term maturity of these instruments.

**NIO INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**(All amounts in thousands, except for share and per share data)**

When available, the Group uses quoted market prices to determine the fair value of an asset or liability. If quoted market prices are not available, the Group will measure fair value using valuation techniques that use, when possible, current market-based or independently sourced market parameters, such as interest rates and currency rates. Below is a description of the valuation techniques that the Group uses to measure the fair value of assets that the Group reports on its consolidated balance sheets at fair value on a recurring basis.

*Time deposits.* The Group values its time deposits held in certain bank accounts using quoted prices for securities with similar characteristics and other observable inputs, and accordingly, the Group classifies the valuation techniques that use these inputs as Level 2.

*Short-term borrowings.* The rates of interest under the loan agreements with the lending banks were determined based on the prevailing interest rates in the market. The Group classifies the valuation techniques that use these inputs as Level 2.

*Short-term receivables and payables.* Trade receivable and prepayments and other current assets are financial assets with carrying values that approximate fair value due to their short term nature. Trade payable, accruals and other liabilities are financial liabilities with carrying values that approximate fair value due to their short term nature.

*Prepayments and other assets in non-current assets.* Prepayments and other assets in non-current assets are financial assets with carrying values that approximate fair value due to the change in fair value after considering the discount rate. The Group estimated fair values of non-current prepayments and other assets using the discount cash flow method.

**(g) Cash, cash equivalents and restricted cash**

Cash and cash equivalents represent cash on hand, time deposits and highly-liquid investments placed with banks or other financial institutions, which are unrestricted as to withdrawal and use, and which have original maturities of three months or less. The Group adopted ASU No. 2016-18, Statement of Cash Flows: Restricted Cash (Topic 230) for interim periods beginning after January 1, 2018, using a retrospective method to each period presented. The changes in restricted cash in the consolidated cash flow were RMB15,335, RMB9,564 and RMB65,641 for the years ended December 31, 2016, 2017 and 2018, respectively, which were no longer presented within investing activities and were retrospectively included in the changes of cash, cash equivalents and restricted cash as required.

Restricted cash is restricted to withdrawal for use or pledged as security is reported separately on the face of the Consolidated Balance Sheets, and is not included in the total cash and cash equivalents in the Consolidated Statements of Cash Flows. The Group's restricted cash mainly represents (a) the secured deposits held in designated bank accounts for issuance of bank credit card; (b) time deposit that are pledged for property lease.

Cash, cash equivalents and restricted cash as reported in the consolidated statement of cash flows are presented separately on our consolidated balance sheet as follows:

	<b>December 31, 2017</b>	<b>December 31 2018</b>
Cash and cash equivalents	7,505,954	3,133,847
Restricted cash	10,606	57,012
Long-term restricted cash	14,293	33,528
Total	<u>7,530,853</u>	<u>3,224,387</u>

**(h) Short-term investment**

Short-term investments consist primarily of investments in fixed deposits with maturities between three months and one year and investments in money market funds. As of December 31, 2017 and 2018, the investment in fixed deposits that were recorded as short-term investments amounted to nil and RMB5,154,703, respectively, among which, nil and RMB1,775,000 were restricted as collateral for bank borrowings and letter of guarantee.

**NIO INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
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***(i) Account Receivable and Allowance for Doubtful Accounts***

Accounts receivable primarily include amounts of vehicle sales in relation of government subsidy to be collected from government on behalf of customers, current portion of battery installment and receivables due from vehicle users. The Group provides an allowance against accounts receivable to the amount we reasonably believe will be collected. The Group writes off accounts receivable when they are deemed uncollectible. No allowance for doubtful accounts were recognized for the years ended December 31, 2016, 2017 and 2018.

***(j) Inventory***

Inventories are stated at the lower of cost or net realizable value. Cost is calculated on the average basis and includes all costs to acquire and other costs to bring the inventories to their present location and condition. The Group records inventory write-downs for excess or obsolete inventories based upon assumptions on current and future demand forecasts. If the inventory on hand is in excess of future demand forecast, the excess amounts are written off. The Group also reviews inventory to determine whether its carrying value exceeds the net amount realizable upon the ultimate sale of the inventory. This requires the determination of the estimated selling price of the vehicles less the estimated cost to convert inventory on hand into a finished product. Once inventory is written-down, a new, lower-cost basis for that inventory is established and subsequent changes in facts and circumstances do not result in the restoration or increase in that newly established cost basis.

No inventory write-downs were recognized for the years ended December 31, 2016 and 2017 and 2018.

***(k) Trading securities***

Trading securities are comprised of bonds and are all designated as trading securities as they have been acquired principally for the purpose of selling in the near term. They are recognized on the trade date, when the Group enters into contractual arrangements with counterparties, and are normally derecognized when sold. They are initially measured at fair value, with transaction costs taken to the statements of operations and comprehensive loss. Subsequent changes in their fair values and interest are recognized in the statements of comprehensive loss.

***(l) Property, plant and equipment, net***

Property, plant and equipment are stated at cost less accumulated depreciation and impairment loss, if any. Property and equipment are depreciated at rates sufficient to write off their costs less impairment and residual value, if any, over their estimated useful lives on a straight-line basis. Leasehold improvements are amortized over the shorter of the lease term or the estimated useful lives of the related assets.

The estimated useful lives are as follows:

	<b>Useful lives</b>
Building and constructions	20 years
Production facilities	10 years
Charging & battery swap infrastructure	5 years
R&D equipment	5 years
Computer and electronic equipment	3 years
Purchased software	3 years
Leasehold improvements	Shorter of the estimated useful life or remaining lease term
Others	3 to 5 years

Depreciation for mold and tooling is computed using the units-of-production method whereby capitalized costs are amortized over the total estimated productive life of the related assets.

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The cost of maintenance and repairs is expensed as incurred, whereas the cost of renewals and betterment that extends the useful lives of property, plant and equipment is capitalized as additions to the related assets. Interest expense on outstanding debt is capitalized during the period of significant capital asset construction. Capitalized interest on construction-in-progress is included within property, plant and equipment and is amortized over the life of the related assets. When assets are retired or otherwise disposed of, the cost and related accumulated depreciation and amortization are removed from their respective accounts, and any gain or loss on such sale or disposal is reflected in the statements of comprehensive loss.

***(m) Intangible assets, net***

Intangible assets are carried at cost less accumulated amortization and impairment, if any. Intangible assets are amortized using the straight-line method over the estimated useful lives as below:

	<u>Useful lives</u>
Domain names and others	5 years
License	3 years

The estimated useful lives of amortized intangible assets are reassessed if circumstances occur that indicate the original estimated useful lives have changed.

***(n) Land use rights, net***

Land use rights are recorded at cost less accumulated amortization. Amortization is provided on a straight-line basis over the estimated useful lives which are 536 months and represent the shorter of the estimated usage periods or the terms of the agreements.

***(o) Long-term investments***

As of December 31, 2018, the Group's long-term investments was accounted for using equity method. Investments in entities in which the Group can exercise significant influence and holds an investment in voting common stock or in-substance common stock (or both) of the investee but does not own a majority equity interest or control are accounted for using the equity method of accounting in accordance with ASC topic 323, *Investments—Equity Method and Joint Ventures* ("ASC 323"). Under the equity method, the Group initially records its investments at fair value. The Group subsequently adjusts the carrying amount of the investments to recognize the Group's proportionate share of each equity investee's net income or loss into earnings after the date of investment. The Group evaluates the equity method investments for impairment under ASC 323. An impairment loss on the equity method investments is recognized in earnings when the decline in value is determined to be other-than-temporary. The carrying value of the Group's long-term investments measured under equity method was RMB47,125 and RMB148,303 as of December 31, 2017 and 2018, respectively. No impairment charge was recognized for the years ended December 31, 2016, 2017 and 2018.

***(p) Impairment of long-lived assets***

Long-lived assets are evaluated for impairment whenever events or changes in circumstances (such as a significant adverse change to market conditions that will impact the future use of the assets) indicate that the carrying amount may not be fully recoverable or that the useful life is shorter than the Group had originally estimated. When these events occur, the Group evaluates the impairment by comparing carrying value of the assets to an estimate of future undiscounted cash flows expected to be generated from the use of the assets and their eventual disposition. If the sum of the expected future undiscounted cash flows is less than the carrying value of the assets, the Group recognizes an impairment loss based on the excess of the carrying value of the assets over the fair value of the assets. No impairment charge was recognized for the years ended December 31, 2016, 2017 and 2018.

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***(q) Revenue recognition***

Revenue is recognized when or as the control of the goods or services is transferred to a customer. Depending on the terms of the contract and the laws that apply to the contract, control of the goods and services may be transferred over time or at a point in time. Control of the goods and services is transferred over time if the Group's performance:

- provides all of the benefits received and consumed simultaneously by the customer;
- creates and enhances an asset that the customer controls as the Group performs; or
- does not create an asset with an alternative use to the Group and the Group has an enforceable right to payment for performance completed to date.

If control of the goods and services transfers over time, revenue is recognized over the period of the contract by reference to the progress towards complete satisfaction of that performance obligation. Otherwise, revenue is recognized at a point in time when the customer obtains control of the goods and services.

Contracts with customers may include multiple performance obligations. For such arrangements, the Group allocates revenue to each performance obligation based on its relative standalone selling price. The Group generally determines standalone selling prices based on the prices charged to customers. If the standalone selling price is not directly observable, it is estimated using expected cost plus a margin or adjusted market assessment approach, depending on the availability of observable information. Assumptions and estimations have been made in estimating the relative selling price of each distinct performance obligation, and changes in judgments on these assumptions and estimates may impact the revenue recognition.

When either party to a contract has performed, the Group presents the contract in the statement of financial position as a contract asset or a contract liability, depending on the relationship between the entity's performance and the customer's payment.

A contract asset is the Group's right to consideration in exchange for goods and services that the Group has transferred to a customer. A receivable is recorded when the Group has an unconditional right to consideration. A right to consideration is unconditional if only the passage of time is required before payment of that consideration is due.

If a customer pays consideration or the Group has a right to an amount of consideration that is unconditional, before the Group transfers a good or service to the customer, the Group presents the contract liability when the payment is made, or a receivable is recorded (whichever is earlier). A contract liability is the Group's obligation to transfer goods or services to a customer for which the Group has received consideration (or an amount of consideration is due) from the customer. The Group's contract liabilities primarily resulted from the multiple performance obligations identified in the vehicle sales contract and the sales of Energy and Service Packages, which is recorded as deferred revenue and advance from customers.

*Vehicle sales*

The Group generates revenue from sales of electric vehicles, currently the ES8, together with a number of embedded products and services through a series of contracts. The Group identifies the users who purchase the ES8 as its customers. There are multiple distinct performance obligations explicitly stated in a series of contracts including sales of ES8, charging piles, vehicle internet connection services and extended lifetime warranty which are accounted for in accordance with ASC 606. The standard warranty provided by the Group is accounted for in accordance with ASC 460, Guarantees, and the estimated costs are recorded as a liability when NIO transfers the control of ES8 to a user.



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Customers only pay the amount after deducting the government subsidies to which they are entitled for the purchase of electric vehicles, which is applied on their behalf and collected by the Group or Jianghuai Automobile Group Co., Ltd. (“JAC”) from the government. The Group has concluded that government subsidies should be considered as a part of the transaction price it charges the customers for the electric vehicle, as the subsidy is granted to the buyer of the electric vehicle and the buyer remains liable for such amount in the event the subsidies were not received by the Group. For efficiency reason, the Group or JAC applies and collects the payment on a customer’ behalf. In the instance that some eligible customer selects installment payment for battery, the Group believes such arrangement contains a significant financing component and as a result adjusts the amount considering the impact of time value on the transaction price using an appropriate discount rate (i.e. the interest rates of the loan reflecting the credit risk of the borrower). The long term receivable of installment payment for battery was recognized as non-current assets. The difference between the gross receivable and the present value is recorded as unrealized finance income. Interest income resulting from a significant financing component will be presented separately from revenue from contracts with customers as this is not the Group’s ordinary business.

The Group uses a cost plus margin approach to determine the estimated standalone selling price for each individual distinct performance obligation identified, considering the Group’s pricing policies and practices, and the data utilized in making pricing decisions. The overall contract price is then allocated to each distinct performance obligation based on the relative estimated standalone selling price in accordance with ASC 606. The revenue for sales of the ES8 and charging piles are recognized at a point in time when the control of the product is transferred to the customer. For the vehicle internet connection service, the Group recognizes the revenue using a straight-line method. As for the extended lifetime warranty, given limited operating history and lack of historical data, the Group decides to recognize the revenue over time based on a straight-line method initially, and will continue monitoring the cost pattern periodically and adjust the revenue recognition pattern to reflect the actual cost pattern as it becomes available.

As the consideration for the vehicle and all embedded services must be paid in advance, which means the payments received are prior to the transfer of goods or services by the Group, the Group records a contract liability (deferred revenue) for the allocated amount regarding those unperformed obligations.

*Sales of Energy and Service Packages*

The Group also sells the two packages, Energy Package and Service Package in exchange of considerations. The Energy Package provides ES8 users with a comprehensive range of charging solutions (including charging and battery swapping). The energy service is applied by users on the mobile application depending on their needs and the Group can decide the most appropriate service to offer according to its available resource. Through the Service Package, the Group offers ES8 users with a “worry free” vehicle ownership experience (including free repair service with certain limitations, routine maintenance service, enhanced data package, etc.), which can be applied by user via mobile application.

The Group identifies the users who purchase Energy Package and Service Package meet the definition of a customer. The agreements for Energy Package and Service Package create legal enforceability to both parties on a monthly basis as the respective Energy or Service Packages can be canceled at any time without any penalty. The Group concludes the energy or service provided in Energy Package or Service Package respectively meets the stand-ready criteria and contains only one performance obligation within each package, the revenue is recognized overtime on a monthly basis as customer simultaneously receives and consumes the benefits provided and the term of legally enforced contract is only one month.

*Incentives*

The Group offers a self-managed customer loyalty program points, which can be used in the Group’s online store and at NIO houses to redeem NIO merchandise. The Group determines the value of each points based on cost of the NIO merchandise that can be redeemed with points. Customers and NIO fans and advocates have a variety of ways to obtain the points. The major accounting policy for its points program is described as follows:

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*(i) Sales of ES8 vehicle*

The Group concludes the points offered linked to the purchase transaction of the ES8 vehicle is a material right and accordingly a separate performance obligation according to ASC 606, and should be taken into consideration when allocating the transaction price of the ES8 sales. The Group also estimates the probability of points redemption when performing the allocation. Since historical information does not yet exist for the Group to determine any potential points forfeitures and the fact that most merchandise can be redeemed without requiring a significant amount of points compared with the amount of points provided to users, the Group believes it is reasonable to assume all points will be redeemed and no forfeiture is estimated currently. The amount allocated to the points as separate performance obligation is recorded as contract liability (deferred revenue) and revenue should be recognized when future goods or services are transferred. The Group will continue to monitor when and if forfeiture rate data becomes available and will apply and update the estimated forfeiture rate at each reporting period.

*(ii) Sales of Energy Package*

Energy Package—When the customers charge their ES8 without using the Group’s charging network, the Group will grant points based on the actual cost the customers incur. The Group records the value of the points as a reduction of revenue from the Energy Package.

Since historical information does not yet exist for the Group to determine any potential points forfeiture and most merchandise can be redeemed without requiring a significant amount of points compared with the amount of points provided to users, the Group has used an estimated forfeiture rate of zero.

*(iii) Other scenarios*

Customers or users of the mobile application can also obtain points through any other ways such as frequent sign-ins to the Group’s mobile application, sharing articles from the application to users’ own social media. The Group believes these points are to encourage user engagement and generate market awareness. As a result, the Group accounts for such points as selling and marketing expenses with a corresponding liability recorded under other current liabilities of its consolidated balance sheets upon the points offering. The Group estimates liabilities under the customer loyalty program based on cost of the NIO merchandise that can be redeemed, and its estimate of probability of redemption. At the time of redemption, the Group records a reduction of inventory and other current liabilities. In certain cases where merchandise is sold for cash in addition to points, the Group records other revenue.

Similar to the reasons above, the Group estimates no points forfeiture currently and continues to assess when and if a forfeiture rate should be applied.

For the years ended December 31, 2016, 2017 and 2018, the revenue portion allocated to the points as separate performance obligation was nil, nil and RMB47,310, respectively, which is recorded as contract liability (deferred revenue). For the years ended December 31, 2016, 2017 and 2018, the total points recorded as a reduction of revenue was nil, nil and RMB441, respectively. For the years ended December 31, 2016, 2017 and 2018, the total points recorded as selling and marketing expenses were nil, RMB16,460 and RMB153,057, respectively.

As of December 31, 2017 and 2018, liabilities recorded related to unredeemed points were RMB16,460 and RMB143,868, respectively.

*Practical expedients and exemptions*

The Group follows the guidance on immaterial promises when identifying performance obligations in the vehicle sales contracts and concludes that lifetime roadside assistance and out-of-town charging services are not performance obligations considering these two services are value-added services to enhance user experience rather than critical items for ES8 driving and forecasted that usage of these two services will be very limited. The Group also performs an estimation on the stand-alone fair value of each promise applying a cost plus margin approach and concludes that the standalone fair value of roadside assistance and out-of-town charging services are insignificant individually and in aggregate, representing less than 1% of ES8 gross selling price and aggregate fair value of each individual promises.

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Considering the qualitative assessment and the result of the quantitative estimate, the Group concluded not to assess whether promises are performance obligation if they are immaterial in the context of the contract and the relative stand-alone fair value individually and in aggregate is less than 3% of the contract price, namely the road-side assistance and out-of-town charging services. Related costs are then accrued instead.

**(r) Cost of Sales**

*Vehicle*

Cost of vehicle revenue includes direct parts, material, processing fee, loss compensation to JAC, labor costs, manufacturing overhead (including depreciation of assets associated with the production), and reserves for estimated warranty expenses. Cost of vehicle revenue also includes adjustments to warranty expense and charges to write-down the carrying value of the inventory when it exceeds its estimated net realizable value and to provide for on-hand inventory that is either obsolete or in excess of forecasted demand.

*Service and Other*

Cost of service and other revenue includes direct parts, material, labor costs, vehicle internet connectivity costs, and depreciation of assets that are associated with sales of energy and service packages.

**(s) Sales and marketing expenses**

Sales and marketing expenses consist primarily of marketing and promotional expenses, salaries and other compensation-related expenses to sales and marketing personnel. Advertising expenses consist primarily of costs for the promotion of corporate image and product marketing. The Group expenses all advertising costs as incurred and classifies these costs under sales and marketing expenses. For the years ended December 31, 2016, 2017 and 2018, advertising costs totalled RMB4,095, RMB63,427 and RMB218,060, respectively.

**(t) Research and development expenses**

Certain costs associated with developing internal-use software are capitalized when such costs are incurred within the application development stage of software development. Other than that, all costs associated with research and development ("R&D") are expensed as incurred. R&D expenses are primary comprised of charges for R&D and consulting work performed by third parties; salaries, bonuses, share-based compensation, and benefits for those employees engaged in research, design and development activities; costs related to design tools; license expenses related to intellectual property, supplies and services; and allocated costs, including depreciation and amortization, rental fees, and utilities.

**(u) General and administrative expenses**

General and administrative expenses consist primarily of salaries, bonuses, share-based compensation and benefits for employees involved in general corporate functions and those not specifically dedicated to research and development activities, depreciation and amortization of fixed assets which are not used in research and development activities, legal and other professional services fees, rental and other general corporate related expenses.

**(v) Employee benefits**

Full time employees of the Group in the PRC participate in a government mandated defined contribution plan, pursuant to which certain pension benefits, medical care, employee housing fund and other welfare benefits are provided to the employees. Chinese labor regulations require that the PRC subsidiaries and VIE of the Group make contributions to the government for these benefits based on certain percentages of the employees' salaries, up to a maximum amount specified by the local government. The Group has no legal obligation for the benefits beyond the contributions made. Total amounts of such employee benefit expenses, which were expensed as incurred, were approximately RMB105,955, RMB231,070 and RMB517,787 for the years ended December 31, 2016, 2017 and 2018, respectively.

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**(w) Government grants**

The Group's PRC based subsidiaries received government subsidies from certain local governments. The Group's government subsidies consisted of specific subsidies and other subsidies. Specific subsidies are subsidies that the local government has provided for a specific purpose, such as product development and renewal of production facilities. Other subsidies are the subsidies that the local government has not specified its purpose for and are not tied to future trends or performance of the Group; receipt of such subsidy income is not contingent upon any further actions or performance of the Group and the amounts do not have to be refunded under any circumstances. The Group recorded specific purpose subsidies as advances payable when received. For specific subsidies, upon government acceptance of the related project development or asset acquisition, the specific purpose subsidies are recognized to reduce related R&D expenses or the cost of asset acquisition. Other subsidies are recognized as other income upon receipt as further performance by the Group is not required.

**(x) Income taxes**

Current income taxes are recorded in accordance with the regulations of the relevant tax jurisdiction. The Group accounts for income taxes under the asset and liability method in accordance with ASC 740, *Income Tax*. Under this method, deferred tax assets and liabilities are recognized for the tax consequences attributable to differences between carrying amounts of existing assets and liabilities in the financial statements and their respective tax basis, and operating loss carry-forwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred taxes of a change in tax rates is recognized in the consolidated statements of comprehensive loss in the period of change. Valuation allowances are established when necessary to reduce the amount of deferred tax assets if it is considered more likely than not that amount of the deferred tax assets will not be realized.

The Group records liabilities related to uncertain tax positions when, despite the Group's belief that the Group's tax return positions are supportable, the Group believes that it is more likely than not that those positions may not be fully sustained upon review by tax authorities. Accrued interest and penalties related to unrecognized tax benefits are classified as income tax expense. The Group did not recognize uncertain tax positions as of December 31, 2017 and 2018.

**(y) Share-based compensation**

The Company grants restricted shares and share options to eligible employees and non-employee consultants and accounts for share-based compensation in accordance with ASC 718, *Compensation—Stock Compensation* and ASC 505-50 *Equity-Based Payments to Non-Employees*.

Employees' share-based compensation awards are measured at the grant date fair value of the awards and recognized as expenses a) immediately at the grant date if no vesting conditions are required; or b) for share options or restricted shares granted with only service conditions, using the straight-line vesting method, net of estimated forfeitures, over the vesting period; or c) for share options granted with service conditions and the occurrence of an IPO as performance condition, cumulative share-based compensation expenses for the options that have satisfied the service condition should be recorded upon the completion of the IPO, using the graded vesting method. This performance condition was met upon completion of the Company's IPO on September 12, 2018 and the associated share-based compensation expense for awards vested as of that date were recognized; or d) for share options where the underlying share is liability within the scope of ASC 480, using the graded vesting method, net of estimated forfeitures, over the vesting period, and re-measuring the fair value of the award at each reporting period end until the award is settled.

All transactions in which goods or services are received in exchange for equity instruments are accounted for based on the fair value of the consideration received or the fair value of the equity instrument issued, whichever is more reliably measurable.

Share-based compensation expenses for share options and restricted shares granted to non-employees are measured at fair value at the earlier of the performance commitment date or the date service is completed, and recognized over the period during which the service is provided. The Group applies the guidance in ASC 505-50 to measure share options and restricted shares granted to non-employees based on the then-current fair value at each reporting date.

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The fair value of the restricted shares were assessed using the income approaches / market approaches, with a discount for lack of marketability given that the shares underlying the awards were not publicly traded at the time of grant. This assessment required complex and subjective judgments regarding the Company's projected financial and operating results, its unique business risks, the liquidity of its ordinary shares and its operating history and prospects at the time the grants were made. In addition, the binomial option-pricing model is used to measure the value of share options. The determination of the fair value is affected by the fair value of the ordinary shares as well as assumptions regarding a number of complex and subjective variables, including the expected share price volatility, actual and projected employee and non-employee share option exercise behavior, risk-free interest rates and expected dividends. The fair value of these awards was determined taking into account independent valuation advice.

The assumptions used in share-based compensation expense recognition represent management's best estimates, but these estimates involve inherent uncertainties and application of management judgment. If factors change or different assumptions are used, the share-based compensation expenses could be materially different for any period. Moreover, the estimates of fair value of the awards are not intended to predict actual future events or the value that ultimately will be realized by grantees who receive share-based awards, and subsequent events are not indicative of the reasonableness of the original estimates of fair value made by the Company for accounting purposes.

Forfeitures are estimated at the time of grant and revised in subsequent periods if actual forfeitures differ from those estimates. The Group uses historical data to estimate pre-vesting options and records share-based compensation expenses only for those awards that are expected to vest.

***(z) Comprehensive income/(loss)***

The Group applies ASC 220, *Comprehensive Income*, with respect to reporting and presentation of comprehensive loss and its components in a full set of financial statements. Comprehensive loss is defined to include all changes in equity of the Group during a period arising from transactions and other event and circumstances except those resulting from investments by shareholders and distributions to shareholders. For the years presented, the Group's comprehensive loss includes net loss and other comprehensive loss, which mainly consists of the foreign currency translation adjustment that have been excluded from the determination of net loss.

***(aa) Leases***

Leases are classified at the inception date as either a capital lease or an operating lease. As the lessee, a lease is a capital lease if any of the following conditions exists: a) ownership is transferred to the lessee by the end of the lease term, b) there is a bargain purchase option, c) the lease term is at least 75% of the property's estimated remaining economic life, or d) the present value of the minimum lease payments at the beginning of the lease term is 90% or more of the fair value of the leased property to the lessor at the inception date. A capital lease is accounted for as if there was an acquisition of an asset and an incurrence of an obligation at the inception of the lease.

All other leases are accounted for as operating leases wherein rental payments are expensed as incurred. Payments made under operating lease to the lessors are charged to the consolidated statement of comprehensive loss on a straight-line basis over the lease period. Operating lease expenses recorded in the accompanying consolidated statements of comprehensive loss amounted to RMB102,020, RMB228,478 and RMB490,936 for the years ended December 31, 2016, 2017 and 2018, respectively.

***(ab) Dividends***

Dividends are recognized when declared. No dividends were declared for the years ended December 31, 2016, 2017 and 2018, respectively.

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***(ac) Earnings/(Loss) per share***

Basic earnings/(loss) per share is computed by dividing net income/(loss) attributable to holders of ordinary shares, considering the accretions to redemption value of the preferred shares, by the weighted average number of ordinary shares outstanding during the period using the two-class method. Under the two-class method, net income is allocated between ordinary shares and other participating securities based on their participating rights. Diluted earnings/(loss) per share is calculated by dividing net income/(loss) attributable to ordinary shareholders, as adjusted for the accretion and allocation of net income related to the preferred shares, if any, by the weighted average number of ordinary and dilutive ordinary equivalent shares outstanding during the period. Ordinary equivalent shares consist of shares issuable upon the conversion of the preferred shares using the if-converted method, unvested restricted shares, restricted share units and ordinary shares issuable upon the exercise of outstanding share options (using the treasury stock method). Ordinary equivalent shares are not included in the denominator of the diluted earnings per share calculation when inclusion of such shares would be anti-dilutive.

***(ad) Segment reporting***

ASC 280, *Segment Reporting*, establishes standards for companies to report in their financial statements information about operating segments, products, services, geographic areas, and major customers.

Based on the criteria established by ASC 280, the Group's chief operating decision maker ("CODM") has been identified as the Chief Executive Officer, who reviews consolidated results when making decisions about allocating resources and assessing performance of the Group. As a whole and hence, the Group has only one reportable segment. The Group does not distinguish between markets or segments for the purpose of internal reporting. As the Group's long-lived assets are substantially located in the PRC, no geographical segments are presented.

**3. Recent Accounting Pronouncements**

In May 2014, the FASB issued ASU No. 2014-09, "Revenue from Contracts with Customers (Topic 606)." This guidance supersedes current guidance on revenue recognition in Topic 605, "Revenue Recognition." In addition, there are disclosure requirements related to the nature, amount, timing, and uncertainty of revenue recognition. In August 2015, the FASB issued ASU No. 2015-14 to defer the effective date of ASU No. 2014-09 for all entities by one year. For publicly-traded business entities that follow U.S. GAAP, the deferral results in the new revenue standards' being effective for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2017, with early adoption permitted for interim and annual periods beginning after December 15, 2016. The Group adopted this ASU after starting to generate revenue in June 2018.

In January 2016, the FASB issued ASU No. 2016-01, Financial Instruments—Overall (Subtopic 825-10): Recognition and Measurement of Financial Assets and Financial Liabilities ("ASU 2016-01"). The main objective of this update is to enhance the reporting model for financial instruments to provide users of financial statements with more decision-useful information. ASU 2016-01 changes how entities measure certain equity investments and present changes in the fair value of financial liabilities measured under the fair value option that are attributable to their own credit. The guidance also changes certain disclosure requirements and other aspects of current U.S. GAAP. Further, in June 2018, the FASB issued "Technical Corrections and Improvements to Financial Instruments—Overall (Subtopic 825-10): Recognition and Measurement of Financial Assets and Financial Liabilities," which provides further guidance on adjustments for observable transaction for equity securities without a readily determinable fair value and clarification on fair value option for liabilities instruments. ASU 2016-01 was effective for annual reporting periods and interim periods within those years beginning after December 15, 2017. The adoption of ASU 2016-01 had no impact on the Group's consolidated financial statements.

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In February 2016, the FASB issued ASU No. 2016-02, Leases (Topic 842). The ASU is effective for reporting periods beginning after December 15, 2018 and interim periods within those fiscal years. The ASU will require lessees to report most leases as assets and liabilities on the balance sheet, while lessor accounting will remain substantially unchanged. For leases with a term of 12 months or less, a lessee is permitted to make an accounting policy election by class of underlying asset not to recognize lease assets and lease liabilities. If a lessee makes this election, it should recognize lease expenses for such lease generally on a straight-line basis over the lease term. The Group decides to make this election. The new leases standard also provides lessees with a practical expedient, by class of underlying asset, to not separate non-lease components from the associated lease component. If a lessee makes that accounting policy election, it is required to account for the non-lease components together with the associated lease component as a single lease component and to provide certain disclosures. The Group elects not to adopt this practical expedient. The ASU initially required a modified retrospective transition approach for existing leases, whereby the new leases standard will be applied to the earliest year presented. In July 2018, the FASB issued ASU 2018-11, which provides another transition method, the additional transition method, in addition to the existing transition method by allowing entities to initially apply the new leases standard at the adoption date and recognize a cumulative-effect adjustment to the opening balance of retained earnings in the period of adoption. The Group will adopt this new guidance by using the additional transition method for the year ended December 31, 2019 and interim periods in the year ended December 31, 2019. Most of leases will continue to be operating leases. Upon the adoption, the Group expects its consolidated balance sheet to include a right of use asset and liability related to substantially all of our lease arrangements. The Group estimated approximately RMB1.8 to 2.0 billion would be recognized as total right-of-use assets and total lease liabilities on the Group's consolidated balance sheet as of January 1, 2019. Other than disclosed, the Group does not expect the new standard to have a material impact on the Group's remaining consolidated financial statements.

In March 2016, the FASB issued ASU No. 2016-09, Compensation—Stock Compensation (Topic 718): Improvements to Employee Share-Based Payment Accounting ("ASU 2016-09"). ASU 2016-09 simplifies the accounting for share-based payment transactions specifically related to the tax effects associates with share-based compensation, an accounting policy election to determine how forfeitures are recorded and a change in the presentation requirements in the statement of cash flows. Non-public companies are also granted two additional optional provisions that would provide a practical expedient for determining the expected term and a one-time opportunity to change the measurement basis for all liability-classified awards to intrinsic value. There was no significant impact upon adoption in 2018.

In June 2016, the FASB issued ASU No. 2016-13 (ASU 2016-13), "Financial Instruments – Credit Losses", which introduces new guidance for credit losses on instruments within its scope. The new guidance introduces an approach based on expected losses to estimate credit losses on certain types of financial instruments, including, but not limited to, trade and other receivables, held-to-maturity debt securities, loans and net investments in leases. The new guidance also modifies the impairment model for available-for-sale debt securities and requires the entities to determine whether all or a portion of the unrealized loss on an available-for-sale debt security is a credit loss. The standard also indicates that entities may not use the length of time a security has been in an unrealized loss position as a factor in concluding whether a credit loss exists. The ASU 2016-13 is effective for public companies for fiscal years beginning after December 15, 2019, and interim periods within those fiscal years. Early adoption is permitted for all entities for fiscal years beginning after December 15, 2018, including interim periods within those fiscal years. The Group is in the process of evaluating the impact of adopting this guidance.

In August 2016, the FASB issued ASU No. 2016-15, Classification of Certain Cash Receipts and Cash Payments, to reduce the diversity in practice with respect to the classification of certain cash receipts and cash payments on the statement of cash flows. The ASU is effective for interim and annual periods beginning after December 15, 2017. Adoption of the ASU is retrospective. The Group adopted the ASU on January 1, 2018, which did not have a material impact on the consolidated financial statements.

In November 2016, the FASB issued ASU No. 2016-18, Statement of Cash Flows: Restricted Cash (Topic 230). The ASU requires that a statement of cash flows explain the change during the period in the total of cash, cash equivalents, and amounts generally described as restricted cash or restricted cash equivalents. Therefore, amounts generally described as restricted cash and restricted cash equivalents should be included with cash and cash equivalents when reconciling the beginning-of-period and end-of-period total amounts shown on the statement of cash flows. The standard should be applied to each period presented using a retrospective transition method. The adoption of this standard did not have a material impact on the Group's consolidated financial statements, but resulted in restricted cash being included with cash and cash equivalents when reconciling the beginning-of-period and end-of-period total amounts shown on the statements of cash flows.

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**4. Concentration and Risks**

**(a) Concentration of credit risk**

Assets that potentially subject the Group to significant concentrations of credit risk primarily consist of cash and cash equivalents, restricted cash and short-term investment. The maximum exposure of such assets to credit risk is their carrying amounts as of the balance sheet dates. As of December 31, 2017 and 2018, all of the Group's cash and cash equivalents, restricted cash and short-term investments were held by major financial institutions located in the PRC and Hong Kong which management believes are of high credit quality. The PRC does not have an official deposit insurance program, nor does it have an agency similar to the Federal Deposit Insurance Corporation (FDIC) in the United States. However, the Group believes that the risk of failure of any of these PRC banks is remote. Bank failure is uncommon in China and the Group believes that those Chinese banks that hold the Group's cash and cash equivalents and restricted cash are financially sound based on publicly available information.

**(b) Currency convertibility risk**

The PRC government imposes controls on the convertibility of RMB into foreign currencies. The Group's cash and cash equivalents and restricted cash denominated in RMB that are subject to such government controls amounted to RMB914,460 and RMB2,051,482 as of December 31, 2017 and 2018, respectively. The value of RMB is subject to changes in the central government policies and to international economic and political developments affecting supply and demand in the PRC foreign exchange trading system market. In the PRC, certain foreign exchange transactions are required by law to be transacted only by authorized financial institutions at exchange rates set by the People's Bank of China (the "PBOC"). Remittances in currencies other than RMB by the Group in the PRC must be processed through PBOC or other Chinese foreign exchange regulatory bodies which require certain supporting documentation in order to process the remittance.

**(c) Foreign currency exchange rate risk**

Since July 21, 2005, the RMB has been permitted to fluctuate within a narrow and managed band against a basket of certain foreign currencies. While the international reaction to the RMB appreciation has generally been positive, there remains significant international pressure on the PRC government to adopt an even more flexible currency policy, which could result in a further and more significant appreciation of the RMB against other currencies.

**5. Inventory**

Inventory consists of the following:

	<b>December 31, 2017</b>	<b>December 31, 2018</b>
Raw materials	44,061	696,005
Work in process	22,262	6,727
Finished Goods	—	723,591
Merchandise	23,141	38,916
<b>Total</b>	<b>89,464</b>	<b>1,465,239</b>

Raw materials as of December 31, 2017 are mainly used for research and development purpose and will be expensed when incurred. In the second quarter of 2018, the Group started selling vehicles and procured raw materials for volume production purpose. As of December 31, 2018, raw materials primarily consist of materials for volume production as well as spare parts used for aftersales services.

Work in progress are mainly used for research and development of new models and will be expensed when incurred. Electric drive systems in production are also recorded as work in progress.

Finished goods include vehicles ready for transit at production factory, vehicles in transit to fulfill customer orders, new vehicles available for immediate sale at our sales and service center locations, and charging piles.

Merchandise inventory includes branded merchandise of NIO which can be redeemed by deducting membership rewards points of customer loyalty program in the Group's application store.



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**6. Prepayments and Other Current Assets**

Prepayments and other current assets consist of the following:

	December 31, 2017	December 31, 2018
Deductible VAT input	456,774	1,018,766
Prepayment to vendors	185,401	333,367
Deposits	12,582	23,321
Other receivables	19,668	138,803
<b>Total</b>	<b>674,425</b>	<b>1,514,257</b>

Prepayment to vendors mainly consist of prepayment for raw materials, prepaid rental for offices and NIO Houses, and prepaid expenses for R&D services provided by suppliers.

**7. Property, Plant and Equipment, Net**

Property and equipment and related accumulated depreciation were as follows:

	December 31, 2017	December 31, 2018
Construction in process	1,016,643	1,289,611
Mold and tooling	2,619	1,032,685
Leasehold improvements	413,368	653,298
Building and construction	—	481,121
Charging & battery swap infrastructure	—	470,506
Production facilities	134,080	456,569
Computer and electronic equipment	178,534	393,931
R&D equipment	173,741	320,362
Purchased software	135,775	286,034
Others	77,681	146,869
Subtotal	2,132,441	5,530,986
Less: Accumulated depreciation	(221,428)	(677,829)
<b>Total property, plant and equipment, net</b>	<b>1,911,013</b>	<b>4,853,157</b>

The Group recorded depreciation expenses of RMB45,013, RMB165,960 and RMB469,408 for the years ended December 31, 2016, 2017 and 2018, respectively.

**8. Intangible Assets, Net**

Intangible assets and related accumulated amortization were as follows:

	December 31, 2017			December 31, 2018		
	Gross carrying value	Accumulated amortization	Net carrying value	Gross carrying value	Accumulated amortization	Net carrying value
Domain names and others	4,230	(1,017)	3,213	5,269	(1,974)	3,295
License	3,199	(1,955)	1,244	3,161	(2,986)	175
<b>Total intangible assets, net</b>	<b>7,429</b>	<b>(2,972)</b>	<b>4,457</b>	<b>8,430</b>	<b>(4,960)</b>	<b>3,470</b>

The Group recorded amortization expenses of RMB1,074, RMB1,898 and RMB1,988 for the years ended December 31, 2016, 2017 and 2018, respectively.

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**9. Land Use Rights, Net**

Land use rights and related accumulated amortization were as follows:

	December 31, 2017	December 31, 2018
Land use rights	—	216,489
Less: Accumulated amortization—land use rights	—	(2,827)
<b>Total land use rights, net</b>	<b>—</b>	<b>213,662</b>

In June 2018, XPT NJEP entered into an agreement to purchase land use rights for usage of land to build a factory for manufacturing of e-powertrain for the Group.

The Group recorded amortization expenses for land use rights of nil, nil and RMB2,827 for the years ended December 31, 2016, 2017 and 2018, respectively.

**10. Other Non-current Assets**

Other non-current assets consist of the following:

	December 31, 2017	December 31, 2018
Long-term deposits	80,168	616,199
Receivables of installment payments for battery	—	574,677
Prepayments for purchase of property and equipment	50,882	159,341
Others	91	62,613
<b>Total</b>	<b>131,141</b>	<b>1,412,830</b>

Long-term deposit mainly consists of deposits to vendors for guarantee of production capacity as well as rental deposit for offices and NIO Houses which will not be collectible within one year.

**11. Accruals and Other Liabilities**

Accruals and other liabilities consist of the following:

	December 31, 2017	December 31, 2018
Payables for purchase of property and equipment	410,726	1,027,377
Payable for R&D expenses	247,923	437,731
Payables for marketing events	37,933	423,953
Salaries and benefits payable	170,274	402,163
Accrued expenses	199,087	308,486
Advance from customers	68,439	233,767
Current portion of deferred revenue	—	108,250
Current portion of deferred construction allowance	—	87,330
Investment deposit from investors	—	47,124
Warranty	—	46,574
Payables for traveling expenses	10,678	43,147
Interest payables	24,320	2,584
Non-recourse loan	55,028	—
Other payables	61,184	215,195
<b>Total</b>	<b>1,285,592</b>	<b>3,383,681</b>

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**12. Borrowings**

Borrowings consist of the following:

	<b>December 31,</b> <b>2017</b>	<b>December 31,</b> <b>2018</b>
Short-term borrowing	28,787	1,870,000
Current portion of long-term borrowings	—	198,852
Long-term borrowings:		
Bank loan	454,901	766,592
Loan from joint investor	187,500	401,420
Total	<u>671,188</u>	<u>3,236,864</u>

As of December 31, 2017, we obtained two short-term borrowings of RMB28,787 in aggregate. The annual interest rate of these borrowings is approximately 4.57% to 4.87%.

As of December 31, 2018, we obtained short-term borrowings from ten banks of RMB1,870,000 in aggregate collateralized by bank deposit of RMB1,375,000 classified as short-term investment provided by one of our wholly-owned subsidiaries. The annual interest rate of these borrowings is approximately 4.35% to 5.22%.

On May 17, 2017, the Group entered into a secured loan agreement with the Bank of Nanjing of a facility amount of RMB685,000 with a maturity date of May 17, 2022. As of December 31, 2017 and 2018, the aggregated draw amounted to RMB454,901 and RMB674,279, respectively. The annual interest rate of these borrowings is approximately 4.75% to 5.80%. The loan was guaranteed by Nanjing Xingzhi as an incentive for XPT NJES to continue doing business in the respective region. There is no restrictive financial covenants attached to the loan.

On September 28, 2017, the Group entered into a loan agreement with China Merchants Bank of a facility amount of RMB200,000 with a maturity date of September 27, 2019. As of December 31, 2018, the aggregated draw amounted to RMB99,500 subject to a floating interest of 10% to 18% above the benchmark interest rate of three-year RMB loan announced by PBOC.

On February 2, 2018, the Group entered into a loan agreement with China CITIC Bank of a principal of RMB50,000 with a maturity date of February 1, 2021. As of December 31, 2018, the aggregated draw amounted to RMB49,750 subject to a floating interest rate of 10% above the average quoted interest rate of one-year RMB loan announced by the National Interbank Funding Center.

On May 14, 2018, the Group entered into a loan agreement with Bank of Shanghai of a facility amount of RMB1,500,000 with a maturity date of December 15, 2025. As of December 31, 2018, the aggregated draw amounted to RMB27,000 subject to a floating interest rate of 20% above the benchmark interest rate of five-year RMB loan announced by PBOC.

On August 17, 2018, the Group entered into a loan agreement with China CITIC Bank of a principal of RMB50,000 with a maturity date of March 7, 2021. As of December 31, 2018, the aggregated draw amounted to RMB50,000 subject to a floating interest rate of 26% above the average quoted interest rate of one-year RMB loan announced by the National Interbank Funding Center.

On November 30, 2018, the Group entered into a loan agreement with Bank of Shanghai of a principal of RMB5,200 with a maturity date of November 30, 2021. As of December 31, 2018, the aggregated draw amounted to RMB5,115 subject to a floating interest rate of 30% above the average quoted interest rate of three-year RMB loan announced by PBOC.

On December 20, 2018, the Group entered into a loan agreement with Bank of Shanghai of a principal of RMB19,800 with a maturity date of November 30, 2021. The loan is subject to a floating interest rate of 30% above the average quoted interest rate of three-year RMB loan announced by PBOC.

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On December 24, 2018, the Group entered into a loan agreement with Bank of Shanghai of a principal of RMB40,000 with a maturity date of November 30, 2021. The loan is subject to a floating interest rate of 30% above the average quoted interest rate of three-year RMB loan announced by PBOC.

On September 7, 2016, the Group entered into a joint investment agreement with Nanjing Xingzhi Technology Industry Development Co., Ltd (“Nanjing Xingzhi”, formerly known as Nanjing Zijin (New Harbor) Technology Entrepreneurial Special Community Construction Development Co., Ltd). Nanjing Xingzhi invested in XPT NJES, a subsidiary of the Group, with a contribution of RMB37,500. According to the agreement, the annual rate of return on investment of Nanjing Xingzhi equals the benchmark interest rate of one-year RMB loan announced by PBOC. Given Nanjing Xingzhi does not bear the risk of the losses and only entitles to fixed interest income, the Group regarded it a loan in substance and recorded it in liability with the interest expenses amortized through the period. On May 16, 2018, the Group entered into an agreement with Nanjing Xingzhi to purchase Nanjing Xingzhi’s shareholding in XPT NJES at a price of RMB41,773, which approximately the entire principal plus interest accrued so far.

On May 18, 2017, the Group entered into a joint investment agreement with Wuhan Donghu New Technology Development Zone Management Committee (“Wuhan Donghu”) to set up a joint venture entity (the “PE WHJV”). Wuhan Donghu subscribed for RMB384,000 paid in capital in PE WHJV with 49% of the shares. On June 30, 2017, September 29, 2017 and April 16, 2018, Wuhan Donghu injected RMB50,000, RMB100,000 and RMB234,000 in cash to PE WHJV, respectively. Pursuant to the investment agreement, Wuhan Donghu does not have substantive participating rights to PE WHJV, nor is allowed to transfer its equity interest in PE WHJV to other third party. In addition, within five years or when the net assets of PE WHJV is less than RMB550,000, the Group is obligated to purchase from Wuhan Donghu all of its interest in PE WHJV at its investment amount paid plus interest at the current market rate announced by PBOC. As such, the Group consolidates PE WHJV. The investment by Wuhan Donghu is accounted for as a loan because it is only entitled to fixed interest income and subject to repayment within five years or upon the financial covenant violation. As of December 31, 2017 and 2018, nil and RMB17,420 of interest were accrued at the benchmark rate of medium and long-term loan announced by PBOC.

**13. Other Non-Current Liabilities**

Other non-current liabilities consist of the following:

	<b>December 31, 2017</b>	<b>December 31, 2018</b>
Deferred government grants	30,416	351,896
Deferred revenue	—	193,524
Warranty	—	130,719
Rental payable	48,926	129,995
Deferred construction allowance	61,771	124,678
<b>Total</b>	<b>141,113</b>	<b>930,812</b>

Deferred government grants mainly consist of specific government subsidies for purchase of land use right and buildings, product development and renewal of production facilities.

Rental payable represents the difference between the straight-line rental expenses and the actual rental fee paid for long term rental agreements.

Deferred construction allowance consists of long-term payable of construction projects, with payment terms over one year.

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**14. Revenues**

Revenues by source consists of the following:

	<b>For the Year Ended December 31,</b>		
	<b>2016</b>	<b>2017</b>	<b>2018</b>
Vehicle sales	—	—	4,852,470
Sales of charging pile	—	—	82,184
Sales of Packages	—	—	10,220
Others	—	—	6,297
<b>Total</b>	<b>—</b>	<b>—</b>	<b>4,951,171</b>

**15. Deferred Revenue**

The following table shows a reconciliation in the current reporting period related to carried-forward deferred revenue.

	<b>For the Year Ended December 31</b>		
	<b>2016</b>	<b>2017</b>	<b>2018</b>
Deferred revenue – beginning of year	—	—	—
Additions	—	—	384,116
Recognition	—	—	(82,342)
Deferred revenue – end of year	<b>—</b>	<b>—</b>	<b>301,774</b>

Deferred revenue mainly includes the transaction price allocated to the performance obligations that are unsatisfied, or partially satisfied, which mainly arises from the undelivered charging pile, the vehicle internet connection service, the extended lifetime warranty service as well as the points offered to customers embedded in the ES8 sales contract, with unrecognized deferred revenue balance of nil and RMB181,539 as of December 31, 2017 and 2018.

Deferred revenue also includes the reimbursement from a depository bank in connection with the advancement of the Company's ADR and investor relations programs in the next five years. The Company initially recorded the payment from the depository bank as deferred revenue and then recognized as other gain over the beneficial period, with unrecognized deferred revenue balance of nil and RMB99,684 as of December 31, 2017 and 2018.

The Group expects that 36% of the transaction price allocated to unsatisfied performance obligation as at December 31, 2018 will be recognized as revenue during the period from January 1, 2019 to December 31, 2019. The remaining 64% will be recognized during the period from January 1, 2020 to December 31, 2023.

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**16. Manufacturing in collaboration with JAC**

The Group entered into an arrangement with JAC for the manufacture of the ES8 for five years in May 2016. Pursuant to the arrangement, JAC will build up a new manufacturing plant (“Hefei Manufacturing Plant”) and is responsible for the equipment used on the product line while NIO is responsible for the tooling. For each vehicle produced the Group will pay processing fee to JAC on a per-vehicle basis monthly for the first three years on the basis that NIO will provide all the raw materials to JAC. In addition, for the first 36 months after agreed time of start of production, which is April 2018, the Group will compensate JAC operating losses incurred in Hefei Manufacturing Plant. For the years ended December 31, 2016, 2017 and 2018, JAC charged the Group nil, nil and RMB126,425, respectively, based on the actual losses incurred in Hefei Manufacturing Plant during the same periods, which was recorded into cost of sales.

**17. Research and Development Expenses**

Research and development expenses consist of the following:

	<b>Year Ended December 31,</b>		
	<b>2016</b>	<b>2017</b>	<b>2018</b>
Employee compensation	451,284	1,004,835	1,850,886
Design and development expenses	948,753	1,455,297	1,827,980
Travel and entertainment expenses	27,085	60,622	104,949
Depreciation and amortization expenses	7,819	38,940	103,427
Rental and related expenses	10,485	12,367	33,105
Others	19,927	30,828	77,595
<b>Total</b>	<b>1,465,353</b>	<b>2,602,889</b>	<b>3,997,942</b>

**18. Selling, General and Administrative Expenses**

Selling, general and administrative expenses consist of the following:

	<b>Year Ended December 31,</b>		
	<b>2016</b>	<b>2017</b>	<b>2018</b>
Employee compensation	473,302	929,928	2,256,455
Marketing and promotional expenses	239,549	523,535	1,158,519
Professional services	133,368	238,740	578,469
Rental and related expenses	91,535	216,111	450,113
Depreciation and amortization expenses	38,268	128,918	249,765
Travel and entertainment expenses	32,572	71,278	197,187
IT consumable, office supply and other low value consumable	21,621	114,668	167,323
Others	106,972	127,529	283,959
<b>Total</b>	<b>1,137,187</b>	<b>2,350,707</b>	<b>5,341,790</b>

**19. Acquisition and Investment in Equity Investees**

On June 1, 2017, the Company entered into an agreement with the minority shareholder of NIO Sport for the purchase of the remaining 45% shares of NIO Sport at total consideration of US\$4,000 and GBP200 (RMB28,417 equivalent in total). The Company recorded the difference between the carrying amount of the non-controlling interest and the consideration paid in accumulated deficit.

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**20. Convertible Promissory Note**

On February 16, 2017, the Company issued convertible promissory note (“the Note”) in the aggregated principal amount of US\$48,000 (RMB312,624 equivalent) to one of its existing convertible redeemable preferred shareholder with compounding interest at 15% per annum, maturing 90 days after the issuance date. Pursuant to the Note agreements, the holders of the Note may (i) convert the outstanding principal and accrued interest of the Note into the most recent round of equity security at a conversion price equal to 97% of the per share price paid by the investors in the event that the Company issues and sells equity security to investors on or before the date of the repayment in full of this Note in an equity financing resulting in gross proceeds to the Company of at least US\$100,000 (“Qualified Financing”), however, the Company and the Note holder both agreed that the 3% discount on the price shall not be applicable to the Series C Convertible Redeemable Preferred Shares (“Series C Preferred Shares”), or (ii) convert the outstanding principal and accrued interest of the Note into Series B Convertible Redeemable Preferred Shares (“Series B Preferred Shares”) of the Company at a conversion price of US\$2.751 per share if no Qualified Financing occurred before prior to the maturity date. The Company may elect to repay the accrued interests in cash under either way. The issuance cost for the Note was immaterial. On May 17, 2017, the Note was fully repaid in cash together with the accrued interest of US\$1,800 (RMB12,389 equivalent).

**21. Convertible Redeemable Preferred Shares**

In March 2015, the Company issued 165,000,000 shares of Series A-1 convertible redeemable preferred shares (“Series A-1 Preferred Shares”) for US\$1.00 per share for cash of US\$165,000. The total consideration was paid in three instalments and were fully paid in January 2017. In March and May 2015, the Company issued 130,000,000 shares of Series A-2 convertible redeemable preferred shares (“Series A-2 Preferred Shares”) for US\$1.00 per share for cash of US\$130,000. In September 2015, the Company issued 24,210,431 shares of Series A-3 Preferred Shares for US\$1.6522 per share for cash of US\$40,000. The Series A-1, A-2 and A-3 Preferred Shares are collectively referred to as the “Series A Preferred Shares”.

In June, July, August, September 2016 and February 2017, the Company issued 114,867,321 shares of Series B convertible redeemable preferred shares (“Series B Preferred Shares”) for US\$2.751 per share for cash of US\$316,000.

In March, April, May and July 2017, the Company issued 166,205,830 shares of Series C convertible redeemable preferred shares (“Series C Preferred Shares”) for US\$3.885 per share for cash of US\$645,709.

In November and December 2017, the Company issued 211,156,415 shares of Series D convertible redeemable preferred shares (“Series D Preferred Shares”) for US\$5.353 per share for cash of US\$1,130,320. US\$12,000 out of the total consideration from one of the investor was not paid until March 28, 2018 and it was treated as a reduction of Series D Preferred Shares until it was paid. In addition, a finder’s commission of US\$26,000 was incurred for the Series D Preferred Shares financing. The Company paid 50% of the commission in cash amounted US\$13,000 and the remaining 50% by issuance of 2,428,588 shares of Series D Preferred Shares for free to the financial advisory. The total of the finder’s commission was also recorded as an issuance cost as a deduction of the preferred shares.

The Series A-1, A-2, A-3, B, C and D Preferred Shares are collectively referred to as the “Preferred Shares”. All series of Preferred Shares have the same par value of US\$0.00025 per share.

The Company classified the Preferred Shares in the mezzanine section of the consolidated balance sheets because they were redeemable at the holders’ option any time after a certain date and were contingently redeemable upon the occurrence of certain liquidation events outside of the Company’s control, that being the Company’s failure to complete a QIPO by December 31, 2021. The Preferred Shares are recorded initially at fair value, net of issuance costs. The issuance costs for Series A-1, A-2, A-3, B, C, and D were RMB1,892, RMB1,177, RMB1,296, RMB11,857, RMB10,039 and RMB6,033 (US\$301, US\$189, US\$208, US\$1,782, US\$1,489 and US\$901, equivalent).

The major rights, preferences and privileges of the Preferred Shares are as follows:

***Voting Rights***

The holders of the Preferred Shares shall have the right to one vote for each ordinary share into which each outstanding Preferred Share held could then be converted. The holders of the Preferred Shares vote together with the Ordinary Shareholders, and not as a separate class or series, on all matters put before the shareholders. The holders of the Preferred Shares are entitled to appoint a total of 10 out of 11 directors of the Board.

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***Dividends***

Subject to the approval and declaration by the Board of Directors, the holders of the Preferred Shares (exclusive of unpaid shares) are entitled to receive dividends in the following order:

- Series D Preferred Shareholders are entitled to receive dividends at an amount equal to 5% of the issue price prior to and in preference to any dividend on the Series C preferred Shares, Series B preferred shares, Series A Preferred Shares and ordinary shares;
- Series C Preferred Shareholders are entitled to receive dividends at an amount equal to 5% of the issue price prior to and in preference to any dividend on the Series B preferred shares, Series A Preferred Shares and ordinary shares;
- Series B Preferred Shareholders are entitled to receive dividends at an amount equal to 5% of the issue price prior to and in preference to any dividend on the Series A Preferred Shares and ordinary shares;
- Series A Preferred Shareholders are entitled to receive dividends at an amount equal to 5% of the issue price prior to and in preference to any ordinary shares;
- any remaining dividends shall be distributed on a pro rata basis to holders of all the Preferred Shares and ordinary shares on a fully diluted and as-if converted basis.

No dividends on preferred and ordinary shares have been declared since the issuance date through December 31, 2017 and 2018.

***Liquidation***

In the event of any liquidation, the holders of Preferred Shares have preference over holders of ordinary shares with respect to payment of dividends and distribution of assets. Upon Liquidation, Series D Preferred Shares shall rank senior to Series C Preferred Shares, Series C Preferred Shares shall rank senior to Series B Preferred Shares, Series B Preferred Shares shall rank senior to Series A-3 Preferred Shares, Series A-3 Preferred Shares shall rank senior to Series A-1 and A-2 Preferred Shares, Series A-1 and A-2 Preferred Shares shall rank senior to ordinary shares.

The holders of Preferred Shares (exclusive of unpaid shares) shall be entitled to receive an amount per share equal to (A) an amount equal to the higher of (1) 100% of the original issue price of such Preferred Shares, and (2) the amount that would be payable on such Preferred Shares if converted into ordinary shares immediately before such Liquidation; and (B) the amount of all declared but unpaid dividends on such Preferred Shares based on such holder's pro rata portion of the total number of the Preferred Shares. If there are still assets of the Company legally available for distribution, such remaining assets of the Company shall be distributed to the holders of issued and outstanding Ordinary Shares on pro rata basis among themselves.

***Conversion***

The Preferred Shares (exclusive of unpaid shares) would automatically be converted into common shares 1) upon a QIPO; or 2) upon the written consent of the holders of a majority of the outstanding Preferred Share of each class with respect to conversion of each class.

The initial conversion ratio of Preferred Shares to ordinary shares shall be 1:1, subject to adjustments in the event of (i) share splits, share dividends, combinations, recapitalization and similar events, or (ii) issuance of Ordinary Shares (excluding certain events such as issuance of ordinary shares pursuant to a public offering) at a price per share less than the conversion price in effect on the date of or immediately prior to such issuance.

The Company determined that there were no beneficial conversion features identified for any of the Preferred Shares during any of the periods. In making this determination, the Company compared the fair value of the ordinary shares into which the Preferred Shares are convertible with the respective effective conversion price at the issuance date. In all instances, the effective conversion price was greater than the fair value of the ordinary shares. To the extent a conversion price adjustment occurs, as described above, the Company will re-evaluate whether or not a beneficial conversion feature should be recognized.



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***Redemption***

The Company shall redeem, at the option of any holder of outstanding Preferred Shares, all of the outstanding Preferred Shares (other than the unpaid shares) held by the requesting holder, at any time after the earliest to occur of (a) December 31, 2021, if no QIPO or Approved Sale has been consummated prior to such date, (b) any material change in applicable law that would prohibit or otherwise make it illegal to continue to operate the business under the then-existing equity structure of the Group, which could not be solved by alteration or adjustment of the equity structure of the Group after good faith consultation among the Company and its shareholders, (c) the early termination of employment or service contracts of no less than 30% of the certain key employees (or subsequent persons holding their respective positions) with the Group during any six-month period (excluding any early termination with cause) which has resulted in material adverse effect with respect to the Business of the Group as a whole, and (d) termination or disruption of the business of the Group as a whole, which is attributable to any Group Company's non-compliance with applicable laws or breach or early termination of material business contracts or business arrangements with any supplier, clients or otherwise (any matter or event as described in items (a) to (d), hereinafter a "Redemption Event"), or (e) any other Preferred Share holder has requested the Company to redeem its shares in any Redemption Event by delivery of a notice.

The redemption amount payable for each Preferred Share (other than the unpaid shares) will be an amount equal to the greater of (a) 100% of the Preferred Shares' original issue price, plus all accrued but unpaid dividends thereon up to the date of redemption and compound interest on the preferred shares' original issue price at the rate of 8% per annum, proportionally adjusted for share subdivisions, share dividends, reorganizations, reclassifications, consolidations, mergers or similar transactions, and (b) the fair market value of such Preferred Shares at the date of redemption.

Upon the redemption, Series D Preferred Shares shall rank senior to Series C Preferred Shares, Series C Preferred Shares shall rank senior to Series B Preferred Shares, Series B Preferred Shares shall rank senior to Series A-3 Preferred Shares, Series A-3 Preferred Shares shall rank senior to Series A-1 and A-2 Preferred Shares, Series A-1 and A-2 Preferred Shares shall rank pari passu to each other.

***Conversion upon IPO***

On September 14, 2018, in connection with the completion of IPO, all of the Preferred Shares were automatically converted to 821,378,518 ordinary shares based on the aforementioned conversion price.

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*Accounting for Preferred Shares*

The Company recognized accretion to the respective redemption value of the Preferred Shares over the period starting from issuance date to September 12, 2018, the earliest redemption date. According to the redemption price calculation described above, the Company recognized accretion of the Preferred Shares amounted to RMB981,233, RMB2,576,935 and RMB13,667,291 for the years ended December 31, 2016, 2017 and 2018.

The Company's convertible redeemable preferred shares activities for the years ended December 31, 2016, 2017 and 2018 are summarized below.:

	Series A-1 & A-2		Series A-3		Series B		Series C		Series D		Total	
	Number of shares	Amount (RMB)	Number of shares	Amount (RMB)	Number of shares	Amount (RMB)	Number of shares	Amount (RMB)	Number of shares	Amount (RMB)	Number of shares	Amount (RMB)
<b>Balances as of January 1, 2016</b>	295,000,000	1,340,034	24,210,431	276,695	—	—	—	—	—	—	319,210,431	1,616,729
Proceeds from Series A-1 Preferred Shares	—	401,478	—	—	—	—	—	—	—	—	—	401,478
Issuance of preferred shares	—	—	—	—	102,144,675	1,862,134	—	—	—	—	102,144,675	1,862,134
Accretion on convertible redeemable preferred shares to redemption value	—	798,481	—	29,983	—	152,769	—	—	—	—	—	981,233
<b>Balances as of December 31, 2016</b>	<u>295,000,000</u>	<u>2,539,993</u>	<u>24,210,431</u>	<u>306,678</u>	<u>102,144,675</u>	<u>2,014,903</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>421,355,106</u>	<u>4,861,574</u>
Proceeds from Series A-1 Preferred Shares	—	266,511	—	—	—	—	—	—	—	—	—	266,511
Issuance of preferred shares	—	—	—	—	12,722,646	240,066	166,205,830	4,398,313	213,585,003	7,314,387	392,513,479	11,952,766
Accretion on convertible redeemable preferred shares to redemption value	—	2,205,227	—	120,451	—	40,011	—	56,283	—	154,963	—	2,576,935
<b>Balances as of December 31, 2017</b>	<u>295,000,000</u>	<u>5,011,731</u>	<u>24,210,431</u>	<u>427,129</u>	<u>114,867,321</u>	<u>2,294,980</u>	<u>166,205,830</u>	<u>4,454,596</u>	<u>213,585,003</u>	<u>7,469,350</u>	<u>813,868,585</u>	<u>19,657,786</u>

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	Series A-1 & A-2		Series A-3		Series B		Series C		Series D		Total	
	Number of shares	Amount (RMB)	Number of shares	Amount (RMB)	Number of shares	Amount (RMB)	Number of shares	Amount (RMB)	Number of shares	Amount (RMB)	Number of shares	Amount (RMB)
<b>Balances as of December 31, 2017</b>	295,000,000	5,011,731	24,210,431	427,129	114,867,321	2,294,980	166,205,830	4,454,596	213,585,003	7,469,350	813,868,585	19,657,786
Issuance of Series A-3 Preferred Shares (note 24(c))	—	—	7,509,933	—	—	—	—	—	—	—	7,509,933	—
Proceeds from Series D Preferred Shares	—	—	—	—	—	—	—	—	—	78,651	—	78,651
Accretion on convertible redeemable preferred shares to redemption value	—	7,091,163	—	565,979	—	2,417,979	—	2,375,943	—	1,216,227	—	13,667,291
Conversion of Series A-1 and A-2 Preferred Shares to Ordinary shares	(295,000,000)	(12,102,894)	—	—	—	—	—	—	—	—	(295,000,000)	(12,102,894)
Conversion of Series A-3 Preferred Shares to Ordinary shares	—	—	(31,720,364)	(993,108)	—	—	—	—	—	—	(31,720,364)	(993,108)
Conversion of Series B Preferred Shares to Ordinary shares	—	—	—	—	(114,867,321)	(4,712,959)	—	—	—	—	(114,867,321)	(4,712,959)
Conversion of Series C Preferred Shares to Ordinary shares	—	—	—	—	—	—	(166,205,830)	(6,830,539)	—	—	(166,205,830)	(6,830,539)
Conversion of Series D Preferred Shares to Ordinary shares	—	—	—	—	—	—	—	—	(213,585,003)	(8,764,228)	(213,585,003)	(8,764,228)
<b>Balances as of December 31, 2018</b>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>

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**22. Redeemable non-controlling interests**

XPT (Jiangsu) Automotive Technology Co., Ltd. (“XPT Auto”), the Group’s wholly owned subsidiary had its redeemable preferred share (“XPT Auto PS”) financing of RMB1,269,900 to certain third party strategic investors in the second quarter of 2018. These third party strategic investors’ contributions in XPT Auto were accounted for as the Group’s redeemable non-controlling interests, and were classified as Mezzanine equity. Pursuant to XPT Auto’s share purchase agreement, the XPT Auto PS issued to third party strategic investors have the same rights as the existing ordinary shareholder of XPT Auto except that they have following privileges:

***Redemption***

The holders of XPT Auto PS have the option to request XPT Auto to redeem those shares under certain circumstance: (1) a qualified initial public offering of XPT Auto has not occurred by the fifth anniversary after the issuance of XPT Auto PS; (2) XPT Auto doesn’t meet its performance target (revenue and net profit) for each of the year during FY2019 and FY2023; or (3) a deadlock event lasts for 60 working days and cannot be resolved.

The redemption price should be equal to the original issue price plus simple interest on the original issue price at the rate of 10% per annum minus the dividends paid up to the date of redemption.

***Liquidation***

In the event of any liquidation, the holders of XPT Auto PS have preference over holders of ordinary shares. On a return of capital on liquidation, XPT Auto’s assets available for distribution among the investors shall first be paid to XPT Auto PS investors at the amount equal to the original issue price plus simple interest on the original issue price at the rate of 10% per annum minus the dividends paid up to the date of liquidation. The remaining assets of XPT Auto shall all be distributed to its ordinary shareholders.

The Company recognized accretion to the respective redemption value of the XPT Auto PS over the period starting from issuance date. As of December 31, 2018, RMB1,265,900 out of the total consideration was paid by those investors and the remaining RMB4,000 were still outstanding.

**23. Ordinary Shares**

Upon inception, each ordinary share was issued at a par value of US\$0.00025 per share. Various numbers of ordinary shares were issued to share-based compensation award recipients. As of December 31, 2017, the authorized share capital of the Company is US\$500 divided into 2,000,000,000 shares, comprising of: 1,151,269,325 Ordinary Shares, 165,000,000 Series A-1 Preferred Shares, 130,000,000 Series A-2 Preferred Shares, 31,720,364 Series A-3 Preferred Shares, 114,867,321 Series B Preferred Shares, 167,142,990 Series C Preferred Shares, 240,000,000 Series D Preferred Shares, each at a par value of US\$0.00025 per share. As of December 31, 2018, the authorized share capital of the Company is US\$1,000 divided into 4,000,000,000 shares, comprising of: 2,500,000,000 Class A Ordinary Shares, 132,030,222 Class B Ordinary Shares, 148,500,000 Class C Ordinary Shares, each at a par value of US\$0.00025 per share, and 1,219,469,778 shares of a par value of US\$0.00025 each of such class or classes as the board of directors may determine.

As of December 31, 2017 and 2018, 1,151,269,325 and 4,000,000,000 ordinary shares were authorized, respectively, 36,727,350 and 1,057,731,012 shares were issued and 23,850,343 and 1,050,799,032 shares were outstanding as of December 31, 2017 and 2018, respectively.

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**24. Share-based Compensation**

Compensation expenses recognized for share-based awards granted by the Company were as follows:

	<b>For the Year Ended December 31,</b>		
	<b>2016</b>	<b>2017</b>	<b>2018</b>
Cost of sales	—	—	9,289
Research and development expenses	14,484	23,210	109,124
Selling, general and administrative expenses	62,200	67,086	561,055
<b>Total</b>	<b>76,684</b>	<b>90,296</b>	<b>679,468</b>

There was no income tax benefit recognized in the consolidated statements of comprehensive loss for share-based compensation expenses and the Group did not capitalize any of the share-based compensation expenses as part of the cost of any assets in the years ended December 31, 2016, 2017 and 2018.

**(a) Prime Hubs' Restricted Shares Plan**

In 2015, the Company adopted the Prime Hubs Restricted Shares Plan (the "Prime Hubs Plan"). Pursuant to the Prime Hubs Plan, restricted shares were granted to certain employees and non-employee consultants of the Group as approved by the board of directors. The restricted shares granted require the non-employee consultants to serve the Group for a period of one year with 100% of the restricted shares vesting upon the completion of the service period and the employees to serve the group for a period of four years with 25% of the restricted shares vesting at each anniversary of the service commencement date. The restricted shares issued under the Prime Hubs Plan are held by Prime Hubs, a consolidated variable interest entity of the Company, and are accounted for as treasury stocks of the Company prior to their vesting.

The following table summarizes activities of the Company's restricted shares granted to employees under the Prime Hubs Plan:

**(i) Employees**

<b>Employees</b>	<b>Number of Shares Outstanding</b>	<b>Weighted Average Grant Date Fair Value US\$</b>
Unvested as of December 31, 2015	13,450,000	0.72
Vested	(3,362,500)	0.72
Forfeited	(1,687,500)	0.72
Unvested as of December 31, 2016	8,400,000	0.72
Granted	2,000,000	2.05
Vested	(3,133,329)	0.84
Forfeited	(208,333)	0.72
Unvested as of December 31, 2017	7,058,338	1.04
Vested	(7,058,338)	1.04
Unvested as of December 31, 2018	—	—

In August 2018, the Company agreed to repurchase 562,500 vested Prime Hubs restricted shares from a former employee who passed away with total cash consideration of RMB7,490 at the fair value.

For the years ended December 31, 2016, 2017 and 2018, total share-based compensation expenses recognized for the employee restricted shares granted under the Prime Hubs Plan were RMB8,435, RMB20,572 and RMB39,560, respectively.

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As of December 31, 2017 and 2018, there were RMB37,651 and nil of unrecognized share-based compensation expenses related to the employee restricted shares granted under the Prime Hubs Plan. Such unrecognized expenses are expected to be recognized over a weighted-average period of 1.69 and zero years, respectively, as of December 31, 2017 and 2018.

*(ii) Non-Employees*

<u>Non-Employees</u>	<u>Number of Shares Outstanding</u>	<u>Weighted Average Grant Date Fair Value</u> US\$
Unvested as of December 31, 2015	2,950,000	1.25
Vested	(2,950,000)	1.25
Unvested as of December 31, 2016, 2017 and 2018	—	—

In January 2017, the Company agreed to repurchase 250,000 vested Prime Hubs restricted shares from a non-employee with total cash consideration of RMB1,686.

For the years ended December 31, 2016, 2017 and 2018, total share-based compensation expenses recognized for the non-employee restricted shares granted the Prime Hubs Plan were RMB24,532, nil and nil, respectively.

As of December 31, 2016, all share-based compensation expenses related to the non-employee restricted shares granted the Prime Hubs Plan had been recognized.

*(b) NIO Incentive Plans*

In 2015, the Company adopted the 2015 Stock Incentive Plan (the “2015 Plan”), which allows the plan administrator to grant options and restricted shares of the Company to its employees, directors, and consultants.

The Company granted both share options and restricted shares to the employees. The share options and restricted shares of the Company under 2015 Plan have a contractual term of ten years from the grant date, and vest over a period of four years of continuous service, one fourth (1/4) of which vest upon the first anniversary of the stated vesting commencement date and the remaining vest ratably over the following 36 months. Under the 2015 plan, share options granted to the non-NIO US employees of the Group are only exercisable upon the occurrence of an initial public offering by the Company.

In 2016 and 2017, the Board of Directors further approved the 2016 Stock Incentive Plan (the “2016 Plan”) and the 2017 Stock Incentive Plan (the “2017 Plan”). The share options of the Company under 2016 and 2017 Plan have a contractual term of seven or ten years from the grant date, and vest immediately or over a period of four or five years of continuous service.

As of December 31, 2017, the Group had not recognized any share-based compensation expenses for options granted to the non-NIO US employees of the Group, because the Company is unable to determine if it is probable that the performance conditions will be satisfied until the event occurs. As a result, the share-based compensation expenses for these options that are only exercisable upon the occurrence of the Company’s initial public offering will be recognized using the graded-vesting method upon the consummation of the initial public offering. The Group recognized the share options and restricted shares of the Company granted to the employees of NIO US on a straight-line basis over the vesting term of the awards, net of estimated forfeitures.

Upon completion of the Company’s IPO on September 12, 2018, share-based compensation expenses for options granted to the non-NIO US employees of the Group were recognized by using the graded-vesting method.

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*(i) Share Options*

The following table summarizes activities of the Company's share options under the 2015, 2016 and 2017 Plans for the years ended December 31, 2016, 2017 and 2018:

	<u>Number of Options Outstanding</u>	<u>Weighted Average Exercise Price US\$</u>	<u>Weighted Average Remaining Contractual Life In Years</u>	<u>Aggregate Intrinsic Value US\$</u>
Outstanding as of December 31, 2015	—	—	—	—
Granted	53,576,606	0.32	—	—
Cancelled	(945,346)	0.39	—	—
Expired	(7,706)	0.10	—	—
Outstanding as of December 31, 2016	<u>52,623,554</u>	<u>0.32</u>	<u>8.30</u>	<u>51,506</u>
Granted	13,460,477	1.46	—	—
Exercised	(2,723,540)	0.39	—	—
Cancelled	(5,236,562)	0.44	—	—
Expired	(348,015)	0.25	—	—
Outstanding as of December 31, 2017	<u>57,775,914</u>	<u>0.57</u>	<u>8.52</u>	<u>114,299</u>
Granted	47,216,792	2.79	—	—
Exercised	(7,732,317)	0.40	—	—
Cancelled	(5,498,453)	1.17	—	—
Expired	(687,796)	0.62	—	—
Outstanding as of December 31, 2018	<u>91,074,140</u>	<u>1.69</u>	<u>8.23</u>	<u>425,988</u>
Vested and expected to vest as of December 31, 2016	50,782,627	—	—	49,245
Exercisable as of December 31, 2016	1,297,535	—	—	1,336
Vested and expected to vest as of December 31, 2017	55,832,678	—	—	107,299
Exercisable as of December 31, 2017	5,089,894	—	—	11,070
Vested and expected to vest as of December 31, 2018	99,702,386	—	—	467,127
Exercisable as of December 31, 2018	32,959,964	—	—	185,787

The weighted-average grant date fair value for options granted under the Company's 2015, 2016 and 2017 Plans during the years ended December 31, 2016, 2017 and 2018 was US\$0.90, US\$1.21 and US\$1.93, respectively, computed using the binomial option pricing model.

The total share-based compensation expenses recognized for share options during the years ended December 31, 2016, 2017 and 2018 was RMB17,998, RMB30,127 and RMB437,320 respectively.

The fair value of each option granted under the Company's 2015, 2016 and 2017 Plans during 2016, 2017 and 2018 was estimated on the date of each grant using the binomial option pricing model with the assumptions (or ranges thereof) in the following table:

	<u>2016</u>	<u>2017</u>	<u>2018</u>
Exercise price (US\$)	0.10-0.61	0.61-2.55	0.10 - 6.74
Fair value of the ordinary shares on the date of option grant (US\$)	0.96-1.30	1.30-2.55	3.38 - 6.74
Risk-free interest rate	1.46%-1.78%	2.31%-2.40%	2.74% - 3.15%
Expected term (in years)	10	10	7 - 10
Expected dividend yield	0%	0%	0%
Expected volatility	54%	51%-52%	47% - 51%
Expected forfeiture rate (post-vesting)	5%	5%	5% - 8%

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Risk-free interest rate is estimated based on the yield curve of US Sovereign Bond as of the option valuation date. The expected volatility at the grant date and each option valuation date is estimated based on annualized standard deviation of daily stock price return of comparable companies with a time horizon close to the expected expiry of the term of the options. The Company has never declared or paid any cash dividends on its capital stock, and the Group does not anticipate any dividend payments in the foreseeable future. Expected term is the contract life of the options.

As of December 31, 2017 and 2018, there were RMB58,444 and RMB17,101 of unrecognized compensation expenses related to the stock options granted to the employees of NIO US, which is expected to be recognized over a weighted-average period of 2.53 and 2.67 years, respectively.

As of December 31, 2017, there were RMB275,473 of unrecognized compensation expenses related to the stocks options granted to the Group's non-NIO US employees with a performance condition of an IPO, out of which, unrecognized compensation expenses of RMB138,884 related to options for which the service condition had been met and are expected to be recognized when the performance target of an IPO is achieved.

As of December 31, 2018, there were RMB50,279 of unrecognized compensation expenses related to the stocks options granted to the Group's non-NIO US employees which is expected to be recognized over a weighted-average period of 3.02 years.

*(ii) Restricted shares*

The fair value of each restricted share granted with service conditions is estimated based on the fair market value of the underlying ordinary shares of the Company on the date of grant.

The following table summarizes activities of the Company's restricted shares to US employees under the 2015 plan:

	<u>Number of Restricted Shares Outstanding</u>	<u>Weighted Average Grant Date Fair Value US\$</u>
Unvested at December 31, 2015	—	—
Granted	3,103,809	0.96
Vested	(960,958)	0.96
Forfeited	(305,464)	0.96
Unvested at December 31, 2016	<u>1,837,387</u>	<u>0.96</u>
Vested	(470,015)	0.96
Forfeited	(254,395)	0.96
Unvested at December 31, 2017	<u>1,112,977</u>	<u>0.96</u>
Vested	(608,406)	0.96
Forfeited	(63,058)	0.96
Unvested at December 31, 2018	<u>441,513</u>	<u>0.96</u>

As of December 31, 2017 and 2018, there were RMB6,095 and RMB2,812 of unrecognized compensation expenses related to restricted shares granted to the employees of NIO US, which is expected to be recognized over a weighted-average period of 1.75 and 0.75 years, respectively.

Share-based compensation expenses of RMB6,137, RMB4,151 and RMB3,790 related to restricted shares granted to the employees of NIO US was recognized for the years ended December 31, 2016, 2017 and 2018, respectively.



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The following table summarizes activities of the Company’s restricted shares to non-US employees under the 2016 and 2017 plan:

	<u>Number of Restricted Shares Outstanding</u>	<u>Weighted Average Grant Date Fair Value US\$</u>
Unvested at December 31, 2017	—	—
Granted	509,001	6.72
Vested	(445,104)	6.74
Unvested at December 31, 2018	<u>63,897</u>	<u>6.60</u>

As of December 31, 2018, there were RMB2,798 of unrecognized compensation expenses related to restricted shares granted to the non-US employees, which is expected to be recognized over a weighted-average period of 1.70 years.

Share-based compensation expenses of nil, nil and RMB20,323 related to restricted shares granted to the non-US employees was recognized for the years ended December 31, 2016, 2017 and 2018.

***(c) Non-recourse Loan***

In November 2015, the Company issued an offer letter to one of its key management team member (“the Borrower”). In the offer letter, the Company offered the Borrower to purchase 7,509,933 Series A-3 Preferred Shares of the Company at the price of US\$1.6522 per share, which equals to the purchase price same class of preferred shares by other third party investors in the most recent round of financing prior to the offer letter. In addition, the Company agreed to provide a loan in the amount of US\$12,408 with an interest rate of 1.8% compounded semiannually to paid for the fund the purchase of such Series A-3 Preferred Shares by the Borrower (“the Loan”). The Loan agreement was signed on March 10, 2016. The Loan is subject to a three-year service condition with 25% immediately vested on the grant date and 25% cliff vesting annually. The Borrower’s personal liability on the Loan, and the Company’s recourse against the Borrower personally on the Loan, shall be limited to 50% of the then-outstanding principal amount of the Loan, including any interest accrued thereon.

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In June 2018, the Borrower repaid the loan pursuant to the agreement, including the interest accrued, to the Company, amounting to RMB82,863. By the time of the repayment, 75% of the Award was vested and considered as exercised while 25% remained as unvested.

Pursuant to ASC 718, the Company accounted for the Loan as a stock liability (the “Award”). Given the underlying of the Award is Series A-3 Preferred Shares, it was treated as a liability award following ASC 480. The Award was initially recognized at fair value and subsequently re-measured by recognizing the change in fair value as an adjustment to the compensation costs. The fair value of the Award granted was estimated on each reporting date using the Black-Scholes option pricing model with the assumptions (or ranges thereof) in the following table:

	<b>2016</b>	<b>2017</b>	<b>2018</b>
Exercise price	1.83	1.82	1.74
Fair value of the Preferred Shares on the measurement date	1.80	2.70	4.54
Risk-free interest rate	2%	2%	2%
Remaining life (in years)	4.75	3.64	0.26
Expected dividend yield	0%	0%	0%
Expected volatility	47-51%	47-48%	43%-44%

As of December 31, 2018, the Award was fully vested and exercised. Unrecognized expense related to the Award was nil.

Share-based compensation expenses related to the Award of RMB19,582, RMB35,446 and RMB178,475 was recognized for the years ended December 31, 2016, 2017 and 2018, respectively.

## **25. Taxation**

### **(a) Income taxes**

#### *Cayman Islands*

The Company was incorporated in the Cayman Islands and conducts most of its business through its subsidiaries located in Mainland China, Hong Kong, United States, United Kingdom and Germany. Under the current laws of the Cayman Islands, the Company is not subject to tax on either income or capital gain. Additionally, upon payments of dividends to the shareholders, no Cayman Islands withholding tax will be imposed.

#### *PRC*

All Chinese companies are subject to enterprise income tax (“EIT”) at a uniform rate of 25%.

Under the EIT Law enacted by the National People’s Congress of PRC on March 16, 2007 and its implementation rules which became effective on January 1, 2008, dividends generated after January 1, 2008 and payable by a foreign investment enterprise in the PRC to its foreign investors who are non-resident enterprises are subject to a 10% withholding tax, unless any such foreign investor’s jurisdiction of incorporation has a tax treaty with the PRC that provides for a different withholding arrangement. Under the taxation arrangement between the PRC and Hong Kong, a qualified Hong Kong tax resident which is the “beneficial owner” and directly holds 25% or more of the equity interest in a PRC resident enterprise is entitled to a reduced withholding tax rate of 5%. The Cayman Islands, where the Company was incorporated, does not have a tax treaty with PRC.

The EIT Law also provides that an enterprise established under the laws of a foreign country or region but whose “de facto management body” is located in the PRC be treated as a resident enterprise for PRC tax purposes and consequently be subject to the PRC income tax at the rate of 25% for its global income. The Implementing Rules of the EIT Law merely define the location of the “de facto management body” as “the place where the exercising, in substance, of the overall management and control of the production and business operation, personnel, accounting, properties, etc., of a non-PRC company is located.” Based on a review of surrounding facts and circumstances, the Group does not believe that it is likely that its operations outside of the PRC will be considered a resident enterprise for PRC tax purposes. However, due to limited guidance and implementation history of the EIT Law, there is uncertainty as to the application of the EIT Law. Should the Company be treated as a resident enterprise for PRC tax purposes, the Company will be subject to PRC income tax on worldwide income at a uniform tax rate of 25%.

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According to relevant laws and regulations promulgated by the State Administration of Tax of the PRC effective from 2008 onwards, enterprises engaging in research and development activities are entitled to claim 175% of their qualified research and development expenses so incurred as tax deductible expenses when determining their assessable profits for the year ('Super Deduction'). The additional deduction of 75% of qualified research and development expenses can only be claimed directly in the annual EIT filing and subject to the approval from the relevant tax authorities.

*Hong Kong*

Under the current Hong Kong Inland Revenue Ordinance, the subsidiaries of the Group incorporated in Hong Kong are subject to 16.5% Hong Kong profit tax on their taxable income generated from operations in Hong Kong. Additionally, payments of dividends by the subsidiaries incorporated in Hong Kong to the Company are not subject to any Hong Kong withholding tax.

*Other Countries*

The maximum applicable income tax rates of other countries where the Company's subsidiaries having significant operations for the years ended December 31, 2016, 2017 and 2018 are as follows:

	<b>For the Year Ended December 31,</b>		
	<b>2016</b>	<b>2017</b>	<b>2018</b>
United States	42.84%	42.84%	29.84%
United Kingdom	20.00%	19.25%	19.00%
Germany	32.98%	32.98%	32.98%

Composition of income tax expense for the periods presented are as follows:

	<b>For the Year Ended December 31,</b>		
	<b>2016</b>	<b>2017</b>	<b>2018</b>
Current income tax expense	4,314	7,906	22,044

Reconciliations of the income tax expense computed by applying the PRC statutory income tax rate of 25% to the Group's income tax expense of the years presented are as follows:

	<b>For the</b> <b>Year Ended December 31,</b>		
	<b>2016</b>	<b>2017</b>	<b>2018</b>
Loss before income tax expense	(2,568,940)	(5,013,268)	(9,616,935)
Income tax expense computed at PRC statutory income tax rate of 25%	(642,235)	(1,253,318)	(2,404,234)
Non-deductible expenses	91,915	91,093	96,684
Foreign tax rates differential	52,495	(74,531)	167,180
Additional 50% tax deduction for qualified research and development expenses	(46,527)	(93,513)	(216,993)
Tax exempted interest income	(52)	(845)	(10,377)
Effect of U.S. tax law change	—	165,898	—
US tax credits	(5,716)	(52,185)	(42,781)
Prior year adjustments	3,594	(10,293)	(1,422)
Tax benefit not utilized	550,840	1,235,600	2,433,987
Income tax expense	4,314	7,906	22,044

The PRC statutory income tax rate was used because the majority of the Group's operations are based in PRC.

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**(b) Deferred tax**

The Group considers positive and negative evidence to determine whether some portion or all of the deferred tax assets will be more-likely-than-not realized. This assessment considers, among other matters, the nature, frequency and severity of recent losses and forecasts of future profitability. These assumptions require significant judgment and the forecasts of future taxable income are consistent with the plans and estimates the Group is using to manage the underlying business. The statutory income tax rate of 25% or applicable preferential income tax rates were applied when calculating deferred tax assets.

The Group's deferred tax assets consist of the following components:

	<b>As of December 31,</b>		
	<b>2016</b>	<b>2017</b>	<b>2018</b>
<b>Deferred tax assets</b>			
Net operating loss carry-forwards	567,844	1,620,535	3,777,696
Accrued and prepaid expenses	39,174	84,320	255,240
Advertising expenses in excess of deduction limit	9,118	65,737	14,234
Tax credit carry-forwards	13,735	60,624	117,801
Property, plant and equipment, net	28,849	27,463	17,467
Deferred rent	9,478	8,699	36,729
Deferred Revenue	2,411	—	83,877
Unrealized financing cost	—	—	41,939
Intangible assets	1,643	7,104	15,687
Share-based compensation	637	4,106	8,962
Unrealized foreign exchange loss	—	55	55
Total deferred tax assets	<u>672,889</u>	<u>1,878,643</u>	<u>4,369,687</u>
Less: Valuation allowance	<u>(672,889)</u>	<u>(1,878,643)</u>	<u>(4,369,687)</u>
Total deferred tax assets, net	<u>—</u>	<u>—</u>	<u>—</u>

Full valuation allowances have been provided where, based on all available evidence, management determined that deferred tax assets are not more likely than not to be realizable in future tax years. Movement of valuation allowance is as follow:

	<b>As of December 31,</b>		
	<b>2016</b>	<b>2017</b>	<b>2018</b>
<b>Valuation allowance</b>			
Balance at beginning of the year	—	672,889	1,878,643
Additions	672,889	1,205,754	2,491,044
Balance at end of the year	<u>672,889</u>	<u>1,878,643</u>	<u>4,369,687</u>

The Group has tax losses arising in Mainland China of 11,551,510 that will expire in one to five years for deduction against future taxable profit.

Loss expiring in 2019	4
Loss expiring in 2020	186,827
Loss expiring in 2021	1,335,168
Loss expiring in 2022	3,098,425
Loss expiring in 2023	6,931,086
Total	<u>11,551,510</u>

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The Group has tax losses arising in Hong Kong and United Kingdom of 1,221,492 for which could be carried forward indefinitely against future taxable income.

The Group has tax losses arising in United States of 22,960, 232,429, 894,771 and 1,156,230 that will expire in seventeen, eighteen, nineteen and infinite years for deduction against future taxable income.

On December 22, 2017, the 2017 Tax Cuts and Jobs Act (“Tax Act”) was enacted into law making significant changes to the Internal Revenue Code. Changes include, but are not limited to, a federal corporate tax rate decrease from 35% to 21% for tax years beginning after December 31, 2017. The Group is required to recognize the effect of the tax law changes in the period of enactment, such as re-measuring the Group’s U.S. deferred tax assets and liabilities as well as reassessing the net realizability of the deferred tax assets and liabilities. The Tax Act did not give rise to any material impact on the consolidated balance sheets and consolidated statements of comprehensive loss due to the Group’s historical worldwide loss position and the full valuation allowance provided against the Group’s net U.S. deferred tax assets.

In December 2017, the Securities and Exchange Commission issued Staff Accounting Bulletin No. 118, Income Tax Accounting Implications of the Tax Cuts and Jobs Act (“SAB 118”), which allows the Group to record provisional amounts during a measurement period not to extend beyond one year from the enactment date. Since the Tax Act was enacted late in the fourth quarter of 2017 (and ongoing guidance and accounting interpretations are expected over the next 12 months), the Group considers the accounting of deferred tax re-measurements and other items to be incomplete due to the forthcoming guidance and its ongoing analysis of final year-end data and tax positions. The Group expects to complete the analysis within the measurement period in accordance with SAB 118. The Group does not expect any subsequent adjustments to have any material impact on the consolidated balance sheets or consolidated statements of comprehensive loss due to our historical worldwide loss position and the full valuation allowance provided against the Group’s net U.S. deferred tax assets.

*Uncertain Tax Position*

The Group did not identify any significant unrecognized tax benefits for each of the periods presented. The Group did not incur any interest related to unrecognized tax benefits, did not recognize any penalties as income tax expense and also does not anticipate any significant change in unrecognized tax benefits within 12 months from December 31, 2018.

**26. Loss Per Share**

Basic loss per share and diluted loss per share have been calculated in accordance with ASC 260 on computation of earnings per share for the years ended December 31, 2016, 2017 and 2018 as follows:

	<b>For the Year Ended December 31,</b>		
	<b>2016</b>	<b>2017</b>	<b>2018</b>
<b>Numerator:</b>			
Net loss	(2,573,254)	(5,021,174)	(9,638,979)
Accretion on convertible redeemable preferred shares to redemption value	(981,233)	(2,576,935)	(13,667,291)
Accretion on redeemable non-controlling interests to redemption value	—	—	(63,297)
Net loss attributable to non-controlling interests	36,938	36,440	41,705
Net loss attributable to ordinary shareholders of NIO Inc. for basic/dilutive net loss per share	<u>(3,517,549)</u>	<u>(7,561,669)</u>	<u>(23,327,862)</u>
<b>Denominator:</b>			
Weighted-average number of ordinary shares outstanding — basic and diluted	16,697,527	21,801,525	332,153,211
Basic and diluted net loss per share attributable to ordinary shareholders of NIO Inc.	<u>(210.66)</u>	<u>(346.84)</u>	<u>(70.23)</u>

For the years ended December 31, 2016, 2017 and 2018, assumed conversion of the Preferred Shares into ordinary shares were excluded from the calculations of diluted net loss per share of the Company due to the anti-dilutive effect. The effects of all outstanding share options have also been excluded from the computation of diluted net loss per share for the years ended December 31, 2016, 2017 and 2018, as their effects would be anti-dilutive.

For the years ended December 31, 2016, 2017 and 2018, the Company had potential ordinary shares, including non-vested restricted shares, option granted and Preferred Shares. As the Group incurred losses for the years ended December 31, 2016, 2017 and 2018, these potential ordinary shares were anti-dilutive and excluded from the calculation of diluted net loss per share of the Company. The weighted-average numbers of non-vested restricted shares, options granted and Preferred Shares excluded from the calculation of diluted net loss per share of the Company were 12,198,170, 26,311,777 and 369,222,548 as of December 31, 2016, 8,323,591, 27,495,737 and 593,611,970 as of December 31, 2017, 340,518, 72,735,288 and 678,614,152 as of December 31, 2018.

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**27. Related Party Balances and Transactions**

The principal related parties with which the Group had transactions during the years presented are as follows:

<u>Name of Entity or Individual</u>	<u>Relationship with the Company</u>
Bin Li	Principal Shareholder, Chairman of the Board and Chief Executive Officer
Lihong Qin	Principal Shareholder, Director and President of the Company
Baidu Capital L.P.	Shareholder
Hubei Changjiang Nextev New Energy Investment Management Co., Ltd.	Controlled by Principal Shareholder
Jiangsu Xindian Automotive Co., Ltd.	Controlled by Principal Shareholder
Beijing CHJ Information Technology Co., Ltd.	Controlled by Principal Shareholder
Ningbo Meishan Bonded Port Area Weilan Investment Co., Ltd.	Controlled by Principal Shareholder
Shanghai NIO Hongling Investment Management Co., Ltd.	Controlled by Principal Shareholder
NIO Capital	Controlled by Principal Shareholder
Hubei Changjiang Nextev New Energy Industry Development Capital Partnership (Limited Partnership)	Controlled by Principal Shareholder
Suzhou Zenlead XPT New Energy Technologies Co., Ltd.	Affiliate
Beijing Chehui Hudong Guanggao Co., Ltd.	Controlled by Principal Shareholder
Beijing Xinyi Hudong Guanggao Co., Ltd.	Controlled by Principal Shareholder
Bite Shijie (Beijing) Keji Co., Ltd.	Controlled by Principal Shareholder
Kunshan Siwopu Intelligent Equipment Co., Ltd.	Affiliate
Nanjing Weibang Transmission Technology Co., Ltd.	Affiliate
Shanghai Weishang Business Consulting Co.,Ltd.	Controlled by Principal Shareholder
Beijing Bitauto Information Technology Co., Ltd.	Controlled by Principal Shareholder

**(a) The Group entered into the following significant related party transactions:**

*(i) Provision of service*

For the years ended December 31, 2016, 2017 and 2018, service income was primarily generated from property management and miscellaneous research and development services the Group provided to its related parties.

	<b>For the Year Ended December 31,</b>		
	<b>2016</b>	<b>2017</b>	<b>2018</b>
Shanghai NIO Hongling Investment Management Co., Ltd.	—	—	2,707
Shanghai Weishang Business Consulting Co.,Ltd.	—	—	905
Hubei Changjiang Nextev New Energy Investment Management Co.,Ltd.	—	11,121	—
Beijing CHJ Information Technology Co., Ltd.	—	4,588	—
Hubei Changjiang Nextev New Energy Industry Development Capital Partnership (Limited Partnership)	—	4,015	—
Jiangsu Xindian Automotive Co., Ltd.	—	1,785	—
	<u>—</u>	<u>21,509</u>	<u>3,612</u>

*(ii) Acceptance of marketing and advertising service*

	<b>For the Year Ended December 31,</b>		
	<b>2016</b>	<b>2017</b>	<b>2018</b>
Beijing Xinyi Hudong Guanggao Co., Ltd.	—	8,021	28,245
Beijing Chehui Hudong Guanggao Co., Ltd.	—	544	6,915
Bite Shijie (Beijing) Keji Co., Ltd.	—	6,987	2,865
Beijing Bitauto Information Technology Co., Ltd.	—	—	32
	<u>—</u>	<u>15,552</u>	<u>38,057</u>

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*(iii) Loan to related party*

	<b>For the Year Ended December 31,</b>		
	<b>2016</b>	<b>2017</b>	<b>2018</b>
NIO Capital	—	—	66,166
Ningbo Meishan Bonded Port Area Weilan Investment Co., Ltd.	—	50,000	—
	<u>—</u>	<u>50,000</u>	<u>66,166</u>

In 2017, the Company granted interest-free loans to Ningbo Meishan Bonded Port Area Weilan Investment Co., Ltd. As of December 31, 2018, the loans remain outstanding.

On January 12, 2018, the Group granted two interest free loans to NIO Capital, with principal amount of US\$5,000 each, The loans mature in six months. One of the loan can be converted into ordinary shares of a subsidiary of NIO Capital upon maturity at the option of the Group.

*(iv) Cost of manufacturing consignment*

	<b>For the Year Ended December 31,</b>		
	<b>2016</b>	<b>2017</b>	<b>2018</b>
Suzhou Zenlead XPT New Energy Technologies Co.,Ltd.	—	18,324	132,152

*(v) Purchase of property and equipment*

	<b>For the Year Ended December 31,</b>		
	<b>2016</b>	<b>2017</b>	<b>2018</b>
Kunshan Siwopu Intelligent Equipment Co., Ltd.	—	—	11,107
Bite Shijie (Beijing) Keji Co., Ltd.	—	2,960	—
	<u>—</u>	<u>2,960</u>	<u>11,107</u>

*(vi) Interest payable on behalf of related party*

	<b>For the Year Ended December 31,</b>		
	<b>2016</b>	<b>2017</b>	<b>2018</b>
Baidu Capital L.P.	—	21,671	8,065

*(vii) Acceptance of R&D and maintenance service*

	<b>For the Year Ended December 31,</b>		
	<b>2016</b>	<b>2017</b>	<b>2018</b>
Suzhou Zenlead XPT New Energy Technologies Co.,Ltd.	—	—	14,776
Kunshan Siwopu Intelligent Equipment Co., Ltd.	—	—	2,436
	<u>—</u>	<u>—</u>	<u>17,212</u>

*(viii) Payment on behalf of related party*

	<b>For the Year Ended December 31,</b>		
	<b>2016</b>	<b>2017</b>	<b>2018</b>
Nanjing Weibang Transmission Technology Co., Ltd.	—	—	2,790

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*(b) The Group had the following significant related party balances:*

*(i) Amounts due from related parties*

	<b>December 31, 2017</b>	<b>December 31, 2018</b>
Ningbo Meishan Bonded Port Area Weilan Investment Co., Ltd.	50,000	50,000
NIO Capital	—	34,316
Kunshan Siwopu Intelligent Equipment Co., Ltd.	—	7,970
Nanjing Weibang Transmission Technology Co., Ltd.	—	2,790
Shanghai Weilan Hongling Investment Management Co., Ltd.	—	960
Baidu Capital L.P.	21,671	—
Beijing CHJ Information Technology Co., Ltd.	3,624	—
Bin Li	1,680	—
Jiangsu Xindian Automotive Co., Ltd.	1,627	—
Hubei Changjiang Nextev New Energy Investment Management Co., Ltd.	954	—
<b>Total</b>	<b>79,556</b>	<b>96,036</b>

*(ii) Amounts due to related parties*

	<b>December 31, 2017</b>	<b>December 31, 2018</b>
Suzhou Zenlead XPT New Energy Technologies Co., Ltd.	19,466	210,868
Beijing Chehui Hudong Guanggao Co., Ltd.	576	4,085
Beijing Xinyi Hudong Guanggao Co., Ltd.	400	3,530
Kunshan Siwopu Intelligent Equipment Co., Ltd.	—	761
Bite Shijie (Beijing) Keji Co., Ltd. .	—	339
Bin Li	14,289	—
Lihong Qin	5,338	—
<b>Total</b>	<b>40,069</b>	<b>219,583</b>

**28. Commitments and Contingencies**

*(a) Capital commitments*

Capital expenditures contracted for at the balance sheet dates but not recognized in the Group's consolidated financial statements are as follows:

	<b>December 31, 2017</b>	<b>December 31, 2018</b>
Property and equipment	1,250,612	1,454,031
Leasehold improvements	470,600	149,551
<b>Total</b>	<b>1,721,212</b>	<b>1,603,582</b>



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***(b) Operating lease commitments***

As of December 31, 2017 and 2018, the Group had remaining outstanding commitments non-cancelable agreements in respect to its operating leases as follows:

	<b>December 31, 2017</b>	<b>December 31, 2018</b>
Within one year	233,486	393,734
1 to 2 years	261,846	457,892
2 to 3 years	278,278	444,909
More than 3 years	912,356	1,091,911
<b>Total</b>	<b>1,685,966</b>	<b>2,388,446</b>

***(c) Contingencies***

On March 12, 2019, two putative securities class action lawsuits were filed against the Company and certain of the Company officers in the U.S. District Court of the Eastern District of New York. On March 14, 2019, another putative securities class action lawsuit was filed against the Company, certain of the Company directors and officers, and underwriters in the Supreme Court of the State of New York. The plaintiffs in these cases allege, in sum and substance, that the Company's statements in the Registration Statement and/or other public statements were false or misleading and in violation of the U.S. federal securities laws. These actions remain in their preliminary stages and the Company is currently unable to determine the potential loss, if any, associated with the resolution of such lawsuits, if they proceed.

**29. Subsequent Events**

On February 4, 2019, the Company issued US\$650,000 aggregate principal amount of 4.50% Convertible Senior Notes due 2024 (the "2024 Notes"). The initial purchasers of the 2024 Notes were granted an option to purchase, exercisable within a 30-day period, up to an additional US\$100 million principal amount of the 2024 Notes. The initial purchasers of the 2024 Notes have exercised the option in full by purchasing US\$51,773 aggregate principal amount of the 2024 Notes on February 15, 2019 and US\$48,227 aggregate principal amount of the 2024 Notes on February 28, 2019.

On January 30, 2019, in connection with the pricing of the 2024 Notes, the Company entered into capped call transactions. On February 15, 2019 and February 26, 2019, the Company entered into additional capped call transactions. The Company used a portion of the net proceeds of the 2024 Notes to pay the cost of such transactions. The cap price of these capped call transactions is initially US\$14.92 per ADS and is subject to adjustment under the terms of the capped call transactions.

On January 30, 2019, in connection with the pricing of the 2024 Notes, the Company also entered into privately negotiated zero-strike call option transactions and used a portion of the net proceeds of the 2024 Notes to pay the aggregate premium under such transactions. Pursuant to the zero-strike call option transactions, the Company purchased in the aggregate approximately 26.8 million ADSs.

**30. Parent Company Only Condensed Financial Information**

The Company performed a test on the restricted net assets of its consolidated subsidiaries and VIEs in accordance with Securities and Exchange Commission Regulation S-X Rule 4-08 (e) (3), "General Notes to Financial Statements" and concluded that it was applicable for the Company to disclose the financial information for the Company only.

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The subsidiaries did not pay any dividend to the Company for the years presented. Certain information and footnote disclosures generally included in financial statements prepared in accordance with U.S. GAAP have been condensed and omitted. The footnote disclosures contain supplemental information relating to the operations of the Company, as such, these statements are not the general-purpose financial statements of the reporting entity and should be read in conjunction with the notes to the consolidated financial statements of the Company.

The Company did not have significant capital and other commitments, or guarantees as of December 31, 2018.

**Condensed Balance Sheets**

	As of December 31,		
	2017 RMB	2018 RMB	2018 US\$ Note 2(e)
<b>ASSETS</b>			
Current assets:			
Cash and cash equivalents	23,270	17,179	2,499
Amounts due from related parties	1,243,251	20,701	3,011
Prepayments and other current assets	1,642	54,847	7,977
<b>Total current assets</b>	<u>1,268,163</u>	<u>92,727</u>	<u>13,487</u>
Non-current assets:			
Investments in subsidiaries and VIEs	6,977,051	8,891,882	1,293,271
<b>Total non-current assets</b>	<u>6,977,051</u>	<u>8,891,882</u>	<u>1,293,271</u>
<b>Total assets</b>	<u>8,245,214</u>	<u>8,984,609</u>	<u>1,306,758</u>
<b>LIABILITIES</b>			
Current liabilities:			
Amounts due to related parties	135,490	2,046,971	297,720
Accruals and other liabilities	55,027	913	134
<b>Total current liabilities</b>	<u>190,517</u>	<u>2,047,884</u>	<u>297,854</u>
Deferred revenue	—	99,684	14,498
<b>Total non-current liabilities</b>	<u>—</u>	<u>99,684</u>	<u>14,498</u>
<b>Total liabilities</b>	<u>190,517</u>	<u>2,147,568</u>	<u>312,352</u>
<b>MEZZANINE EQUITY</b>			
Series A-1 and A-2 convertible redeemable preferred shares	5,011,731	—	—
Series A-3 convertible redeemable preferred shares	427,129	—	—
Series B convertible redeemable preferred shares	2,294,980	—	—
Series C convertible redeemable preferred shares	4,454,596	—	—
Series D convertible redeemable preferred shares	7,547,760	—	—
Receivable from a holder of Series D convertible redeemable preferred shares	(78,410)	—	—
<b>Total mezzanine equity</b>	<u>19,657,786</u>	<u>—</u>	<u>—</u>
<b>SHAREHOLDERS' (DEFICIT)/EQUITY</b>			
Ordinary shares	60	—	—
Class A Ordinary Shares	—	1,329	193
Class B Ordinary Shares	—	226	33
Class C Ordinary Shares	—	254	37
Treasury shares	(9,186)	(9,186)	(1,336)
Additional paid in capital	131,907	41,918,936	6,096,856
Accumulated other comprehensive income/(loss)	(13,922)	(34,708)	(5,048)
Accumulated deficit	(11,711,948)	(35,039,810)	(5,096,329)
<b>Total shareholders' (deficit)/equity</b>	<u>(11,603,089)</u>	<u>6,837,041</u>	<u>994,406</u>
<b>Total liabilities, mezzanine equity and shareholders' (deficit)/equity</b>	<u>8,245,214</u>	<u>8,984,609</u>	<u>1,306,758</u>

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*Condensed Statements of Comprehensive Loss*

	For the Year ended December 31,			
	2016 RMB	2017 RMB	2018 RMB	2018 US\$ Note 2(e)
<b>Operating expenses:</b>				
Selling, general and administrative	(24,684)	(52,518)	(178,479)	(25,959)
<b>Total operating expenses</b>	<u>(24,684)</u>	<u>(52,518)</u>	<u>(178,479)</u>	<u>(25,959)</u>
<b>Loss from operations</b>	(24,684)	(52,518)	(178,479)	(25,959)
Interest income	24,309	2,391	7,692	1,119
Interest expense	—	(12,389)	—	—
Equity in loss of subsidiaries and VIEs	(2,539,323)	(4,924,897)	(9,432,640)	(1,371,921)
Investment income	2,670	3,498	—	—
Other loss, net	712	(819)	6,153	895
<b>Loss before income tax expense</b>	<u>(2,536,316)</u>	<u>(4,984,734)</u>	<u>(9,597,274)</u>	<u>(1,395,866)</u>
Income tax expense	—	—	—	—
<b>Net loss</b>	<u>(2,536,316)</u>	<u>(4,984,734)</u>	<u>(9,597,274)</u>	<u>(1,395,866)</u>
Accretion on convertible redeemable preferred shares to redemption value	(981,233)	(2,576,935)	(13,667,291)	(1,987,825)
Accretion on redeemable non-controlling interests to redemption value	—	—	(63,297)	(9,206)
<b>Net loss attributable to ordinary shareholders of NIO Inc.</b>	<u><u>(3,517,549)</u></u>	<u><u>(7,561,669)</u></u>	<u><u>(23,327,862)</u></u>	<u><u>(3,392,897)</u></u>

*Condensed Statements of Cash Flows*

	For The Year ended December 31,			
	2016 RMB	2017 RMB	2018 RMB	2018 US\$ Note 2(e)
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>				
Net cash used in operating activities	(2,540,639)	(4,920,905)	3,917,654	569,799
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>				
Proceeds from sale of trading securities	3,118,559	1,340,911	—	—
Purchase of held for trading securities	(2,346,261)	(1,337,413)	—	—
Acquisitions of equity investees	(669,433)	(6,223,178)	(11,693,144)	(1,700,697)
Net cash used in investing activities	<u>102,865</u>	<u>(6,219,680)</u>	<u>(11,693,144)</u>	<u>(1,700,697)</u>
<b>CASH FLOWS FROM FINANCING ACTIVITIES</b>				
Proceeds from exercise of stock options	—	6,207	42,251	6,145
Repurchase of restricted shares	—	—	(7,490)	(1,089)
Proceeds from issuance of convertible promissory note	—	312,624	—	—
Repayment of convertible promissory note	—	(325,013)	—	—
Repayment of non-recourse loan	—	—	82,863	12,052
Proceeds from issuance of ordinary shares, net of issuance costs	—	—	7,566,470	1,100,497
Proceeds from issuance of convertible redeemable preferred shares, net of issuance costs	2,260,444	11,093,377	78,651	11,439
Net cash provided by financing activities	<u>2,260,444</u>	<u>11,087,195</u>	<u>7,762,745</u>	<u>1,129,044</u>
Effects of exchange rate changes on cash and cash equivalents	(7,323)	(3,031)	6,654	969
<b>NET DECREASE IN CASH AND CASH EQUIVALENTS</b>	<u>(184,653)</u>	<u>(56,421)</u>	<u>(6,091)</u>	<u>(885)</u>
Cash and cash equivalents at beginning of the year	264,344	79,691	23,270	3,384
Cash and cash equivalents at end of the year	<u><u>79,691</u></u>	<u><u>23,270</u></u>	<u><u>17,179</u></u>	<u><u>2,499</u></u>

**NIO INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**(All amounts in thousands, except for share and per share data)**

*Basis of presentation*

The Company's accounting policies are the same as the Group's accounting policies with the exception of the accounting for the investments in subsidiaries and VIEs.

For the Company only condensed financial information, the Company records its investments in subsidiaries and VIEs under the equity method of accounting as prescribed in ASC 323, Investments—Equity Method and Joint Ventures.

Such investments are presented on the Condensed Balance Sheets as "Investments in subsidiaries and VIEs" and shares in the subsidiaries and VIEs' loss are presented as "Equity in loss of subsidiaries and VIEs" on the Condensed Statements of Comprehensive Loss. The parent company only condensed financial information should be read in conjunction with the Group' consolidated financial statements.

US\$650,000,000

NIO INC.

4.50% CONVERTIBLE SENIOR NOTES DUE 2024

PURCHASE AGREEMENT

January 30, 2019

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Credit Suisse Securities (USA) LLC  
Eleven Madison Avenue  
New York, New York 10010  
U.S.A.

J.P. Morgan Securities LLC  
383 Madison Avenue  
New York, New York 10179  
U.S.A.

Morgan Stanley & Co. LLC  
1585 Broadway  
New York, New York 10036  
U.S.A.

Goldman Sachs (Asia) L.L.C.  
68th Floor, Cheung Kong Center  
2 Queens Road  
Central, Hong Kong

As representatives (the "**Representatives**") of the several Purchasers named in Schedule I hereto

Ladies and Gentlemen:

1. *Introductory.* NIO Inc., an exempted company incorporated in the Cayman Islands (the "**Company**"), proposes to issue and sell (such issuance and sale, the "**Offering**") to the several initial purchasers named in Schedule I hereto (the "**Purchasers**") US\$650,000,000 principal amount of its 4.50% Convertible Senior Notes due 2024 (the "**Firm Securities**") and, at the election of the Purchasers, up to an additional US\$100,000,000 principal amount of such 4.50% Convertible Senior Notes due 2024 (the "**Optional Securities**"; the Firm Securities and the Optional Securities which the Purchasers may elect to purchase pursuant to Section 3 hereof are herein collectively called the "**Offered Securities**"), each to be issued under an indenture dated as of February 4, 2019 (the "**Indenture**"), between the Company and The Bank of New York Mellon, as trustee (the "**Trustee**").

The American depositary shares (the "**ADSs**") to be issued upon conversion of the Offered Securities are to be issued pursuant to and in accordance with the deposit agreement dated as of September 11, 2018 (the "**Deposit Agreement**") among the Company, Deutsche Bank Trust Company Americas, as depositary (the "**Depository**"), and all holders from time to time of American depositary receipts ("**ADRs**") issued by the Depository and evidencing ADSs, as supplemented, for the purposes of the Offering, by a deposit agreement for restricted securities to be dated February 4, 2019 between the Company and the Depository (the "**Restricted Issuance Agreement**"). The ADSs will be evidenced by ADRs and each ADS will initially represent the right to receive one Class A ordinary share, par value US\$0.00025 per share of the Company (the "**Ordinary Shares**") deposited pursuant to the Deposit Agreement. The ADSs issuable upon conversion of the Offered Securities shall be hereinafter referred to as the "**Underlying ADSs**."

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The Offered Securities will be sold without being registered under the United States Securities Act of 1933, as amended (the “**Securities Act**”), to qualified institutional buyers in compliance with the exemption from registration provided by Rule 144A under the Securities Act (“**Rule 144A**”) and outside the United States to non-U.S. persons in reliance on Regulation S under the Securities Act (“**Regulation S**”).

In connection with the sale of the Offered Securities, the Company has prepared a preliminary offering memorandum dated January 29, 2019 (the “**Preliminary Offering Memorandum**”) and a final offering memorandum dated January 30, 2019 (the “**Final Offering Memorandum**”) including a description of the terms of the Offered Securities, the terms of the offering and a description of the Company. For purposes of this Agreement, “**Additional Written Offering Communication**” means any written communication (as defined in Rule 405 under the Securities Act) that constitutes an offer to sell or a solicitation of an offer to buy the Offered Securities other than the Preliminary Offering Memorandum or the Final Offering Memorandum, and “**Offering Document**” means the Preliminary Offering Memorandum together with the Additional Written Offering Communications identified in Schedule II to this Agreement. As used herein, the terms Preliminary Offering Memorandum, Offering Document and Final Offering Memorandum shall include the documents, if any, incorporated by reference therein on the date hereof. The terms “supplement”, “amendment” and “amend” as used herein with respect to the Preliminary Offering Memorandum, the Offering Document, the Final Offering Memorandum or any Additional Written Offering Communication shall include all documents subsequently filed by the Company with the Securities and Exchange Commission (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 “Applicable Time” means 9:00 p.m. (New York time) on January 30, 2019.

In connection with the offering of the Offered Securities, the Company is separately entering into capped call transactions with one or more of the Purchasers (or affiliates thereof) (the “**Capped Call Counterparties**”) pursuant to separate capped call confirmations (the “**Base Capped Call Confirmations**”), each to be dated the date hereof, and in connection with any exercise by the Purchasers of their option to purchase any Optional Securities, the Company and the Capped Call Counterparties may enter into additional capped call transactions pursuant to additional capped call confirmations (the “**Additional Capped Call Confirmations**”) and, together with the Base Capped Call Confirmations, the “**Capped Call Confirmations**”), each to be dated the date on which the Purchasers exercise their option to purchase the Optional Securities.

In connection with the offering of the Offered Securities, the Company is also separately entering into zero-strike call option transactions with one or more of the Purchasers (or affiliates thereof) pursuant to separate zero-strike call option confirmations (the “**Zero-Strike Call Option Confirmations**”), each to be dated on or around the date hereof.

The Company hereby agrees with the several Purchasers as follows:

2. *Representations and Warranties of the Company.* The Company represents and warrants to and agrees with each of the Purchasers that:

(a) (i) The Offering Document, at the Applicable Time, 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, and (ii) the Final Offering Memorandum, at the Applicable Time, does not, and on each Closing Date (as defined below), as then amended or supplemented by the Company, if applicable, will not, contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, except that the representations and warranties set forth in this paragraph do not apply to statements or omissions in the Offering Document or the Final Offering Memorandum that are based upon information relating to any Purchaser furnished to the Company in writing by such Purchaser through you expressly for use therein, it being understood and agreed that the only such information is that described as such in Section 8(b) hereof.

(b) The Company has been duly incorporated, is validly existing as a corporation in good standing under the laws of the jurisdiction of its incorporation, has the corporate power and authority to own its property and to conduct its business as described in the Offering Document and is duly qualified to transact business and is in good standing in each jurisdiction in which the conduct of its business or its ownership or leasing of property requires such qualification, except to the extent that the failure to be so qualified or be in good standing would not have a material adverse effect on the condition (financial or otherwise), earnings, results of operations, business or prospects of the Company and its Subsidiaries and Affiliated Entities (as defined below), taken as a whole, or on the ability of the Company to carry out its obligations under this Agreement, the Indenture, the Offered Securities, the Deposit Agreement, the Capped Call Confirmations and the Zero-Strike Call Option Confirmations (a “**Material Adverse Effect**”). The currently effective memorandum and articles of association or other constitutive or organizational documents of the Company comply with the requirements of applicable Cayman Islands law and are in full force and effect.



(c) Each of the Company's direct and indirect subsidiaries (as such term is defined in Rule 405 under the Securities Act, but for the avoidance of any doubt, excluding any non-consolidated joint ventures, associates and their subsidiaries that are not controlled by the Company) has been identified on Schedule III-A hereto (the "**Subsidiaries**"), and the entities through which the Company conducts its operations in the People's Republic of China ("**PRC**") by way of contractual arrangements and their subsidiaries (the "**Affiliated Entities**") have been identified on Schedule III-B hereto. Each of the Subsidiaries and Affiliated Entities has been duly incorporated, is validly existing as a corporation or organization in good standing under the laws of the jurisdiction of its incorporation or organization, has the corporate power and authority to own its property and to conduct its business as described in the Offering Document and is duly qualified to transact business and is in good standing in each jurisdiction in which the conduct of its business or its ownership or leasing of property requires such qualification, except to the extent that the failure to be so qualified or be in good standing would not have a Material Adverse Effect; all of the Equity Interests of each Subsidiary have been duly and validly authorized and issued, are owned directly or indirectly by the Company, are fully paid and non-assessable (to the extent they have become due and payable under the charter documents of the applicable Subsidiaries) and are free and clear of all material (individually or in aggregate) liens, encumbrances, equities or claims (for purpose of this Agreement, "**Equity Interests**" shall mean the share capital or equity interest of each Subsidiary owned by the Company, another Subsidiary or another affiliate (as defined in Rule 405 under the Securities Act) of the Company); all of the equity interests in each of the Affiliated Entities have been duly and validly authorized and issued, are fully paid and non-assessable (to the extent they have become due and payable under the charter documents of the applicable Subsidiaries) and are owned as described in the Offering Document, free and clear of all liens, encumbrances, equities or claims (other than the share pledge contemplated under the Corporate Structure Contracts (as defined below)). None of the outstanding share capital or equity interest in any Subsidiary or Affiliated Entity was issued in violation of preemptive or similar rights of any security holder of such Subsidiary or Affiliated Entity. All of the currently effective constitutive or organizational documents of each of the Subsidiaries and Affiliated Entities comply with the requirements of applicable laws of its jurisdiction of incorporation or organization and are in full force and effect.

(d) Upon issuance and delivery of the Offered Securities in accordance with this Agreement and the Indenture, the Offered Securities will be convertible at the option of the holder thereof into cash, ADSs representing Ordinary Shares or a combination thereof in accordance with the terms of the Offered Securities; the Ordinary Shares underlying the ADSs to be issued upon conversion of the Offered Securities may be freely deposited by the Company with the Depository against issuance of ADRs evidencing the ADSs; the maximum number of Ordinary Shares issuable upon conversion of the Offered Securities have been duly authorized and reserved and when issued upon conversion of the Offered Securities in accordance with the terms of the Offered Securities, will be validly issued, fully paid and non-assessable and will conform to the description thereof contained in the Offering Document, and the issuance of the Ordinary Shares will not be subject to any preemptive rights of the shareholders of the Company.

(e) Except as described in the Offering Document, (i) none of the Company nor any of its Subsidiaries or Affiliated Entities is prohibited, directly or indirectly, from (1) paying any dividends or making any other distributions on its share capital, (2) making or repaying any loan or advance to the Company or any other Subsidiary or Affiliated Entity or (3) transferring any of its properties or assets to the Company or any other Subsidiary or Affiliated Entity; and (ii) all interest, principal, premium, if any, and other payments due or made on the Offered Securities and dividends and other distributions declared and payable on the Underlying ADSs issuable upon conversion thereof (or the Ordinary Shares represented thereby) (1) may be converted into foreign currency that may be freely transferred out of any such entity's jurisdiction of incorporation or tax residence, without the consent, approval, authorization or order of, or qualification with, any court or governmental agency or body in any such entity's jurisdiction of incorporation or tax residence; (2) are not and will not be subject to withholding, value added or other taxes under the currently effective laws and regulations of any such entity's jurisdiction of incorporation or tax residence; and (3) may be made without the necessity of obtaining any consents, approvals, authorizations, orders, registrations, clearances or qualifications of or with any arbitrator, court, governmental body, regulatory body, administrative agency or other authority, body or agency having jurisdiction over the Company, any of the Subsidiaries or the Affiliated Entities or any of their respective properties, assets or operations (each, a "**Governmental Entity**").

(f) The description of the corporate structure of the Company and the various contracts among certain Subsidiaries, the shareholders of the Affiliated Entities and the Affiliated Entities (each a "**Corporate Structure Contract**" and collectively the "**Corporate Structure Contracts**"), as the case may be, as set forth in the Offering Document under the captions "Corporate History and Structure" and "Related Party Transactions", is true and accurate in all material respects and nothing has been omitted from such description which would make it misleading in any material respect. There is no other material agreement, contract or other document relating to the corporate structure or the operation of the Company together with its Subsidiaries and the Affiliated Entities taken as a whole, which has not been previously disclosed or made available to the Purchasers and disclosed in the Offering Document.

(g) Each Corporate Structure Contract has been duly authorized, executed and delivered by the parties thereto and constitutes a valid and legally binding obligation of the parties thereto, enforceable in accordance with its terms (except as disclosed in the Offering Document), subject, as to the enforcement of remedies, to the effects of (1) bankruptcy, reorganization, insolvency, fraudulent conveyance, moratorium or similar laws affecting creditors' rights generally from time to time in effect, (2) general principles of equity (whether considered in a proceeding in equity or at law) and (3) an implied covenant of good faith and fair dealing (collectively, the "**Enforcement Limitations**"). No consent, approval, authorization, or order of, or filing or registration with, any Governmental Entity is required for the performance of the obligations under any Corporate Structure Contract by the parties thereto, except as already obtained or disclosed in the Offering Document; and no consent, approval, authorization, order, filing or registration that has been obtained is being withdrawn or revoked or is subject to any condition precedent which has not been fulfilled or performed. Except as described in the Offering Document under the heading "Risks Relating to Our Corporate Structure", the corporate structure of the Company complies with all applicable PRC laws and regulations, and neither the corporate structure of the Company nor any of the Corporate Structure Contracts violates, breaches, contravenes or otherwise conflicts with any applicable PRC laws. There is no legal or governmental proceeding, inquiry or investigation pending against the Company, the Subsidiaries or the Affiliated Entities or shareholders of the Affiliated Entities in any jurisdiction challenging the validity of any of the Corporate Structure Contracts, and to the knowledge of the Company, no such proceeding, inquiry or investigation is threatened in any jurisdiction.

(h) The execution, delivery and performance of each Corporate Structure Contract by the parties thereto do not and will not result in a breach or violate any of the terms or provisions of, or constitute a default under, or result in the imposition of any lien, encumbrance, equity or claim upon any property or assets of the Company or any of the Subsidiaries or the Affiliated Entities pursuant to (i) the constitutive or organizational documents of the Company or any of the Subsidiaries or the Affiliated Entities, (ii) any existing statute, rule, regulation or order of any Governmental Entity as currently in effect having jurisdiction over the Company or any of the Subsidiaries or the Affiliated Entities or any of their properties, or any arbitration award, or (iii) any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Company or any of the Subsidiaries or any of the Affiliated Entities is a party or by which the Company or any of the Subsidiaries or the Affiliated Entities is bound or to which any of the properties of the Company or any of the Subsidiaries or the Affiliated Entities is subject, except, in the case of (iii), where such breach, violation or default would not individually or in the aggregate have a Material Adverse Effect. Each Corporate Structure Contract is in full force and effect and none of the parties thereto is in breach or default in the performance of any of the terms or provisions of such Corporate Structure Contract. None of the parties to any of the Corporate Structure Contracts has sent or received any communication regarding termination of, or intention not to renew, any of the Corporate Structure Contracts, and to the knowledge of the Company, no such termination or non-renewal has been threatened by any of the parties thereto.

(i) The Company possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the Affiliated Entities, through certain of its Subsidiaries' rights to exercise the voting rights of the shareholders of the Affiliated Entities.

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

(k) The Indenture has been duly authorized; the Offered Securities have been duly authorized; and when the Offered Securities are delivered and paid for by the Purchasers pursuant to this Agreement on each Closing Date (as defined below), the Indenture will have been duly executed and delivered by the Company, such Offered Securities will have been duly executed, issued and delivered and will conform to the description thereof contained in the Offering Document and the Indenture and such Offered Securities will constitute valid and legally binding obligations of the Company, enforceable in accordance with their terms, subject to the Enforcement Limitations.

(l) The Capped Call Confirmations have been duly authorized, executed and delivered by the Company and, assuming due execution and delivery thereof by the other parties thereto, are valid and legally binding obligations of the Company, enforceable against the Company in accordance with their terms, subject to the Enforcement Limitations; the Capped Call Confirmations will conform in all material respects to the descriptions thereof in the Offering Document.

(m) The Zero-Strike Call Option Confirmations have been duly authorized, executed and delivered by the Company and, assuming due execution and delivery thereof by the other parties thereto, are valid and legally binding obligations of the Company, enforceable against the Company in accordance with their terms, subject to the Enforcement Limitations; the Zero-Strike Call Option Confirmations will conform in all material respects to the descriptions thereof in the Offering Document.

(n) The Deposit Agreement has been duly authorized, executed and delivered by the Company and constitutes a valid and legally binding agreement of the Company, enforceable in accordance with its terms, subject to the Enforcement Limitations; the Restricted Issuance Agreement has been duly authorized and when the Offered Securities are delivered and paid for by the Purchasers pursuant to this Agreement on each Closing Date (as defined below), the Restricted Issuance Agreement will have been duly executed and delivered by the Company; and upon issuance by the Depository of ADRs evidencing Underlying ADSs and the deposit of Ordinary Shares in respect thereof in accordance with the provisions of the Deposit Agreement and Restricted Issuance Agreement, such ADRs will be duly and validly issued and the persons in whose names the ADRs are registered will be entitled to the rights specified therein and in the Deposit Agreement; and the Deposit Agreement and the ADRs conform in all material respects to the descriptions thereof contained in the Offering Document.

(o) The authorized share capital of the Company conforms as to legal matters to the description thereof contained the Offering Document.

(p) Neither the Company nor any of its Subsidiaries or Affiliated Entities is (i) in breach of or in default under any laws, regulations, rules, orders, decrees, guidelines or notices of its jurisdiction of organization or any other jurisdiction where it operates, (ii) in violation of its constitutive or organizational documents, or (iii) in default in the performance or observance of any obligation, agreement, 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, except in the case of (i) and (iii) above, where any such breach or default would not, individually or in aggregate, have a Material Adverse Effect.

(q) The execution and delivery by the Company of this Agreement, the Indenture, the Capped Call Confirmations, the Zero-Strike Call Option Confirmations and the Restricted Issuance Agreement, the performance by the Company of its obligations under this Agreement, the Indenture, the Offered Securities, the Capped Call Confirmations, the Zero-Strike Call Option Confirmations, the Deposit Agreement and the Restricted Issuance Agreement and the consummation by the Company of the transactions hereunder and thereunder (including the issuance and sale of the Offered Securities), will not contravene any provision of applicable law or the memorandum and articles of incorporation of the Company or any agreement or other instrument binding upon the Company or any of its Subsidiaries or Affiliated Entities that is material to the Company and its Subsidiaries and Affiliated Entities, taken as a whole, or any judgment, order or decree of any Governmental Entity having jurisdiction over the Company or any Subsidiary or Affiliated Entity, and no consent, approval, authorization or order of, or qualification with, any Governmental Entity is required for the performance by the Company of its obligations under this Agreement, the Indenture, the Deposit Agreement, the Restricted Issuance Agreement, the Capped Call Confirmations, the Zero-Strike Call Option Confirmations or the consummation by the Company of the issuance and sale of the Offered Securities, except (i) the Registration Certificate (as defined below) and the filings with NDRC (as defined below) described in subsection (r) below and (ii) such consents, approvals, authorizations, orders, registrations or qualifications as may be required under applicable state Blue Sky securities laws in connection with the purchase and resale of the Offered Securities by each Purchaser.

(r) The Company (through a PRC Subsidiary) obtained an enterprise foreign debt registration certificate dated January 21, 2019 with a validity period of one year (the “**Registration Certificate**”) from the National Development and Reform Commission (“**NDRC**”). Such registration has not been withdrawn and is not subject to any condition which has not been fulfilled or performed, except for the filing by such PRC Subsidiary with NDRC of the requisite information and documents within ten (10) business days in the PRC after the date of issuance of the Offered Securities in accordance with the Circular on Promoting the Reform of the Administrative System on the Issuance by Enterprises of Foreign Debt Filings and Registrations (国家发展改革委关于推进企业发行外债备案登记制管理改革的通知(发改外资[2015]2044号)) (the “**NDRC Circular**”).

(s) The application of the net proceeds from the offering of Offered Securities, as described in the Offering Document, will not (i) contravene any provision of any current and applicable laws or the current constituent documents of the Company or any of its Subsidiaries or Affiliated Entities, (ii) contravene the terms or provisions of, or constitute a default under, any material indenture, mortgage, deed of trust, loan agreement, note, lease or other agreement or instrument currently binding upon the Company or any of its Subsidiaries or Affiliated Entities, or (iii) contravene or violate the terms or provisions of any order or decree of any Governmental Entity having jurisdiction over the Company or any Subsidiary or Affiliated Entity.

(t) There has not occurred any material adverse change, or any development involving a prospective material adverse change, in the condition, financial or otherwise, or in the earnings, business or operations of the Company and its Subsidiaries and Affiliated Entities, taken as a whole, from that set forth in the Offering Document.

(u) There are no legal or governmental proceedings pending, or to the knowledge of the Company, threatened, to which the Company or any of its Subsidiaries or Affiliated Entities is a party or to which any of the properties of the Company or any of its Subsidiaries or Affiliated Entities is subject (other than proceedings accurately described in all material respects in the Offering Document and proceedings that would not have a Material Adverse Effect).

(v) The Company is not, and after giving effect to the offering and sale of the Offered Securities, the application of the proceeds thereof as described in the Offering Document, the Capped Call Confirmations and the Zero-Strike Call Option Confirmations will not be, required to register as an "investment company" as such term is defined in the Investment Company Act of 1940, as amended.

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

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

(y) (i) None of the Company or its Subsidiaries or Affiliated Entities or any director or officer thereof, or, to the Company's knowledge, any of its or their affiliates or employees, or any agent or other representative thereof, is aware of or has taken or will take any action, directly or indirectly, that would result in a violation by such persons of the Foreign Corrupt Practice Act of 1977, as amended, and the rules of regulations thereunder, the U.K. Bribery Act 2010, as amended, and the rules and regulations thereunder, or any other applicable anti-corruption law 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 its Subsidiaries and Affiliated Entities and its and their affiliates have conducted their businesses in compliance with applicable anti-corruption laws and have instituted and since instituting have 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 its Subsidiaries or Affiliated Entities 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.

(z) The operations of the Company and its Subsidiaries and Affiliated Entities are and have been conducted at all times in 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 its Subsidiaries and Affiliated Entities conduct business, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental or regulatory agency (collectively, the "**Anti-Money Laundering Laws**"), and no action, suit or proceeding by or before any court or governmental or regulatory agency, authority or body or any arbitrator involving the Company or any of its Subsidiaries or Affiliated Entities with respect to the Anti-Money Laundering Laws is pending or, to the best knowledge of the Company, threatened.

(aa) (i) None of the Company, any of its Subsidiaries or Affiliated Entities, or any director or officer thereof, or, to the Company's knowledge, any agent, affiliate, employee or other representative of the Company or any of its Subsidiaries or Affiliated Entities, 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 Treasury's Office of Foreign Assets Control ("OFAC"), the U.S. Department of State, the United Nations Security Council ("UNSC"), the European Union ("EU") (including under Council Regulation (EC) No. 194/2008), Her Majesty's Treasury ("HMT"), the State Secretariat for Economic Affairs, or other relevant sanctions authority (collectively, "Sanctions"), or engaged in any activities sanctionable under the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, the Iran Sanctions Act, the Iran Threat Reduction and Syria Human Rights Act, or any applicable executive order, 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 received by the Company, or lend, contribute or otherwise make available such proceeds to any Subsidiary, Affiliated Entity, 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 its Subsidiaries and Affiliated Entities have not knowingly engaged in, are not now knowingly engaged in, and will not knowingly 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.

(bb) Subsequent to the respective dates as of which information is given in the Offering Document, (i) the Company and its Subsidiaries and Affiliated Entities have not incurred any material liability or obligation, direct or contingent, nor entered into any material transaction; (ii) the Company has not purchased any of its outstanding share capital, nor declared, paid or otherwise made any dividend or distribution of any kind on its share capital other than ordinary and customary dividends; and (iii) there has not been any material change in the share capital, short-term debt or long-term debt of the Company and its Subsidiaries and Affiliated Entities, except in each case as described in the Offering Document.



(cc) The Company and its Subsidiaries and Affiliated Entities have good and marketable title (in fee simple in the case of real property in applicable jurisdictions, and valid land use rights and building ownership certificates in the case of real property in the PRC) to all real property and good and marketable title to all personal property owned by them which is material to the business of the Company and its Subsidiaries and Affiliated Entities taken as a whole, in each case free and clear of all liens, encumbrances and defects except such as are described in the Offering Document or such as do not materially affect the value of such property or interfere with the use made and proposed to be made of such property by the Company and its Subsidiaries and Affiliated Entities; and any real property and buildings held under lease by the Company and its Subsidiaries and Affiliated Entities which are material to the business of the Company and its Subsidiaries and Affiliated Entities taken as a whole are held by them under valid, subsisting and enforceable leases with such exceptions as are not material and do not materially interfere with the use made and proposed to be made of such property and buildings by the Company and its Subsidiaries and Affiliated Entities, except in each case as described in the Offering Document.

(dd) The Company and its Subsidiaries and Affiliated Entities own, possess, or have been authorized to use, or can acquire on reasonable terms sufficient trademarks, trade names, patent rights, copyrights, domain names, licenses, trade secrets, inventions, technology, know-how and other intellectual property and similar rights, including registrations and applications for registration thereof (collectively, "**Intellectual Property Rights**") necessary or material to the conduct of the business as now conducted, and either the expected expiration of any such Intellectual Property Rights would not, individually or in the aggregate, have a Material Adverse Effect or the Company believes it will be able to renew such Intellectual Property Rights on acceptable terms. To the knowledge of the Company, (i) there is no material infringement, misappropriation, breach, default or other violation, or the occurrence of any event that with notice would constitute any of the foregoing, by the Company or its Subsidiaries or Affiliated Entities or third parties of any of the Intellectual Property Rights of the Company or its Subsidiaries or Affiliated Entities; (ii) there is no pending or threatened action, suit, proceeding or claim by others challenging the Company's or the Subsidiaries' or Affiliated Entities' rights in or to, or the violation of any of the terms of, any of their Intellectual Property Rights, and the Company is unaware of any facts which would form a reasonable basis for any such claim; and (iii) there is no pending or threatened action, suit, proceeding or claim by others that the Company or any of its Subsidiaries or Affiliated Entities infringes, misappropriates or otherwise violates or conflicts with any Intellectual Property Rights or other proprietary rights of others and the Company is unaware of any other fact which would form a reasonable basis for any such claim, except in each case covered by clauses (i) to (iii) such as would not, if determined adversely to the Company or its Subsidiaries or Affiliated Entities, individually or in the aggregate, have a Material Adverse Effect.

(ee) No material labor dispute with the employees of the Company or any of its Subsidiaries or Affiliated Entities exists, except as described in the Offering Document, or, to the knowledge of the Company, is imminent; and, to the Company's knowledge, there is no existing, threatened or imminent labor disturbance by the employees of any of its principal suppliers, manufacturers or contractors that could have a Material Adverse Effect.

(ff) Neither the Company nor any of its Subsidiaries or Affiliated Entities has sent or received any written communication regarding termination of, or intent not to renew, any of the material contracts or agreements specifically referred to or described in the Offering Document, and no such termination or non-renewal has been threatened by the Company, any of its Subsidiaries or Affiliated Entities or, to the Company's knowledge, any other party to any such contract or agreement.

(gg) The Company and each of its Subsidiaries and Affiliated Entities are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as the Company believes are prudent and customary in the businesses in which they are engaged; neither the Company nor any of its Subsidiaries or Affiliated Entities has been refused any insurance coverage sought or applied for; and neither the Company nor any of its Subsidiaries or Affiliated Entities has any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that would not have a Material Adverse Effect, except in each case as described in the Offering Document.

(hh) Except as described in the Offering Document under the heading "We may be adversely affected by the complexity, uncertainties and changes in PRC regulations on internet-related as well as automotive businesses and companies", (i) the Company and its Subsidiaries and Affiliated Entities possess all licenses, consents, authorizations, approvals, orders, certificates and permits issued by the appropriate national, provincial, local or foreign regulatory authorities necessary to conduct their respective businesses; (ii) neither the Company nor any of its Subsidiaries or Affiliated Entities has received any notice of proceedings relating to the revocation or modification of any such license, consent, authorization, approval, order, certificate or permit which, singly or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would have a Material Adverse Effect; and (iii) the Company and its Subsidiaries and Affiliated Entities are in compliance with the provisions of all such licenses, consents, authorizations, approvals, orders, certificates or permits in all material respects.

(ii) Except as described in the Offering Document, the Company and each of its Subsidiaries and Affiliated Entities maintain effective internal control over financial reporting (as defined under Rule 13-a15 and Rule 15d-15 under the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”)) and a system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management’s general or specific authorizations; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with 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. Except as described in the Offering Document, since the end of the Company’s most recent audited fiscal year, there has been (i) no material weakness in the Company’s internal control over financial reporting (whether or not remediated) and (ii) no change in the Company’s internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company’s internal control over financial reporting. The Company maintains disclosure controls and procedures (as such term is defined in Rule 13a-15(e) under the Exchange Act); such disclosure controls and procedures have been designed to ensure that material information relating to the Company and its Subsidiaries and Affiliated Entities is made known to the Company’s principal executive officer and principal financial officer by others within those entities; and such disclosure controls and procedures are effective.

(jj) The Company is in compliance with all provisions of the Sarbanes-Oxley Act of 2002 and all rules and regulations promulgated thereunder or implementing the provisions thereof (the “**Sarbanes-Oxley Act**”) with which the Company is required to comply.

(kk) PricewaterhouseCoopers Zhong Tian LLP, who have certified certain financial statements of the Company, are independent public accountants as required by the Securities Act and the rules and regulations of the Commission thereunder and are independent in accordance with the requirements of the U.S. Public Company Accounting Oversight Board.

(ll) The audited consolidated financial statements (and the notes thereto) of the Company included in the Offering Document fairly present in all material respects the consolidated financial position of the Company as of the dates specified and the consolidated results of operations and changes in the consolidated financial position of the Company for the periods specified, and such financial statements have been prepared in conformity with U.S. GAAP applied on a consistent basis throughout the periods presented (other than as described therein); the summary and selected consolidated financial data included in the Offering Document present fairly the information shown therein and have been compiled on a basis consistent with that of the audited consolidated financial statements included therein. The Company is not reviewing or investigating, and neither the Company’s independent auditors nor its internal auditors have recommended that the Company review or investigate, (i) adding to, deleting, changing the application of, or changing the Company’s disclosure with respect to, any of the Company’s material accounting policies, (ii) any matter that could result in a restatement of the Company’s financial statements for any annual or interim period during the current or prior two fiscal years, or (iii) except as disclosed in the Offering Document, any material weakness, change in internal controls or fraud involving management or other employees who have a significant role in internal controls.

(mm) The section entitled “Management’s Discussion and Analysis of Financial Condition and Results of Operations — Critical Accounting Policies” in the Offering Document accurately describes: (i) accounting policies which the Company believes are the most important in the portrayal of the Company’s financial condition and results of operations and which require management’s most difficult, subjective or complex judgments (“**Critical Accounting Policies**”); and (ii) judgments and uncertainties affecting the application of Critical Accounting Policies; and the Company’s Board of Directors and management have reviewed and agreed with the selection, application and disclosure of Critical Accounting Policies and have consulted with its legal counsel and independent public accountants with regard to such disclosure.

(nn) The section entitled “Management’s Discussion and Analysis of Financial Condition and Results of Operations” in the Offering Document and fairly describes: (i) all material trends, demands, commitments, events, uncertainties and risks, and the potential effects thereof, that the Company believes would materially affect liquidity and are reasonably likely to occur; and (ii) all off-balance sheet transactions, arrangements, and obligations, including, without limitation, relationships with unconsolidated entities that are contractually limited to narrow activities that facilitate the transfer of or access to assets by the Company or any of its Subsidiaries or Affiliated Entities, such as structured finance entities and special purpose entities (collectively, “off-balance sheet arrangements”) that are reasonably likely to have a material effect on the liquidity of the Company and its Subsidiaries and Affiliated Entities taken as a whole or the availability thereof or the requirements of the Company or any of its Subsidiaries or Affiliated Entities for capital resources.

(oo) The statements in the Offering Document under the headings “Offering Summary,” “Risk Factors,” “Description of the Notes,” “Enforceability of Civil Liabilities,” “Corporate History and Structure,” “Management’s Discussion and Analysis of Financial Condition and Results of Operations,” “Business,” “Regulation,” “Management,” “Related Party Transactions,” “Description of Share Capital,” “Description of American Depositary Shares,” “Description of Capped Call Transactions,” “Description of Zero-Strike Call Option Transactions,” “Taxation” and “Plan of Distribution,” insofar as such statements summarize legal matters, agreements, documents or proceedings discussed therein, are accurate and fair summaries of such matters described therein in all material respects.

(pp) Any statistical and market-related data included in the Offering Document are based on or derived from sources that the Company reasonably believes to be reliable and accurate and, to the extent required, the Company has obtained the written consent to the use of such data from such sources.

(qq) Neither the Company nor any of its Subsidiaries, Affiliated Entities or, to the knowledge of the Company, any of its affiliates has taken, directly or indirectly, any action which was designed to or which has constituted or which might reasonably be expected to cause or result in stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Offered Securities.

(rr) Except as disclosed in the Offering Document, the Company and each of its Subsidiaries and Affiliated Entities have filed all national, provincial, local and foreign tax returns required to be filed through the date of this Agreement or have requested extensions thereof (except where the failure to file would not, individually or in the aggregate, have a Material Adverse Effect) and have paid all taxes required to be paid through the date of this Agreement (except for cases in which the failure to pay would not have a Material Adverse Effect, or, except as currently being contested in good faith and for which adequate reserves required by U.S. GAAP have been created in the financial statements of the Company), and no tax deficiency has been, or could reasonably be expected to be, determined adversely to the Company or any of its Subsidiaries or Affiliated Entities which has had (nor does the Company nor any of its Subsidiaries or Affiliated Entities have any notice or knowledge of any tax deficiency which could reasonably be expected to be determined adversely to the Company or its Subsidiaries or Affiliated Entities and which could reasonably be expected to have) a Material Adverse Effect.

(ss) The Company has not distributed and, prior to the later of the Firm Closing Date or any Optional Closing Date and the completion of the distribution of the Offered Securities will not distribute, any offering material in connection with the offering and sale of the Offered Securities other than the Offering Document and the documents listed on Schedule II hereto.

(tt) Except as described in the Offering Document, none of the Company or any of its Subsidiaries or Affiliated Entities is engaged in any material transactions with its directors, officers, management, shareholders, or any other affiliate, including any person who formerly held a position as a director, officer and/or shareholder.

(uu) There are no contracts, agreements or understandings between the Company and any person that would give rise to a valid claim against the Company or any Purchaser for a brokerage commission, finder's fee or other similar payment in connection with the issuance and sale of the Offered Securities.

(vv) The Company is aware of and has been advised as to, the content of the *Rules on Mergers and Acquisitions of Domestic Enterprises by Foreign Investors* jointly promulgated by the Ministry of Commerce, the State Assets Supervision and Administration Commission, the State Tax Administration, the State Administration of Industry and Commerce, the China Securities Regulatory Commission (“CSRC”) and the State Administration of Foreign Exchange of the PRC on August 8, 2006 (as amended, together with any official clarification, guidance, interpretation or implementation rules related thereto, the “M&A Rules”), in particular the relevant provisions thereof which purport to require offshore special purpose vehicles, or SPVs, formed for listing purposes and controlled directly or indirectly by PRC companies or individuals, to obtain the approval of the CSRC prior to the listing and trading of their securities on an overseas stock exchange; the Company has received legal advice specifically with respect to the M&A Rules from its PRC counsel and the Company understands such legal advice; and the Company has fully communicated all relevant portions of such legal advice from its PRC counsel to each of its directors and each director has confirmed that he or she understands such legal advice; the Company and each director of the Company understand the potential personal liability to which each director of the Company and the executive officers of the Company may be subject in the event that the offering and sales of the Offered Securities as contemplated in this Agreement or the listing and trading of the Underlying ADSs on the New York Stock Exchange upon conversion of the Offered Securities were deemed not to be in compliance with the M&A Rules.

(ww) The issuance and sale of the Offered Securities, the listing and trading of the Underlying ADSs on the New York Stock Exchange upon conversion of the Offered Securities and the consummation of the transactions contemplated by this Agreement, the Indenture, the Deposit Agreement, the Restricted Issuance Agreement, the Offered Securities, the Capped Call Confirmations and the Zero-Strike Call Option Confirmations are not and will not be at the Firm Closing Date or any Optional Closing Date adversely affected by the M&A Rules.

(xx) Except as described in the Offering Document, each of the Company and its Subsidiaries that were incorporated outside of the PRC has taken, or is in the process of taking, reasonable steps to comply with, and to request each of its shareholders, option holders, directors, officers, employees and participants in the directed share program in the Company’s initial public offering that, to the knowledge of the Company, is, or is directly or indirectly owned or controlled by, a PRC resident or PRC citizen to comply with any applicable rules and regulations of the relevant PRC government agencies (including but not limited to the Ministry of Commerce, the NDRC and the State Administration of Foreign Exchange) relating to overseas investment by PRC residents and citizens or the repatriation of the proceeds from overseas offering and listing by offshore special purpose vehicles controlled directly or indirectly by PRC companies and individuals, such as the Company (the “**PRC Overseas Investment and Listing Regulations**”), including without limitation, requesting each shareholder, option holder, director, officer, employee and directed share participant that, to the knowledge of the Company, is, or is directly or indirectly owned or controlled by, a PRC resident or citizen to complete any registration and other procedures required under applicable PRC Overseas Investment and Listing Regulations.

(yy) Except as described in the Offering Document, the Company has taken all reasonable steps to comply with, and to request all of the Company's shareholders and prior holders who, to the knowledge of the Company, are PRC residents or PRC citizens to comply with respect to their shareholding in the Company with any applicable rules and regulations of the State Administration of Foreign Exchange (the "**SAFE Rules and Regulations**"), including without limitation, taking reasonable steps to require each of its shareholders and option holders that, to the knowledge of the Company, is, or is directly or indirectly owned or controlled by, a PRC resident or PRC citizen to complete any registration and other procedures required under applicable SAFE Rules and Regulations.

(zz) Except as disclosed in the Offering Document, no stamp, documentary, issuance, registration, transfer, withholding, capital gains, income or other taxes or duties are payable by or on behalf of the Purchasers, the Company or any of its Subsidiaries in the Cayman Islands, the PRC, any other jurisdiction in which the Company is organized, incorporated, engaged in business for tax purposes or is otherwise resident for tax purposes, any jurisdiction from or through which a payment is made by or on behalf of the Company or any political subdivision thereof or therein having the authority to tax (each, a "**Relevant Taxing Jurisdiction**"), in connection with (i) the execution, delivery or consummation of, or consummation of the transactions contemplated by, this Agreement, the Indenture, the Deposit Agreement, the Restricted Issuance Agreement, the Capped Call Confirmations or the Zero-Strike Call Option Confirmations, (ii) the creation, allotment and issuance of the Ordinary Shares represented by the Underlying ADSs to be issued upon conversion of the Offered Securities, (iii) the deposit with the Depository of the Ordinary Shares represented by the Underlying ADSs by the Company against the issuance of ADRs evidencing the Underlying ADSs, (iv) the issuance and delivery of the Underlying ADSs, when issued by the Company upon conversion of the Offered Securities, (v) the issuance, sale and delivery of the Offered Securities to or for the respective accounts of the Purchasers, or (vi) the resale and delivery of the Offered Securities by the Purchasers in the manner contemplated herein.

(aaa) Based upon an analysis of the Company's income and assets in respect of the 2018 taxable year, the Company does not believe that it was a "passive foreign investment company" ("**PFIC**") for U.S. federal income tax purposes for its taxable year ended December 31, 2018, and does not anticipate becoming a PFIC for its current taxable year or the foreseeable future.

(bbb) It is not necessary under the laws of the Cayman Islands (i) to enable the Purchasers to enforce their rights under this Agreement or to enable any holder of Offered Securities to enforce their respective rights thereunder, *provided* that they are not otherwise engaged in business in the Cayman Islands, or (ii) solely by reason of the execution, delivery or consummation of this Agreement, for any of the Purchasers or any holder of Offered Securities to be qualified or entitled to carry out business in the Cayman Islands.

(ccc) Under the laws of the Cayman Islands, each holder of ADRs evidencing Underlying ADSs issued upon conversion of the Offered Securities pursuant to the Deposit Agreement shall be entitled, subject to the Deposit Agreement, to seek enforcement of its rights through the Depository or its nominee registered as representative of the holders of the ADRs in a direct suit, action or proceeding against the Company.

(ddd) Each of this Agreement, the Indenture, the Deposit Agreement, the Offered Securities, the Capped Call Confirmations, the Zero-Strike Call Option Confirmations and the Restricted Issuance Agreement is in the form required under the laws of the Cayman Islands for the enforcement thereof against the Company; and to ensure the legality, validity, enforceability or admissibility into evidence in Cayman Islands of this Agreement, the Indenture, the Deposit Agreement, the Offered Securities, the Capped Call Confirmations, the Zero-Strike Call Option Confirmations and the Restricted Issuance Agreement, it is not necessary that this Agreement, the Indenture, the Deposit Agreement, the Offered Securities, the Capped Call Confirmations, the Zero-Strike Call Option Confirmations or the Restricted Issuance Agreement be filed or recorded with any court or other authority in the Cayman Islands or that any stamp or similar tax in the Cayman Islands be paid on or in respect of this Agreement, the Indenture, the Deposit Agreement, the Offered Securities, the Capped Call Confirmations, the Zero-Strike Call Option Confirmations or the Restricted Issuance Agreement or any other documents to be furnished hereunder, except for nominal stamp duty if the documents are executed in or brought into the Cayman Islands.

(eee) The Company is a “foreign private issuer” as defined in Rule 405 of the Securities Act.

(fff) Except as described under the section “Enforceability of Civil Liabilities” in the Offering Document, the courts of the Cayman Islands and the PRC would recognize as a valid judgment any final monetary judgment obtained against the Company in the courts of the State of New York.

(ggg) Neither the Company nor any of its Subsidiaries or Affiliated Entities nor any of its or their properties or assets has any immunity from the jurisdiction of any court or from any legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution or otherwise) under the laws of the Cayman Islands or the PRC. The irrevocable and unconditional waiver and agreement of the Company contained in Section 18(a) not to plead or claim any such immunity in any legal action, suit or proceeding based on this Agreement is valid and binding under the laws of the Cayman Islands and the PRC.

(hhh) The choice of law of the State of New York as the governing law of this Agreement is a valid choice of law under the laws of the Cayman Islands, and the PRC and will be honored by the courts of the Cayman Islands and the PRC. The Company has the power to submit, and pursuant to Section 18(a) has, to the extent permitted by law, legally, validly, effectively and irrevocably submitted, to the jurisdiction of the Specified Courts (as defined in Section 18(a)), and has the power to designate, appoint and empower, and pursuant to Section 18(b), has legally, validly and effectively designated, appointed and empowered an agent for service of process in any suit or proceeding based on or arising under this Agreement in any of the Specified Courts.



(iii) No forward-looking statement (within the meaning of Section 27A of the Securities Act and Section 21E of the Exchange Act) contained in the Offering Document has been made or reaffirmed without a reasonable basis or has been disclosed other than in good faith.

(jjj) The Company is subject to the reporting requirements of either Section 13 or Section 15(d) of the Exchange Act and timely files reports with the Commission on the Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system.

(kkk) No securities of the same class (within the meaning of Rule 144A(d)(3) under the Securities Act) as the Offered Securities are listed on any national securities exchange registered under Section 6 of the Exchange Act or quoted in a U.S. automated inter-dealer quotation system.

(lll) Assuming the accuracy of the representations and warranties of the Purchasers contained herein, (i) the offer and sale of the Offered Securities by the Company to the several Purchasers in the manner contemplated by this Agreement will be exempt from the registration requirements of the Securities Act, and (ii) it is not necessary to qualify an indenture in respect of the Offered Securities under the United States Trust Indenture Act of 1939, as amended (the “**Trust Indenture Act**”).

(mmm) Neither the Company, nor any of its affiliates, nor any person acting on its or their behalf (i) has, within the six-month period prior to the date hereof, offered or sold in the United States or to any U.S. person (as such terms are defined in Regulation S under the Securities Act) the Offered Securities or any security of the same class or series as the Offered Securities or (ii) has offered or will offer or sell the Offered Securities (A) in the United States by means of any form of general solicitation or general advertising within the meaning of Rule 502(c) under the Securities Act or (B) with respect to any securities sold in reliance on Rule 903 of Regulation S, by means of any directed selling efforts within the meaning of Rule 902(c) of Regulation S. The Company has not entered and will not enter into any contractual arrangement with respect to the distribution of the Offered Securities except for this Agreement.

(nnn) Except as described in the Offering Document, for the period from December 1, 2018 to January 25, 2019 there have not been any decreases, as compared with the corresponding period in the preceding year, in revenues.

3. *Agreements to Sell and Purchase.* The Company hereby agrees to sell to the several Purchasers, and each Purchaser, 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 98.5% of the principal amount thereof (the “**Purchase Price**”) the principal amount of Firm Securities set forth opposite the name of such Purchaser in Schedule I hereto.

The Company will deliver against payment of the purchase price the Firm Securities in the form of one or more permanent global securities in definitive form (the “**Firm Global Securities**”) deposited with the Trustee as custodian for The Depository Trust Company (“**DTC**”) and registered in the name of Cede & Co., as nominee for DTC. Payment for the Firm Securities shall be made by the Purchasers in Federal (same day) funds by official check or checks or wire transfer to an account at a bank acceptable to the Representatives at the office of Latham & Watkins LLP at 9:00 a.m. (New York time), on February 4, 2019, or at such other time not later than seven full business days thereafter as the Representatives and the Company determine, such time being herein referred to as the “**Firm Closing Date**”, against delivery to the Trustee as custodian for DTC of the Firm Global Securities representing all of the Firm Securities. The Firm Global Securities will be made available for checking at the office of Latham & Watkins LLP at least 24 hours prior to the Firm Closing Date.

In addition, upon written notice from the Representatives given to the Company from time to time not more than 30 days subsequent to the date of this Agreement, the Purchasers may purchase all or less than all of the Optional Securities at the Purchase Price. The Company agrees to sell to the Purchasers the principal amount of Optional Securities specified in such notice and the Purchasers agree, severally and not jointly to purchase such Optional Securities. Such Optional Securities shall be purchased from the Company for the account of each Purchaser in the same proportion as the principal amount of Firm Securities set forth opposite such Purchaser's name in Schedule I hereto bears to the total principal amount of Firm Securities (subject to adjustment by the Representatives to eliminate fractions). No Optional Securities shall be sold or delivered unless the Firm Securities previously have been, or simultaneously are, sold and delivered. The right to purchase the Optional Securities or any portion thereof may be exercised from time to time and to the extent not previously exercised may be surrendered and terminated at any time upon notice by the Representatives to the Company.

Each time of delivery and payment for the Optional Securities, being herein referred to as the “**Optional Closing Date**”, which may be the Firm Closing Date (the Firm Closing Date and each Optional Closing Date, if any, being herein referred to as a “**Closing Date**”), shall be determined by the Representatives on behalf of the several Purchasers but shall not be later than seven full business days after written notice of election to purchase Optional Securities is given.

The Company will deliver against payment of the purchase price the Optional Securities being purchased on each Optional Closing Date in the form of one or more definitive global securities in definitive form (each, an “**Optional Global Security**”) deposited with the Trustee as custodian for DTC and registered in the name of Cede & Co., as nominee for DTC. Payment for such Optional Securities shall be made by the Purchasers in Federal (same day) funds by official check or checks or wire transfer to an account at a bank acceptable to the Representatives at the office of Latham & Watkins LLP, against delivery to the Trustee as custodian for DTC of the Optional Global Securities representing all of the Optional Securities being purchased on such Optional Closing Date.

The Company hereby agrees that, without the prior written consent of the Representatives on behalf of the Purchasers, it will not, during the period ending 90 days after the date of the Offering Document (the “**Restricted Period**”), (1) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend, or otherwise transfer or dispose of, directly or indirectly, any ADSs or Ordinary Shares beneficially owned (as such term is used in Rule 13d-3 of the Exchange Act) or any other securities so owned convertible into or exercisable or exchangeable for ADSs or Ordinary Shares or (2) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the ADSs or Ordinary Shares, whether any such transaction described in clause (1) or (2) above is to be settled by delivery of ADSs, Ordinary Shares or such other securities, in cash or otherwise or (3) file any registration statement with the Commission relating to the offering of any ADSs or Ordinary Shares or any securities convertible into or exercisable or exchangeable for ADSs or Ordinary Shares.

The restrictions contained in the preceding paragraph shall not apply to (a) the Offered Securities to be sold hereunder or the Underlying ADSs to be issued upon conversion thereof and the Ordinary Shares represented thereby, (b) the entry into, and performance of the obligations under, the Capped Call Confirmations, (c) the issuance by the Company of ADSs or Ordinary Shares upon the exercise of an option or warrant or the conversion of a security outstanding on the date hereof and which is described in the Offering Document or (d) the establishment of a trading plan pursuant to Rule 10b5-1 under the Exchange Act for the transfer of ADSs or Ordinary Shares, *provided* that (i) such plan does not provide for the transfer of ADSs or Ordinary Shares during the Restricted Period and (ii) no public announcement or filing under the Exchange Act is required of or voluntarily made by or on behalf of the Company regarding the establishment of such plan.

4. *Representations by Purchasers; Resale by Purchasers.*

- (a) Each Purchaser severally represents and warrants to the Company that it is a qualified institutional buyer as defined in Rule 144A (“**Rule 144A**”) and an institutional “accredited investor” within the meaning of Rule 501(a) of Regulation D under the Securities Act.

(b) Each Purchaser severally acknowledges that the Offered Securities have not been registered under the Securities Act and may not be offered or sold within the United States or to, or for the account or benefit of, U.S. persons except in accordance with Regulation S or pursuant to an exemption from the registration requirements of the Securities Act. Each Purchaser severally represents and agrees that it has offered and sold the Offered Securities and will offer and sell the Offered Securities (i) as part of their distribution at any time and (ii) otherwise until 40 days after the later of the commencement of the offering and the latest Closing Date, only in accordance with Rule 144A or Rule 903 under the Securities Act. Accordingly, neither such Purchaser nor its affiliates, nor any persons acting on its or their behalf, have engaged or will engage in any directed selling efforts with respect to the Offered Securities, and such Purchaser, its affiliates and all persons acting on its or their behalf have complied and will comply with the offering restrictions requirement of Regulation S. Each Purchaser severally agrees that, at or prior to confirmation of sale of the Offered Securities, other than a sale pursuant to Rule 144A, such Purchaser will have sent to each distributor, dealer or person receiving a selling concession, fee or other remuneration that purchases the Offered Securities from it during the restricted period a confirmation or notice to substantially the following effect:

“The Securities covered hereby have not been registered under the U.S. Securities Act of 1933, as amended (the “Securities Act”), and may not be offered or sold within the United States or to, or for the account or benefit of, U.S. persons (i) as part of their distribution at any time or (ii) otherwise until 40 days after the later of the date of the commencement of the offering and the closing date, except in either case in accordance with Regulation S (or Rule 144A if available) under the Securities Act. Terms used above have the meanings given to them by Regulation S.”

Terms used in this subsection (b) have the meanings given to them by Regulation S.

(c) Each Purchaser severally agrees that it and each of its affiliates has not entered and will not enter into any contractual arrangement with respect to the distribution of the Offered Securities except for any such arrangements with the other Purchasers or affiliates of the other Purchasers or with the prior written consent of the Company.

(d) Each Purchaser severally agrees, with respect to resales made in reliance on Rule 144A of any of the Offered Securities, to deliver either with the confirmation of such resale or otherwise prior to settlement of such resale a notice to the effect that the resale of such Offered Securities has been made in reliance upon the exemption from the registration requirements of the Securities Act provided by Rule 144A.

5. *Conditions to the Purchasers' Obligations.* The obligations of the Company to sell the Offered Securities to the Purchasers and the several obligations of the Purchasers to purchase and pay for the Offered Securities on a Closing Date are subject to the following conditions:

(a) Subsequent to the execution and delivery of this Agreement and prior to the Closing Date there shall not have occurred (i) 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 its Subsidiaries and Affiliated Entities, taken as a whole, from that set forth in the Preliminary Offering Memorandum that, in the judgment of the Representatives, is material and adverse and that makes it, in the judgment of the Representatives, impracticable to market the Offered Securities on the terms and in the manner contemplated in the Offering Document or (ii) any downgrading in the rating of any debt securities of the Company by any "nationally recognized statistical rating organization" (registered under Section 15E of the Exchange Act), or any public announcement that any such organization has under surveillance or review its rating of any debt securities of the Company (other than an announcement with positive implications of a possible upgrading, and no implication of a possible downgrading, of such rating) or any announcement that the Company has been placed on negative outlook.

(b) The Purchasers shall have received on the Firm Closing Date a certificate, dated the Firm Closing Date and signed by an executive officer of the Company, to the effect set forth in Section 5(a) and Section 5(p) and to the effect that the representations and warranties of the Company contained in this Agreement are true and correct as of the Firm Closing Date and that 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 the Firm Closing Date.

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

(c) The Purchasers shall have received on the Firm Closing Date an opinion and negative assurance letter of Skadden, Arps, Slate, Meagher & Flom LLP, U.S. counsel for the Company, dated the Firm Closing Date, in form and substance reasonably satisfactory to the Purchasers.

(d) The Purchasers shall have received on the Firm Closing Date an opinion of Maples and Calder (Hong Kong) LLP, Cayman Islands counsel for the Company, dated the Firm Closing Date, in form and substance reasonably satisfactory to the Purchasers.

(e) The Purchasers shall have received on the Firm Closing Date an opinion of Han Kun Law Offices, PRC counsel for the Company, dated the Firm Closing Date, in form and substance reasonably satisfactory to the Purchasers.

(f) The Purchasers shall have received on the Firm Closing Date an opinion of Miao & Co (in Association with Han Kun Law Offices), Hong Kong counsel for NIO Nextev Limited, NIO User Enterprise Limited, XPT Limited, NIO Power Express Limited, NIO SPORT LIMITED and XPT Technology Limited, dated the Firm Closing Date, in form and substance reasonably satisfactory to the Purchasers.

(g) The Purchasers shall have received on the Firm Closing Date an opinion of Fenwick & West LLP, U.S. counsel for NIO USA, Inc. and XPT Inc., dated the Firm Closing Date, in form and substance reasonably satisfactory to the Purchasers.

(h) The Purchasers shall have received on the Firm Closing Date an opinion of Bristows LLP, U.K. counsel for NIO NEXTEV (UK) LIMITED, dated the Closing Date, in form and substance reasonably satisfactory to the Purchasers.

(i) The Purchasers shall have received on the Firm Closing Date an opinion of Orrick, Herrington & Sutcliffe LLP, German counsel for NIO GmbH, dated the Firm Closing Date, in form and substance reasonably satisfactory to the Purchasers.

The opinions of counsel for the Company (except for the opinion of PRC counsel for the Company) described above shall be rendered to the Purchasers at the request of the Company, and shall so state therein.

(j) The Purchasers shall have received on the Firm Closing Date an opinion and negative assurance letter of Latham & Watkins LLP, U.S. counsel for the Purchasers, dated the Firm Closing Date, in form and substance satisfactory to the Purchasers.

(k) The Purchasers shall have received on the Firm Closing Date an opinion of Commerce & Finance Law Offices, PRC counsel for the Purchasers, dated the Firm Closing Date, in form and substance satisfactory to the Purchasers.

(l) The Purchasers shall have received on the Firm Closing Date an opinion of White & Case LLP, counsel to the Depositary, dated the Firm Closing Date, in form and substance reasonably satisfactory to the Purchasers.

(m) The Purchasers shall have received, on each of the date hereof and the Firm Closing Date, a letter dated the date hereof or the Firm Closing Date, as the case may be, in form and substance satisfactory to the Purchasers, from PricewaterhouseCoopers Zhong Tian LLP, independent public accountants, containing statements and information of the type ordinarily included in accountants' "comfort letters" to initial purchasers with respect to the financial statements and certain financial information contained in the Offering Document; *provided* that the letter delivered on the Firm Closing Date shall use a "cut-off date" not earlier than the date hereof.

(n) The "lock-up" agreements, each substantially in the form of Exhibit A-1 or A-2 hereto, as applicable, between the Company, the Representatives and the persons listed on Exhibit B hereto relating to sales and certain other dispositions of ADSs, Ordinary Shares or certain other securities, delivered to the Representatives on or before the date hereof, shall be in full force and effect on the Closing Date.

(o) The several obligations of the Purchasers to purchase Optional Securities hereunder are subject to the delivery to the Representatives on the applicable Optional Closing Date of the following:

(i) a certificate, dated the Optional Closing Date and signed by an executive officer of the Company, confirming that the certificate delivered on the Closing Date pursuant to Section 5(b) hereof remains true and correct as of such Optional Closing Date;

(ii) an opinion and negative assurance letter Skadden, Arps, Slate, Meagher & Flom LLP, U.S. counsel for the Company, dated the Optional Closing Date, relating to the Optional Securities to be purchased on such Optional Closing Date and otherwise to the same effect as the opinion required by Section 5(c) hereof;

(iii) an opinion of Maples and Calder (Hong Kong) LLP, Cayman Islands counsel for the Company, dated the Optional Closing Date, relating to the Optional Securities to be purchased on such Optional Closing Date and otherwise to the same effect as the opinion required by Section 5(d) hereof;

(iv) an opinion of Han Kun Law Offices, PRC counsel for the Company, dated the Optional Closing Date, relating to the Optional Securities to be purchased on such Optional Closing Date and otherwise to the same effect as the opinion required by Section 5(e) hereof;

(v) an opinion of Miao & Co (in Association with Han Kun Law Offices), Hong Kong counsel for NIO Nextev Limited, NIO User Enterprise Limited, XPT Limited, NIO Power Express Limited, NIO SPORT LIMITED and XPT Technology Limited, dated the Optional Closing Date, relating to the Optional Securities to be purchased on such Optional Closing Date and otherwise to the same effect as the opinion required by Section 5(f) hereof;

(vi) an opinion of Fenwick & West LLP, U.S. counsel for NIO USA, Inc. and XPT Inc., dated the Optional Closing Date, relating to the Optional Securities to be purchased on such Optional Closing Date and otherwise to the same effect as the opinion required by Section 5(g) hereof;

(vii) an opinion of Bristows LLP, U.K. counsel for NIO NEXTEV (UK) LIMITED, relating to the Optional Securities to be purchased on such Optional Closing Date and otherwise to the same effect as the opinion required by Section 5(h) hereof;

(viii) an opinion of Orrick, Herrington & Sutcliffe LLP, German counsel for NIO GmbH, relating to the Optional Securities to be purchased on such Optional Closing Date and otherwise to the same effect as the opinion required by Section 5(i) hereof;

(ix) an opinion and negative assurance letter of Latham & Watkins LLP, U.S. counsel for the Purchasers, dated the Optional Closing Date, relating to the Optional Securities to be purchased on such Optional Closing Date and otherwise to the same effect as the opinion required by Section 5(j) hereof;

(x) an opinion of Commerce & Finance Law Offices, PRC counsel for the Purchasers, dated the Optional Closing Date, relating to the Optional Securities to be purchased on such Optional Closing Date and otherwise to the same effect as the opinion required by Section 5(k) hereof;

(xi) an opinion of White & Case LLP, counsel to the Depositary, dated the Optional Closing Date, relating to the Optional Securities to be purchased on such Optional Closing Date and otherwise to the same effect as the opinion required by Section 5(l) hereof;

(xii) a letter dated the Optional Closing Date, in form and substance satisfactory to the Purchasers, from PricewaterhouseCoopers Zhong Tian LLP, independent public accountants, substantially in the same form and substance as the letter furnished to the Purchasers pursuant to Section 5(m) hereof; *provided* that the letter delivered on the Optional Closing Date shall use a “cut-off date” not earlier than three business days prior to such Optional Closing Date; and

(xiii) such other documents as the Representatives may reasonably request with respect to the good standing of the Company, the due authorization and issuance of the Optional Securities to be sold on such Optional Closing Date and other matters related to the issuance of such Optional Securities.

(p) There shall not have been any adverse legislative or regulatory developments in the PRC following the signing of this Agreement, which in the Representatives’ sole judgment in good faith after consultation with the Company, would make it inadvisable or impractical to proceed with the offering or the delivery of the Offered Securities at the Firm Closing Date or any Optional Closing Date, as the case may be, on the terms and in the manner contemplated in this Agreement.

(q) The Deposit Agreement shall be in full force and effect on the Firm Closing Date or any Optional Closing Date, as the case may be.



(r) The Company and the Depositary shall have executed the Restricted Issuance Agreement in form and substance satisfactory to the Purchasers (i) providing for the issuance of Underlying ADSs in book-entry form but subject to restrictive legends upon conversion of the Offered Securities in the circumstances described under “Transfer Restrictions” in the Offering Document and (ii) setting forth the procedures by which the Company will remove such restrictive legends within the applicable time period described under “Transfer Restrictions” in the Offering Document.

(s) The Company shall have executed and delivered the Capped Call Confirmations and the Zero-Strike Call Option Confirmations, in form and substance reasonably satisfactory to the Representative, the Capped Call Confirmations and the Zero-Strike Call Option Confirmations shall be in full force and effect, and the Company shall not be in breach or default thereunder.

(t) At or prior to the Closing Date and each Optional Closing Date, the Offered Securities shall be eligible for clearance and settlement through the facilities of the DTC.

(u) On the Closing Date or Optional Closing Date, as the case may be, the Representatives and counsel for the Purchasers shall have received such information, documents, certificates and opinions as they may reasonably require for the purposes of enabling them to pass upon the accuracy and completeness of any statement in the Offering Document, issuance and sale of the Offered Securities as contemplated herein, or in order to evidence the accuracy of any of the representations and warranties, or the satisfaction of any of the conditions or agreements, herein contained.

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

(a) Before finalizing the Offering Document, to furnish to the Representatives a copy of the proposed Offering Memorandum and not to distribute any such proposed Offering Document to which the Representatives reasonably object.

(b) Before amending or supplementing the Offering Document or the Final Offering Memorandum at any time prior to the completion of the initial offering by the Purchasers, to furnish to the Representatives a copy of the proposed amendment or supplement and not to distribute any such proposed amendment or supplement to which the Representatives reasonably object.

(c) Not to distribute prior to the later of the Firm Closing Date or any Optional Closing Date and the completion of the distribution of the Offered Securities any offering material in connection with the offering and sale of the Offered Securities other than the Offering Document and the Final Offering Memorandum.

(d) If, during such period after the date hereof and prior to the date on which all of the Offered Securities shall have been sold by the Purchasers, any event shall occur or condition exist as a result of which it is necessary to amend or supplement the Final Offering Memorandum in order to make the statements therein, in the light of the circumstances when the Final Offering Memorandum is delivered to a purchaser, not misleading, or if, in the opinion of counsel for the Purchasers, it is necessary to amend or supplement the Final Offering Memorandum to comply with applicable law, forthwith to prepare and submit, subject to Section 6(b), at the Company's own expense, to the Purchasers, either amendments or supplements to the Final Offering Memorandum so that the statements in the Final Offering Memorandum as so amended or supplemented will not, in the light of the circumstances when the Final Offering Memorandum is delivered to a purchaser, be misleading or so that the Final Offering Memorandum, as amended or supplemented, will comply with applicable law.

(e) To furnish to the Representatives, without charge, as many copies of the Offering Document and the Final Offering Memorandum and any amendments and supplements thereto (other than, in each case, any documents available on the Commission's EDGAR system) as soon as available as the Representatives may reasonably request. At any time when the Company is not subject to Section 13 or 15(d) of the Exchange Act and is not exempt from reporting pursuant to Rule 12g3-2(b) under the Exchange Act, to promptly furnish or cause to be furnished to the Representatives (and, upon request, to each of the other Purchasers) and, upon request of holders and prospective purchasers of the Offered Securities, to such holders and purchasers, copies of the information required to be delivered to holders and prospective purchasers of the Offered Securities pursuant to Rule 144A(d)(4) under the Securities Act (or any successor provision thereto) in order to permit compliance with Rule 144A in connection with resales by such holders of the Offered Securities; the Company will pay the expenses of printing and distributing to the Purchasers all such documents.

(f) To give the Representatives notice of its intention to make any filing pursuant to the Exchange Act prior to or on the later of the Firm Closing Date or any Optional Closing Date and to furnish the Representatives with copies of any such documents a reasonable amount of time prior to such proposed filing, and not to file or use any such document to which the Representatives or counsel for the Purchasers shall reasonably object.

(g) Not to (and to cause its Subsidiaries and Affiliated Entities not to) take, directly or indirectly, any action which is designed to or which constitutes or which would reasonably be expected to cause or result in stabilization or manipulation of the price of any security of the Company or facilitate the sale or resale of the Offered Securities.

(h) To endeavor to qualify the Offered Securities for offer and sale under the securities or Blue Sky laws of such jurisdictions as the Representatives shall reasonably request.

(i) To assist the Purchasers in arranging for the Offered Securities to be eligible for clearance and settlement through DTC.

(j) During the period of one year after the later of the Firm Closing Date and the last Optional Closing Date, to, upon request, furnish to the Representatives, each of the other Purchasers and any holder of Offered Securities a copy of the restrictions on transfer applicable to the Offered Securities.

(k) During the period of one year after the later of the Firm Closing Date and the last Optional Closing Date, not to, and not to permit any of its affiliates (as defined in Rule 144 under the Securities Act) to, resell any of the Offered Securities that have been reacquired by any of them, except for Offered Securities purchased by the Company or any of its affiliates and resold in a transaction registered under the Securities Act.

(l) During the period of two years after the later of the Firm Closing Date and the last Optional Closing Date, not to be or become, an open-end investment company, unit investment trust or face-amount certificate company that is or is required to be registered under Section 8 of the Investment Company Act.

(m) In connection with the offering, until the Representatives shall have notified the Company and the other Purchasers of the completion of the resale of the Offered Securities, not to, and not to permit any of its affiliates (as defined in Rule 144 under the Securities Act) to, either alone or with one or more other persons, bid for or purchase for any account in which it or any of its affiliates has a beneficial interest any Offered Securities or attempt to induce any person to purchase any Offered Securities; and not to, and not to permit any of its affiliates (as defined in Rule 144 under the Securities Act) to, make bids or purchases for the purpose of creating actual, or apparent, active trading in, or of raising the price of, the Offered Securities.

(n) To use the net proceeds received by it from the sale of the Offered Securities pursuant to this Agreement in the manner specified in the Offering Document under the caption "Use of Proceeds" and in compliance with any applicable laws, rules and regulations of any governmental body, agency or court having jurisdiction over the Company or any Subsidiary or Affiliated Entity; to not, directly or indirectly, use the proceeds of the offering, or lend, contribute or otherwise make available such proceeds to any Subsidiary, Affiliated Entity joint venture partner or other Person 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 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); and to maintain and implement adequate internal controls and procedures to monitor and audit transactions that are reasonably designed to detect and prevent any use of the proceeds from the offering of the Offered Securities contemplated hereby that is inconsistent with any of the Company's representations and obligations under the preceding sentence.

(o) Not to facilitate any shareholder's conversion of Ordinary Shares to ADSs during the Restricted Period and not to release the Depositary from the obligations set forth in, or otherwise amend, terminate or fail to enforce, the Depositary Agreement without the prior written consent of the Representatives. The Company shall at all times maintain transfer restrictions with respect to the ADSs and Ordinary Shares that are subject to transfer restrictions pursuant to this Agreement and the "lock-up" agreements referred to in Section 5(n) and shall ensure compliance with such restrictions on transfer of restricted ADSs and Ordinary Shares. The Company shall retain all share certificates that are by their terms subject to transfer restrictions until such time as such transfer restrictions are no longer applicable to such securities.

(p) To pay, and indemnify and hold the Purchasers harmless against, any stamp, issue, registration, documentary, sales, transfer or other similar taxes or duties, including any interest and penalties, imposed under the laws of any Relevant Taxing Jurisdiction that is payable in connection with (i) the execution, delivery, consummation or enforcement of, and the consummation of the transactions contemplated by, this Agreement, the Deposit Agreement, the Restricted Issuance Agreement, the Indenture, the Capped Call Confirmations or the Zero-Strike Call Option Confirmations, (ii) the creation, allotment and issuance of the Ordinary Shares represented by the Underlying ADSs to be issued upon conversion of the Offered Securities, (iii) the deposit with the Depositary of the Ordinary Shares represented by the Underlying ADSs by the Company against the issuance of ADRs evidencing the Underlying ADSs, (iv) the issuance and delivery of the Underlying ADSs, when issued by the Company upon conversion of the Offered Securities, (v) the issuance, sale and delivery of the Offered Securities to or for the respective accounts of the Purchasers, or (iv) the resale and delivery of the Offered Securities by the Purchasers in the manner contemplated herein.

(q) (i) To not attempt to avoid any judgment in connection with this Agreement obtained by it, applied to it, or denied to it in a court of competent jurisdiction outside the Cayman Islands; (ii) following the consummation of the offering, to use its best efforts to obtain and maintain all approvals required in the Cayman Islands to pay and remit outside the Cayman Islands all interest, principal, premium, if any, and other payments due or made on the Offered Securities and dividends and other distributions declared by the Company and payable on the Underlying ADSs issuable upon conversion thereof (or on the Ordinary Shares represented thereby); and (iii) to use its best efforts to obtain and maintain all approvals, if any, required in the Cayman Islands for the Company to acquire sufficient foreign exchange for the payment of dividends and all other relevant purposes.

(r) To comply with the PRC Overseas Investment and Listing Regulations in all material aspects, and to use its reasonable efforts to request holders of its Ordinary Shares that, to the knowledge of the Company, are, or that are directly or indirectly owned or controlled by, Chinese residents or Chinese citizens, to comply with the PRC Overseas Investment and Listing Regulations applicable to them, including, without limitation, requesting each such shareholder to complete any registration and other procedures required under applicable PRC Overseas Investment and Listing Regulations (including any applicable rules and regulations of the SAFE).

(s) To obtain all authorizations relating to (i) the issuance of the Offered Securities and (ii) the remittance of the proceeds received by the Company from the offering of the Offered Securities to any entity organized in the PRC, and (iii) the use of such proceeds by any entity organized in the PRC, including but not limited to the filing by a PRC Subsidiary of the Company with NDRC of the requisite information and documents within ten (10) business days after the date of issuance of the Offered Securities in accordance with the NDRC Circular.

(t) To reserve and keep available at all times, free of pre-emptive rights, Underlying ADSs and the Ordinary Shares represented thereby for the purpose of enabling the Company to satisfy all obligations to issue the Underlying ADSs upon conversion of the Offered Securities; and to use its best efforts to have the Underlying ADSs accepted for listing on the New York Stock Exchange and maintain the listing of the Underlying ADSs on the New York Stock Exchange.

(u) Upon request of any Purchaser, to furnish, or cause to be furnished, to such Purchaser an electronic version of the Company's trademarks, service marks and corporate logo for use on the website, if any, operated by such Purchaser, solely for the purpose of facilitating the offering of the Offered Securities.

(v) That all sums payable by the Company under this Agreement shall be paid free and clear of and without deductions or withholdings for or on account of any present or future taxes, duties or governmental charges whatsoever, unless the deduction or withholding is required by law, in which case the Company shall pay such additional amounts as will result in the receipt by each Purchaser of the full amount that would have been received had no deduction or withholding been made; except that no additional amounts shall be payable in respect of (i) any reasonable taxes that would not have been imposed but for a present or former connection between the recipient of such payment and the applicable taxing jurisdiction other than a connection arising solely from such recipient having executed, delivered or performed its obligations, or received a payment, under this Agreement or from the enforcement of this Agreement or (ii) any taxes that would not have been imposed but for the failure of the recipient of such payment to use reasonable efforts to comply, upon commercially reasonable request by the Company, with any certification, identification or other reporting requirements concerning the nationality, residence, identity or connection with the taxing jurisdiction of the recipient if such compliance is required or imposed by law as a precondition to an exemption from, or reduction in, such taxes.

(w) That all sums payable to a Purchaser shall be exclusive of and shall be paid free and clear of and without deductions or withholdings of, or reductions for, or on account of, any value added or similar taxes (including related local levies and any other related tax collected at source) (“VAT”) which is chargeable thereon. Where the Company is obliged to pay, withhold, deduct, or reduce for, or on account of, VAT or if any VAT is or becomes chargeable on any amount payable hereunder to a Purchaser, the Company shall in addition to the sum payable hereunder pay an amount equal to any applicable VAT (at the same time and in the same manner as the payment to which such VAT relates). For the avoidance of doubt, all amounts charged by the Purchaser or for which the Purchasers are to be reimbursed will be invoiced and payable together with VAT, where applicable. In case VAT has been charged in respect of any cost, charge or expense, incurred by the Purchasers and for which the Purchasers are to be reimbursed, the Company shall be obligated to reimburse the Purchasers for such VAT.

(x) To deliver to the Representatives, on the date of execution of this Agreement, a properly completed and executed Certification Regarding Beneficial Owners of Legal Entity Customers, together with copies of identifying documentation, and to provide such additional supporting documentation as the Representatives may reasonably request in connection with the verification of the foregoing certification.

7. Expenses.

Whether or not the transactions contemplated in this Agreement are consummated or this Agreement is terminated, the Company agrees to pay or cause to be paid all expenses incident to the performance of its obligations under this Agreement, the Indenture, the Offered Securities, the Restricted Issuance Agreement, the Capped Call Confirmations and the Zero-Strike Call Option Confirmations, including: (i) the fees, disbursements and expenses of the Trustee and its professional advisers, (ii) the fees, disbursements and expenses of the Company’s counsel and the Company’s accountants in connection with the preparation of the Preliminary Offering Memorandum, the Offering Document, the Final Offering Memorandum and amendments and supplements to any of the foregoing, including all printing costs associated therewith, and the mailing and delivering of copies thereof to the Purchasers and dealers, in the quantities hereinabove specified, (iii) all costs and expenses related to the transfer and delivery of the Offered Securities to the Purchasers, including any transfer or other taxes payable thereon, (iv) the cost of printing or producing any Blue Sky or Legal Investment memorandum in connection with the offer and sale of the Offered Securities under state securities laws and all expenses in connection with the qualification of the Offered Securities for offer and sale under state securities laws as provided in Section 6(h) hereof, including filing fees and the reasonable fees and disbursements of counsel for the Purchasers in connection with such qualification and in connection with the Blue Sky or Legal Investment memorandum, (v) the costs and charges of any transfer agent, registrar or depository, (viii) all expenses in connection with the execution, issue, authentication, packaging and initial delivery of the Offered Securities, the preparation and printing of this Agreement, the Offered Securities, the Indenture, the Offering Document and amendments and supplements thereto, and any other document relating to the issuance, offer, sale and delivery of the Offered Securities; and (ix) all other costs and expenses incident to the performance of the obligations of the Company under this Agreement, the Indenture, the Restricted Issuance Agreement, the Capped Call Confirmations and the Zero-Strike Call Option Confirmations for which provision is not otherwise made in this Section. It is understood, however, that except as provided in Section 6(p), this Section 7, Section 8 entitled “Indemnity and Contribution” and the last paragraph of Section 11 below, the Purchasers will pay all of their costs and expenses, including fees and disbursements of their counsel, share transfer taxes payable on resale of any of the Offered Securities by them and any advertising expenses connected with any offers they may make.

8. *Indemnity and Contribution.* (a) The Company agrees to indemnify and hold harmless each Purchaser, each person, if any, who controls any Purchaser within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act, and each affiliate of any Purchaser within the meaning of Rule 405 under the Securities Act, and each of their respective directors, officers and employees, 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), joint or several, arising out of or based upon any untrue statement or alleged untrue statement of a material fact contained in the Preliminary Offering Memorandum, the Offering Document, or any amendment or supplement thereto, any “roadshow”, or the Final Offering Memorandum or any amendment or supplement thereto, or arising out of or based upon any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, except insofar as such losses, claims, damages or liabilities arise out of or are based upon any such untrue statement or omission or alleged untrue statement or omission based upon information furnished to the Company in writing by such Purchaser through the Representatives expressly for use therein, it being understood and agreed that the only such information is that described in Section 8(b);

(b) Each Purchaser agrees, severally and not jointly, to indemnify and hold harmless the Company, the directors of the Company, the officers of the Company 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 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) arising out of or based upon any untrue statement or alleged untrue statement of a material fact contained in the Preliminary Offering Memorandum, the Offering Document, the Final Offering Memorandum or any amendment or supplement thereto, or arising out of or based upon any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, but only with reference to information furnished to the Company in writing by such Purchaser through the Representatives expressly for use in the Preliminary Offering Memorandum, the Offering Document or the Final Offering Memorandum or any amendment or supplement thereto, it being understood and agreed that the only such information furnished by any Purchaser through the Representatives consists of the name of the Purchaser and the disclosure on stabilization appearing under the caption “Plan of Distribution — Price stabilization and short positions; repurchase of ADSs”.

(c) In case any proceeding (including any governmental investigation) shall be instituted involving any person in respect of which indemnity may be sought pursuant to Section 8(a) or 8(b), such person (the “**indemnified party**”) shall promptly notify the person against whom such indemnity may be sought (the “**indemnifying party**”) in writing and the indemnifying party, upon request of the indemnified party, shall retain counsel reasonably satisfactory to the indemnified party to represent the indemnified party and any others the indemnifying party may designate in such proceeding and shall pay the fees and disbursements of such counsel related to such proceeding; *provided* that the failure to notify the indemnifying party shall not relieve it from any liability that it may have under the preceding paragraphs of this Section 8 except to the extent that it has been materially prejudiced (through the forfeiture of substantive rights or defenses) by such failure. In any such proceeding, any indemnified party shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of such indemnified party unless (i) the indemnifying party and the indemnified party shall have mutually agreed to the retention of such counsel or (ii) the named parties to any such proceeding (including any impleaded parties) include both the indemnifying party and the indemnified party and representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them. It is understood that the indemnifying party shall not, in respect of the legal expenses of any indemnified party in connection with any proceeding or related proceedings in the same jurisdiction, be liable for (i) the fees and expenses of more than one separate firm (in addition to any local counsel) for all Purchasers and all persons, if any, who control any Purchaser within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act or who are affiliates of any Purchaser within the meaning of Rule 405 under the Securities Act, (ii) the fees and expenses of more than one separate firm (in addition to any local counsel) for 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 such Section, and that all such fees and expenses shall be reimbursed as they are incurred. In the case of any such separate firm for the Purchasers and such control persons and affiliates of any Purchasers, such firm shall be designated in writing by the Representatives. In the case of any such separate firm for the Company, and such directors, officers and control persons of the Company, such firm shall be designated in writing by the Company. 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 (x) includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such proceeding and (y) does not include a statement as to or an admission of fault, culpability or a 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) is unavailable to an indemnified party or insufficient in respect of any losses, claims, damages or liabilities (or actions in respect thereof) 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 (or actions in respect thereof) (i) in such proportion as is appropriate to reflect the relative benefits received by the indemnifying party or parties on the one hand and the indemnified party or parties on the other hand from the offering of the Offered Securities or (ii) if the allocation provided by clause 9(d)(i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause 9(d)(i) above but also the relative fault of the indemnifying party or parties on the one hand and of the indemnified party or parties on the other hand in connection with the statements or omissions that resulted in such losses, claims, damages or liabilities (or actions in respect thereof), as well as any other relevant equitable considerations. The relative benefits received by the Company on the one hand and the Purchasers on the other hand in connection with the offering of the Offered Securities shall be deemed to be in the same respective proportions as the net proceeds from the offering of the Offered Securities (before deducting expenses) received by the Company on the one hand and the total discounts and commissions received by the Purchasers on the other hand bear to the aggregate offering price of the Offered Securities. The relative fault of the Company on the one hand and the Purchasers on the other hand shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company or by the Purchasers and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The Purchasers' respective obligations to contribute pursuant to this Section 8 are several in proportion to the respective principal amount of Offered Securities they have purchased hereunder, and not joint.

(e) The Company and the Purchasers agree that it would not be just or equitable if contribution pursuant to this Section 8 were determined by *pro rata* allocation (even if the Purchasers were treated as one entity for such purpose) or by any other method of allocation that does not take account of the equitable considerations referred to in Section 8(d). The amount paid or payable by an indemnified party as a result of the losses, claims, damages or liabilities (or actions in respect thereof) 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, no Purchaser shall be required to contribute any amount in excess of the amount by which the total price at which the Offered Securities purchased by it were resold exceeds the amount of any damages that such Purchaser has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. 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 any Purchaser, any person controlling any Purchaser or any affiliate of any Purchaser or the Company, its officers or directors or any person controlling the Company and (iii) acceptance of and payment for any of the Offered Securities.

9. *Termination.* The Purchasers may terminate this Agreement by notice given by the Representatives to the Company, if after the execution and delivery of this Agreement and prior to any Closing Date (i) trading generally shall have been suspended or materially limited on, or by, as the case may be, any of the New York Stock Exchange, the NYSE MKT, the NASDAQ Global Market, The Stock Exchange of Hong Kong Limited, or the London Stock Exchange, (ii) trading of any securities of the Company shall have been suspended on any exchange or in any over-the-counter market, (iii) a material disruption in securities settlement, payment or clearance services in the United States, the United Kingdom, the PRC, Hong Kong, the Cayman Islands or other relevant jurisdiction shall have occurred, (iv) any moratorium on commercial banking activities shall have been declared by Federal, New York State, Hong Kong, London, PRC, Cayman Islands or other relevant authorities or (v) there shall have occurred any outbreak or escalation of hostilities, or any change in financial markets, currency exchange rates or controls or any calamity or crisis that, in the judgment of the Representatives, is material and adverse and which, singly or together with any other event specified in this clause (v), makes it, in the judgment of the Representatives, impracticable or inadvisable to proceed with the offer, sale or delivery of the Offered Securities on the terms and in the manner contemplated in the Offering Document or the Final Offering Memorandum.

10. *Representations, Warranties and Agreements to Survive.* All representations, warranties and agreements contained in this Agreement or in certificates of officers of the Company submitted pursuant hereto, shall remain operative and in full force and effect regardless of (i) any investigation made by or on behalf of any Purchaser or its affiliates or selling agents, any person controlling any Purchaser, its officers or directors, any person controlling the Company and (ii) delivery of and payment for the ADSs.

11. *Effectiveness; Defaulting Purchasers.* This Agreement shall become effective upon the execution and delivery hereof by the parties hereto.

If, on the Closing Date or an Optional Closing Date, as the case may be, any one or more of the Purchasers shall fail or refuse to purchase Offered Securities that it has or they have agreed to purchase hereunder on such date, and the aggregate principal amount of Offered Securities which such defaulting Purchaser agreed but failed or refused to purchase is not more than one-tenth of the aggregate principal amount of the Offered Securities to be purchased on such date, the other Purchasers shall be obligated severally in the proportions that the aggregate principal amount of Firm Securities set forth opposite their respective names in Schedule I bears to the aggregate number of Firm Securities set forth opposite the names of all such non-defaulting Purchasers, or in such other proportions as the Representatives may specify, to purchase the Offered Securities which such defaulting Purchaser agreed but failed or refused to purchase on such date; *provided* that in no event shall the aggregate principal amount of the Offered Securities that any Purchaser has agreed to purchase pursuant to this Agreement be increased pursuant to this Section 11 by an amount in excess of one-ninth of such aggregate principal amount without the written consent of such Purchaser. If, on the Firm Closing Date, any Purchaser shall fail or refuse to purchase Firm Securities and the aggregate principal amount of Firm Securities with respect to which such default occurs is more than one-tenth of the aggregate principal amount of Firm Securities to be purchased on such date, and arrangements satisfactory to the Representatives and the Company for the purchase of such Firm Securities are not made within 36 hours after such default, this Agreement shall terminate without liability on the part of any non-defaulting Purchaser or the Company. In any such case either the Representatives or the Company shall have the right to postpone the Firm Closing Date, but in no event for longer than seven days, in order that the required changes, if any, in the Offering Document or in any other documents or arrangements may be effected. If, on an Optional Closing Date, any Purchaser shall fail or refuse to purchase Optional Securities and the aggregate principal amount of Optional Securities with respect to which such default occurs is more than one-tenth of the aggregate principal amount of Optional Securities to be purchased on such Optional Closing Date, the non-defaulting Purchasers shall have the option to (i) terminate their obligation hereunder to purchase the Optional Securities to be sold on such Optional Closing Date or (ii) purchase not less than the principal amount of Optional Securities that such non-defaulting Purchasers would have been obligated to purchase in the absence of such default. Any action taken under this paragraph shall not relieve any defaulting Purchaser from liability in respect of any default of such Purchaser under this Agreement.

If this Agreement shall be terminated by the Purchasers, or any of them, because of any failure or refusal on the part of the Company to comply with the terms or to fulfill any of the conditions of this Agreement, or if for any reason the Company shall be unable to perform its obligations under this Agreement, the Company will reimburse the Purchasers or such Purchasers as have so terminated this Agreement with respect to themselves, severally, for all out-of-pocket expenses (including the fees and disbursements of their counsel) reasonably incurred by such Purchasers in connection with this Agreement or the offering contemplated hereunder.

12. *Entire Agreement.* (a) This Agreement, together with any contemporaneous written agreements and any prior written agreements (to the extent not superseded by this Agreement) that relate to the offering of the Offered Securities, represents the entire agreement between the Company, on the one hand, and the Purchasers, on the other, with respect to the preparation of the Preliminary Offering Memorandum, the Offering Document, the Final Offering Memorandum, the conduct of the offering, and the purchase and sale of the Offered Securities.

(b) the Company acknowledges that in connection with the offering of the Offered Securities: (i) the Purchasers have acted at arms' length, are not agents of, and owe no fiduciary duties to, the Company or any other person, (ii) the Purchasers owe the Company only those duties and obligations set forth in this Agreement and prior written agreements (to the extent not superseded by this Agreement), if any, and (iii) the Purchasers may 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 Purchasers arising from an alleged breach of fiduciary duty in connection with the offering of the Offered Securities.

13. *Trial by Jury.* The Company and each of the Purchasers hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.

14. *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.

15. *Applicable Law.* This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York.

16. *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.

17. *Notices.* All communications hereunder shall be in writing and effective only upon receipt and if to the Purchasers shall be delivered, mailed or sent to the Representatives, at:

Credit Suisse Securities (USA) LLC  
Eleven Madison Avenue  
New York, New York 10010  
U.S.A.

J.P. Morgan Securities LLC  
383 Madison Avenue  
New York, New York 10179  
United States of America  
Attention: Equity Syndicate Desk  
Fax: (212) 622-8358

Morgan Stanley & Co. LLC  
1585 Broadway  
New York, New York 10036  
U.S.A.

Goldman Sachs (Asia) L.L.C.  
68th Floor, Cheung Kong Center  
2 Queens Road, Central  
Hong Kong

if to the Company shall be delivered, mailed or sent to Building 20, No. 56 AnTuo Road, Jiading District, Shanghai, 201804, People's Republic of China.

18. *Submission to Jurisdiction; Appointment of Agents for Service.* (a) The Company hereby submits to the non-exclusive jurisdiction of any New York State or United States Federal court sitting in Borough of Manhattan in The City of New York (the "**Specified Courts**") over any suit, action or proceeding arising out of or relating to this Agreement, the Offering Document or the offering of the Offered Securities (each, a "**Related Proceeding**"). The Company irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of venue of any Related Proceeding brought in such a court and any claim that any such Related Proceeding brought in such a court has been brought in an inconvenient forum. To the extent that the Company has or hereafter may acquire any immunity (on the grounds of sovereignty or otherwise) from the jurisdiction of any court or from any legal process with respect to itself or its property, the Company irrevocably waives, to the fullest extent permitted by law, such immunity in respect of any such suit, action or proceeding.

(b) The Company hereby irrevocably appoints Law Debenture Corporate Services Inc., with offices at 801 2nd Avenue, Suite 403, New York, NY 10017, United States of America, as its agent for service of process in any Related Proceeding and agrees that service of process in any such Related Proceeding may be made upon it at the office of such agent. The Company waives, to the fullest extent permitted by law, any other requirements of or objections to personal jurisdiction with respect thereto. The Company represents and warrants that such agent has agreed to act as the Company's agent for service of process, and the Company agrees to take any and all action, including the filing of any and all documents and instruments, that may be necessary to continue such appointment in full force and effect until the earlier of the date that is six years from the date hereof and the date that no Offered Securities remain outstanding.

19. *Recognition of the U.S. Special Resolution Regimes.*

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

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

In this Section 19:

“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.

20. *Judgment Currency.* If for the purposes of obtaining judgment in any court it is necessary to convert a sum due hereunder into any currency other than United States dollars, the parties hereto agree, to the fullest extent permitted by law, that the rate of exchange used shall be the rate at which in accordance with normal banking procedures the Purchasers could purchase United States dollars with such other currency in The City of New York on the business day preceding that on which final judgment is given. The obligation of the Company with respect to any sum due from it to any Purchaser or any person controlling any Purchaser shall, notwithstanding any judgment in a currency other than United States dollars, not be discharged until the first business day following receipt by such Purchaser or controlling person of any sum in such other currency, and only to the extent that such Purchaser or controlling person may in accordance with normal banking procedures purchase United States dollars with such other currency. If the United States dollars so purchased are less than the sum originally due to such Purchaser or controlling person hereunder, the Company agrees as a separate obligation and notwithstanding any such judgment, to indemnify such Purchaser or controlling person against such loss. If the United States dollars so purchased are greater than the sum originally due to such Purchaser or controlling person hereunder, such Purchaser or controlling person agrees to pay to the Company an amount equal to the excess of the dollars so purchased over the sum originally due to such Purchaser or controlling person hereunder.

21. *Representatives.* The Representatives will act for the several Purchasers in connection with the transactions contemplated by this Agreement, and any action under this Agreement taken by the Representatives jointly will be binding upon all the Purchasers.

Very truly yours,

NIO Inc.

By: /s/ Authorized Signatory  
Name: Authorized Signatory  
Title:

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*[Signature page to Purchase Agreement]*

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Accepted as of the date hereof

Credit Suisse Securities (USA) LLC  
J.P. Morgan Securities LLC  
Morgan Stanley & Co. LLC  
Goldman Sachs (Asia) L.L.C.

Acting severally on behalf of themselves and the several Purchasers named in Schedule I hereto

*[Signature page to Purchase Agreement]*

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By: Credit Suisse Securities (USA) LLC

By: /s/ Authorized Signatory  
Name: Authorized Signatory  
Title:

By: J.P. Morgan Securities LLC

By: /s/ Authorized Signatory  
Name: Authorized Signatory  
Title:

By: Morgan Stanley & Co. LLC

By: /s/ Authorized Signatory  
Name: Authorized Signatory  
Title:

By: Goldman Sachs (Asia) L.L.C.

By: /s/ Authorized Signatory  
Name: Authorized Signatory  
Title:

*[Signature page to Purchase Agreement]*

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**SCHEDULE I**

<b>Purchaser</b>	<b>Principal Amount of Firm Securities</b>
Credit Suisse Securities (USA) LLC	US\$ 139,033,000
J.P. Morgan Securities LLC	US\$ 113,167,000
Morgan Stanley & Co. LLC	US\$ 113,167,000
Goldman Sachs (Asia) L.L.C.	US\$ 113,167,000
Merrill Lynch, Pierce, Fenner & Smith Incorporated	US\$ 38,800,000
Citigroup Global Markets Inc.	US\$ 45,267,000
Deutsche Bank Securities Inc.	US\$ 45,267,000
UBS Securities LLC	US\$ 38,800,000
WR Securities, LLC	US\$ 3,332,000
Total:	US\$ 650,000,000

**Permitted Communications**

Term sheet containing the terms of the Offered Securities, substantially in the form of Annex A.

**Subsidiaries**

1. NIO Nextev Limited
2. NIO User Enterprise Limited
3. XPT Limited
4. NIO Power Express Limited
5. XPT INC.
6. NIO NEXTEV (UK) LTD
7. NIO GmbH
8. NIO USA, Inc.
9. NIO SPORT LIMITED
10. XPT Technology Limited
11. NIO Co., Ltd. (上海蔚来汽车有限公司)
12. NIO Energy Investment (Hubei) Co., Ltd. (蔚来能源投资(湖北)有限公司)
13. Wuhan NIO Energy Co., Ltd. (武汉蔚来能源有限公司)
14. Shanghai NIO Sales and Services Co., Ltd. (上海蔚来汽车销售服务有限公司)
15. Beijing NIO Sales and Services Co., Ltd. (北京蔚来汽车销售服务有限公司)
16. Shanghai NIO User Services Co., Ltd. (上海蔚来汽车用户服务有限公司)
17. Guangzhou NIO Sales and Services Co., Ltd. (广州蔚来汽车销售服务有限公司)

18. Hangzhou NIO Sales and Services Co., Ltd. (杭州蔚来汽车销售服务有限公司)
19. Shenzhen NIO Sales and Services Co., Ltd. (深圳蔚来汽车销售服务有限公司)
20. Nanjing NIO Sales Co., Ltd. (南京蔚来汽车销售有限公司)
21. Suzhou Weiran Sales and Services Co., Ltd. (苏州蔚然汽车销售服务有限公司)
22. Anhui Weirui Sales and Services Co., Ltd. (安徽蔚锐汽车销售服务有限公司)
23. Chengdu NIO Sales and Services Co., Ltd. (成都蔚来汽车销售服务有限公司)
24. Chengdu Weiran Sales and Services Co., Ltd. (成都蔚然汽车销售服务有限公司)
25. Wuhan NIO Sales and Services Co., Ltd. (武汉蔚来汽车销售服务有限公司)
26. XPT (Jiangsu) Investment Co., Ltd. (蔚然(江苏)投资有限公司)
27. Shanghai XPT Technology Limited (上海蔚兰动力科技有限公司)
28. XPT (Nanjing) E-Powertrain Technology Co., Ltd. (蔚然(南京)动力科技有限公司)
29. XPT (Nanjing) Energy Storage System Co., Ltd. (蔚然(南京)储能技术有限公司)
30. XTRONICS (Nanjing) Automotive Intelligent Technologies Co., Ltd. (蔚隆(南京)汽车智能科技有限公司)
31. XPT (Jiangsu) Automotive Technology Co., Ltd. (江苏蔚然汽车科技有限公司)
32. Shanghai Pajiang Automotive Technology Co., Ltd. (上海帕疆汽车科技有限公司)
33. Beijing Yufeng Automotive Technology Development Co., Ltd. (北京驭锋汽车科技有限公司)
34. Shanghai NIO Energy Technology Co., Ltd. (上海蔚来能源科技有限公司)
35. XTRONICS (Nanjing) Electronics Technology Co., Ltd. (南京蔚隆汽车电子科技有限公司)
36. Beijing NIO Energy Technology Co., Ltd. (北京蔚来能源科技有限公司)
37. Nanjing NIO Energy Co., Ltd. (南京蔚来能源有限公司)

38. Hangzhou NIO Energy Co., Ltd. (杭州蔚来能源有限公司)
39. Guangzhou NIO Energy Co., Ltd. (广州蔚来能源有限公司)
40. Chengdu NIO Energy Co., Ltd. (成都蔚来能源有限公司)
41. Suzhou NIO Energy Co., Ltd. (苏州蔚来能源有限公司)
42. Hefei NIO Energy Technology Co., Ltd. (合肥蔚电科技有限公司)
43. Wuhan NIO Energy Equipment Co., Ltd. (武汉蔚来能源设备有限公司)
44. Wuhan NIO Energy Service Co., Ltd. (武汉蔚来能源服务有限公司)
45. Shenzhen NIO Energy Co., Ltd. (深圳蔚来能源有限公司)
46. Shanghai NIO Energy Co., Ltd. (上海蔚来能源有限公司)
47. Wuhan NIO Energy Leasing Co., Ltd. (武汉蔚来能源租赁有限公司)
48. Wuhan NIO Energy Technology Co., Ltd. (武汉蔚来能源科技有限公司)
49. Changzhou NIO Sales and Services Co., Ltd. (常州蔚然汽车销售服务有限公司)
50. Chongqing NIO Sales and Services Co., Ltd. (重庆蔚锐汽车销售服务有限公司)
51. Jiaxing NIO Sales and Services Co., Ltd. (嘉兴蔚来汽车销售服务有限公司)
52. Wuxi NIO Sales and Services Co., Ltd. (无锡蔚来汽车销售服务有限公司)
53. Xi'an NIO Sales and Services Co., Ltd. (西安蔚然汽车销售服务有限公司)
54. Qingdao NIO Sales and Services Co., Ltd. (青岛蔚然汽车销售服务有限公司)
55. Shijiazhuang NIO Sales Co., Ltd. (石家庄蔚锐汽车销售有限公司)
56. Nantong NIO Sales and Services Co., Ltd. (南通蔚来汽车销售服务有限公司)
57. Dongguan NIO Sales and Services Co., Ltd. (东莞蔚来汽车销售服务有限公司)

58. Zhengzhou NIO Sales Co., Ltd. (郑州蔚来汽车销售有限公司)
59. Zhenjiang NIO Sales and Services Co., Ltd. (镇江蔚来汽车销售服务有限公司)
60. Shaoxing NIO Sales and Services Co., Ltd. (绍兴蔚来汽车销售服务有限公司)
61. Jinhua NIO Sales and Services Co., Ltd. (金华蔚来汽车销售服务有限公司)
62. Xiamen NIO Sales and Services Co., Ltd. (厦门蔚来汽车销售服务有限公司)
63. Kunming NIO Sales and Services Co., Ltd. (昆明蔚来汽车销售服务有限公司)
64. Changsha NIO Sales Co., Ltd. (长沙蔚澜汽车销售有限公司)
65. Ningbo NIO Sales and Services Co., Ltd. (宁波蔚来汽车销售服务有限公司)
66. Wenzhou NIO Sales and Services Co., Ltd. (温州蔚来汽车销售服务有限公司)
67. Tianjin NIO Sales and Services Co., Ltd. (天津蔚来汽车销售服务有限公司)
68. Shanghai NIO Financial Leasing Co., Ltd. (上海蔚来融资租赁有限公司)
69. Zhuhai NIO Sales and Services Co., Ltd. (珠海蔚来汽车销售服务有限公司)
70. Fuzhou NIO Sales and Services Co., Ltd. (福州蔚来汽车销售服务有限公司)
71. Shenyang NIO Sales and Services Co., Ltd. (沈阳蔚来汽车销售服务有限公司)
72. Sanya NIO Sales Co., Ltd. (三亚蔚然汽车销售有限公司)
73. Taiyuan NIO Sales and Services Co., Ltd. (太原蔚来汽车销售服务有限公司)
74. Lanzhou NIO Sales and Services Co., Ltd. (兰州蔚电汽车销售服务有限公司)
75. Yinchuan NIO Sales and Services Co., Ltd. (银川蔚来汽车销售服务有限公司)
76. Jinan NIO Sales and Services Co., Ltd. (济南蔚来汽车销售服务有限公司)
77. Dalian NIO Sales and Services Co., Ltd. (大连蔚来汽车销售服务有限公司)



78. Haikou NIO Sales Co., Ltd. (海口蔚来汽车销售有限公司)
79. Zhengzhou NIO Energy Technology Co., Ltd. (郑州蔚电新能源科技有限公司)
80. Tianjin NIO Energy Technology Co., Ltd. (天津蔚来新能源科技有限公司)
81. Chongqing NIO Energy Co., Ltd. (重庆蔚电能源有限公司)
82. Xi'an NIO Energy Co., Ltd. (西安蔚然能源有限公司)
83. Shijiazhuang NIO Energy Technology Co., Ltd. (石家庄蔚来能源科技有限公司)
84. Changsha NIO Energy Co., Ltd. (长沙蔚然能源有限公司)
85. Qingdao NIO Energy Co., Ltd. (青岛蔚然能源有限公司)
86. Dalian NIO Energy Co., Ltd. (大连蔚来能源有限公司)
87. Xiamen NIO Energy Co., Ltd. (厦门蔚来能源有限公司)
88. Haikou NIO Energy Co., Ltd. (海口蔚澜能源有限公司)
89. Nanning NIO Sales and Services Co., Ltd. (南宁蔚来汽车销售服务有限公司)
90. Guiyang NIO Sales and Services Co., Ltd. (贵阳蔚来汽车销售服务有限公司)
91. Nanchang NIO Sales and Services Co., Ltd. (南昌蔚然汽车销售服务有限公司)
92. Foshan NIO Sales and Services Co., Ltd. (佛山蔚来汽车销售服务有限公司)
93. Changchun NIO Sales and Services Co., Ltd. (长春蔚来汽车销售服务有限公司)
94. Shanghai Weijing Trade Co., Ltd. (上海蔚景商贸有限公司)
95. Huzhou NIO Sales and Services Co., Ltd. (湖州蔚来汽车销售服务有限公司)

**Affiliated Entities**

1. Shanghai Anbin Technology Co., Ltd. (上海安斌科技有限公司)
2. Beijing NIO Network Technology Co. Ltd. (北京蔚来网络科技有限公司)
3. NIO Technology Co., Ltd. (上海蔚来科技有限公司)
4. Shanghai NIO New Energy Automobile Co., Ltd. (上海蔚来新能源汽车有限公司)

FORM OF LOCK-UP LETTER

January 30, 2019

Credit Suisse Securities (USA) LLC  
Eleven Madison Avenue  
New York, New York 10010  
U.S.A.

J.P. Morgan Securities LLC  
383 Madison Avenue  
New York, New York 10179  
U.S.A.

Morgan Stanley & Co. LLC  
1585 Broadway  
New York, New York 10036  
U.S.A.

Goldman Sachs (Asia) L.L.C.  
68th Floor, Cheung Kong Center  
2 Queens Road  
Central, Hong Kong

Ladies and Gentlemen:

The undersigned understands that Credit Suisse Securities (USA) LLC, J.P. Morgan Securities LLC, Morgan Stanley & Co. LLC and Goldman Sachs (Asia) L.L.C. (the “**Representatives**”) propose to enter into a Purchase Agreement (the “**Purchase Agreement**”) with NIO Inc., an exempted company incorporated in the Cayman Islands (the “**Company**”), providing for the offering (the “**Offering**”) by the several Purchasers, including the Representatives (the “**Purchasers**”), of US\$650,000,000 principal amount of 4.50% Convertible Senior Notes due 2024 (the “**Securities**”). The Securities will be convertible into American depository shares (“**ADSs**”) representing Class A ordinary shares, par value US\$0.00025 per share, of the Company (the “**Ordinary Shares**”). Unless otherwise defined, capitalized terms used herein shall have the definitions set forth in the Purchase Agreement.

To induce the Purchasers that may participate in the Offering to continue their efforts in connection with the Offering, the undersigned hereby agrees that, without the prior written consent of the Representatives on behalf of the Purchasers, it will not, during the period commencing on the date hereof and ending 90 days after the date of the final offering memorandum (the “**Restricted Period**”) relating to the Offering (the “**Offering Memorandum**”), (1) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend, or otherwise transfer or dispose of, directly or indirectly, any ADSs or Ordinary Shares beneficially owned (as such term is used in Rule 13d-3 of the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), by the undersigned or any other securities so owned convertible into or exercisable or exchangeable for ADSs or Ordinary Shares or (2) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of ADSs or Ordinary Shares, whether any such transaction described in clause (1) or (2) above is to be settled by delivery of ADSs, Ordinary Shares or such other securities, in cash or otherwise. The foregoing sentence shall not apply to (a) transactions relating to ADSs, Ordinary Shares or other securities acquired in open market transactions after the completion of the Offering, *provided* that no filing under the Exchange Act or other public announcement shall be required or shall be voluntarily made in connection with subsequent sales of ADSs, Ordinary Shares or other securities acquired in such open market transactions, (b) transfers of ADSs, Ordinary Shares or any security convertible into ADSs or Ordinary Shares as a bona fide gift, or (c) transfers or distributions of ADSs, Ordinary Shares or any security convertible into ADSs or Ordinary Shares to affiliates, limited partners or shareholders of the undersigned; *provided* that in the case of any transfer or distribution pursuant to clause (b) or (c), (i) each transferee, donee or distributee shall sign and deliver a lock-up letter substantially in the form of this letter and (ii) no filing under the Exchange Act or other public announcement, reporting a reduction in beneficial ownership of ADSs or Ordinary Shares, shall be required or shall be voluntarily made during the Restricted Period, (d) the establishment of a trading plan pursuant to Rule 10b5-1 under the Exchange Act for the transfer of ADSs or Ordinary Shares, *provided* that (i) such plan does not provide for the transfer of ADSs or Ordinary Shares during the Restricted Period and (ii) no public announcement or filing under the Exchange Act is required of or voluntarily made by or on behalf of the Company regarding the establishment of such plan or (e) transactions by operation of law, including pursuant to an order of a court (including a domestic order or a negotiated divorce settlement) or regulatory agency, *provided* that no public announcement shall be required or made voluntarily during the Restricted Period in connection with such transaction. In addition, the undersigned agrees that, without the prior written consent of the Representatives on behalf of the Purchasers, it will not, during the Restricted Period, make any demand for or exercise any right with respect to, the registration of any shares of ADSs or Ordinary Shares or any security convertible into or exercisable or exchangeable for ADSs or Ordinary Shares. The undersigned also agrees and consents to the entry of stop transfer instructions with the Company’s transfer agent and registrar against the transfer of the undersigned’s ADSs or Ordinary Shares except in compliance with the foregoing restrictions.

The undersigned understands that the Company and the Purchasers are relying upon this letter in proceeding toward consummation of the Offering. The undersigned further understands that this letter is irrevocable and shall be binding upon the undersigned’s heirs, legal representatives, successors and assigns.

If (a) the Purchase Agreement is not executed by February 28, 2019 or (b) the Purchase Agreement (other than the provisions thereof which survive termination) shall terminate or be terminated prior to the closing of the Offering, then this letter shall be void and of no further force or effect.

The undersigned hereby submits to the exclusive jurisdiction of any New York State or United States Federal court sitting in Borough of Manhattan in The City of New York over any suit, action or proceeding arising out of or relating to this letter (each, a "**Related Proceeding**"). The undersigned irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of venue of any Related Proceeding brought in such a court and any claim that any such Related Proceeding brought in such a court has been brought in an inconvenient forum.

This letter shall be governed by and construed in accordance with the internal laws of the State of New York.

Whether or not the Offering actually occurs depends on a number of factors, including market conditions. Any Offering will only be made pursuant to a Purchase Agreement, the terms of which are subject to negotiation between the Company and the Purchasers.

Very truly yours,

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address)

FORM OF LOCK-UP LETTER

January 30, 2019

Credit Suisse Securities (USA) LLC  
Eleven Madison Avenue  
New York, New York 10010  
U.S.A.

J.P. Morgan Securities LLC  
383 Madison Avenue  
New York, New York 10179  
U.S.A.

Morgan Stanley & Co. LLC  
1585 Broadway  
New York, New York 10036  
U.S.A.

Goldman Sachs (Asia) L.L.C.  
68th Floor, Cheung Kong Center  
2 Queens Road  
Central, Hong Kong

Ladies and Gentlemen:

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To induce the Purchasers to participate in and continue their efforts in connection with the Offering, the undersigned hereby agrees that, without the prior written consent of the Representatives on behalf of the Purchasers, it will not, during the period commencing on the date hereof and ending 90 days after the date of the final offering memorandum (the “**Restricted Period**”) used to sell the Securities (the “**Offering Memorandum**”), (1) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend, or otherwise transfer or dispose of, directly or indirectly, any ADSs or Ordinary Shares beneficially owned (as such term is used in Rule 13d-3 of the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”)), by the undersigned or any other securities so owned convertible into or exercisable or exchangeable for ADSs or Ordinary Shares or (2) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of ADSs or Ordinary Shares, whether any such transaction described in clause (1) or (2) above is to be settled by delivery of ADSs, Ordinary Shares or such other securities, in cash or otherwise. The foregoing sentence shall not apply to (a) transactions relating to ADSs, Ordinary Shares or other securities acquired in open market transactions after the completion of the Offering, *provided* that no filing under the Exchange Act or other public announcement shall be required or shall be voluntarily made in connection with subsequent sales of ADSs, Ordinary Shares or other securities acquired in such open market transactions, (b) transfers of ADSs, Ordinary Shares or any security convertible into ADSs or Ordinary Shares as a bona fide gift, (c) transfers or distributions of ADSs, Ordinary Shares or any security convertible into ADSs or Ordinary Shares to affiliates, limited partners or shareholders of the undersigned and (d) transfers or distributions of ADSs, Ordinary Shares or any security convertible into ADSs or Ordinary Shares to any trust for the direct or indirect benefit of the undersigned or the immediate family of the undersigned; *provided* that in the case of any transfer or distribution pursuant to clause (b), (c) or (d), as the case may be, (i) each transferee, donee or distributee shall sign and deliver a lock-up letter substantially in the form of this letter and (ii) no filing under the Exchange Act or other public announcement, reporting a reduction in beneficial ownership of ADSs or Ordinary Shares, shall be required or shall be voluntarily made during the Restricted Period, (e) the establishment of a trading plan pursuant to Rule 10b5-1 under the Exchange Act for the transfer of ADSs or Ordinary Shares, *provided* that (i) such plan does not provide for the transfer of ADSs or Ordinary Shares during the Restricted Period and (ii) no public announcement or filing under the Exchange Act is required of or voluntarily made by or on behalf of the Company regarding the establishment of such plan, or (f) transactions by operation of law, including pursuant to an order of a court (including a domestic order or a negotiated divorce settlement) or regulatory agency, *provided* that no public announcement shall be required or made voluntarily during the Restricted Period in connection with such transaction. For purpose of this letter, “**immediate family**” shall mean any relationship by blood, marriage or adoption, not more remote than first cousin. In addition, the undersigned agrees that, without the prior written consent of the Representatives on behalf of the Purchasers, it will not, during the Restricted Period, make any demand for or exercise any right with respect to, the registration of any shares of ADSs or Ordinary Shares or any security convertible into or exercisable or exchangeable for ADSs or Ordinary Shares. The undersigned also agrees and consents to the entry of stop transfer instructions with the Company’s transfer agent and registrar against the transfer of the undersigned’s ADSs or Ordinary Shares except in compliance with the foregoing restrictions.

The undersigned understands that the Company and the Purchasers are relying upon this letter in proceeding toward consummation of the Offering. The undersigned further understands that this letter is irrevocable and shall be binding upon the undersigned's heirs, legal representatives, successors and assigns.

If (a) the Purchase Agreement is not executed by February 28, 2019 or (b) the Purchase Agreement (other than the provisions thereof which survive termination) shall terminate or be terminated prior to the closing of the Offering, then this letter shall be void and of no further force or effect.

The undersigned hereby submits to the exclusive jurisdiction of any New York State or United States Federal court sitting in Borough of Manhattan in The City of New York over any suit, action or proceeding arising out of or relating to this letter (each, a "**Related Proceeding**"). The undersigned irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of venue of any Related Proceeding brought in such a court and any claim that any such Related Proceeding brought in such a court has been brought in an inconvenient forum.

This letter shall be governed by and construed in accordance with the laws of the State of New York.

Whether or not the Offering actually occurs depends on a number of factors, including market conditions. Any Offering will only be made pursuant to a Purchase Agreement, the terms of which are subject to negotiation between the Company and the Purchasers.

Very truly yours,

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address)



**PARTIES DELIVERING LOCK-UP LETTER**

Signatories shall include Bin Li, Lihong Qin, Denny Ting Bun Lee and the Tencent entities (as defined in the Offering Memorandum).

**Pricing Term Sheet**

**PRICING TERM SHEET**

**Dated January 30, 2019**

**NIO Inc.**

**4.50% Convertible Senior Notes due 2024  
Interest Payable February 1 and August 1  
Convertible into American depositary shares,  
each currently representing one Class A ordinary share**

*The information in this pricing term sheet supplements NIO Inc.'s preliminary offering memorandum, dated January 29, 2019 (the "Preliminary Offering Memorandum"), and supersedes the information in the Preliminary Offering Memorandum to the extent inconsistent with the information in the Preliminary Offering Memorandum. In all other respects, this term sheet is qualified in its entirety by reference to the Preliminary Offering Memorandum. Terms used herein but not defined herein shall have the respective meanings as set forth in the Preliminary Offering Memorandum. All references to dollar amounts are references to U.S. dollars.*

Issuer:	NIO Inc. ("NIO")
Ticker/ Exchange:	NIO / The New York Stock Exchange ("NYSE")
Title of securities:	4.50% Convertible Senior Notes due 2024 (the "Notes")
Aggregate principal amount offered:	US\$650,000,000
Initial purchasers' option to purchase additional Notes:	The initial purchasers have an option to purchase, exercisable within a 30-day period from the date of the offering memorandum, up to an additional US\$100,000,000 principal amount of Notes.
Interest and Interest Payment Dates:	4.50% per year.  Interest will accrue from, and including, February 4, 2019, and will be payable semiannually in arrears on February 1 and August 1 of each year, beginning on August 1, 2019.
NYSE last reported sale price on January 30, 2019:	US\$7.46 per American depositary share ("ADS"), each representing as of the date of this pricing term sheet one Class A ordinary share of NIO, par value US\$0.00025 per share.
Conversion premium:	Approximately 27.5% above the NYSE last reported sale price on January 30, 2019.
Initial conversion price:	Approximately US\$9.51 per ADS.
Initial conversion rate:	105.1359 ADSs per US\$1,000 principal amount of the Notes.
Interest payment dates:	February 1 and August 1 of each year.
Maturity date:	February 1, 2024, unless earlier repurchased, redeemed or converted.

Joint bookrunners: Credit Suisse Securities (USA) LLC, J.P. Morgan Securities LLC, Morgan Stanley & Co. LLC, Goldman Sachs (Asia) L.L.C., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Citigroup Global Markets Inc., Deutsche Bank Securities Inc. and UBS Securities LLC.

Co-manager: WR Securities, LLC.

Trade date: January 31, 2019

Settlement date: February 4, 2019

CUSIP: Rule 144A Notes: 62914V AA4  
Regulation S Notes: G6525F AA0

ISIN: Rule 144A Notes: US62914VAA44  
Regulation S Notes: USG6525FAA06

Concurrent Capped Call Transactions: In connection with the pricing of the Notes, NIO has entered into capped call transactions with one or more of the initial purchasers and/or their respective affiliates (the “capped call option counterparties”).

NIO intends to use approximately US\$75.9 million of the net proceeds from this offering to pay the cost of such capped call transactions. If the initial purchasers exercise their option to purchase additional Notes, NIO expects to use a portion of the net proceeds from the sale of the additional Notes to enter into additional capped call transactions with the capped call option counterparties. NIO refers to any such additional capped call transactions and the initial capped call transactions collectively as the capped call transactions.

The capped call transactions are expected generally to reduce the potential dilution to NIO’s ADSs and Class A ordinary shares represented thereby upon conversion of the Notes in the event that the market price per ADS, as measured under the terms of the capped call transactions, is greater than the strike price of the capped call transactions, which initially corresponds to the conversion price of the Notes and is subject to anti-dilution adjustments substantially similar to those applicable to the conversion rate of the Notes (subject to NIO’s ability to elect, subject to certain conditions, to settle the capped call transactions in cash, in which case NIO would not receive any ADSs from the capped call option counterparties upon settlement of the capped call transactions). If, however, the market price per ADS, as measured under the terms of the capped call transactions, exceeds the cap price of the capped call transactions, there would nevertheless be dilution upon conversion of the Notes, to the extent that such market price exceeds the cap price of the capped call transactions. The cap price will initially be 100% above the last reported sale price of NIO’s ADSs on the NYSE on January 30, 2019, and is subject to customary adjustments.

For a discussion of the potential impact of any market or other activity by the capped call option counterparties or their respective affiliates in connection with these capped call transactions, see “Risk Factors—Risks Related to the Notes—The capped call transactions may affect the value of the notes and the market price of the ADSs” and “Plan of Distribution—Capped Call Transactions” in the Preliminary Offering Memorandum.

See “Description of Capped Call Transactions” in the Preliminary Offering Memorandum.

Concurrent Zero-Strike Call Option Transactions:

In connection with the pricing of the Notes, NIO has entered into privately negotiated zero-strike call option transactions with one or more of the initial purchasers or their respective affiliates (the “zero-strike call option counterparties”). The initial number of NIO’s ADSs underlying the zero-strike call option transactions is, in the aggregate, approximately 26.8 million ADSs. The premium under each zero-strike call option transaction is equal to the product of the initial number of NIO’s ADSs underlying such zero-strike call option transaction and the last reported sale price of NIO’s ADSs on the NYSE on the pricing date for the Notes. NIO will pay the premium under the zero-strike call option transactions in cash using a portion of the net proceeds from the offering of the Notes on the initial issuance date for the Notes, expected to be February 4, 2019.

See “Risk Factors—Risks Related to the Notes—The zero-strike call option transactions may affect the value of the notes and the market price of the ADSs and may result in unexpected market activity in the notes and/or our ADSs,” “Description of Zero-Strike Call Option Transactions” and “Plan of Distribution—Zero-Strike Call Option Transactions” in the Preliminary Offering Memorandum.

Use of proceeds:

NIO estimates that the net proceeds from this offering will be approximately US\$638.8 million (or US\$737.3 million if the initial purchasers exercise their option to purchase additional Notes in full), after deducting fees and estimated expenses.

NIO has entered into capped call transactions with the capped call option counterparties and zero-strike call option transactions with the zero-strike call option counterparties. NIO intends to use approximately US\$75.9 million of the net proceeds from this offering (assuming no exercise of initial purchasers’ option) to pay the cost of the capped call transactions. NIO intends to use approximately US\$200 million of the net proceeds from this offering to pay the cost of repurchasing the ADSs pursuant to the zero-strike call option transactions with the zero-strike call option counterparties. NIO expects to use the remainder of the net proceeds from this offering as follows:

- approximately 40% on research and development of products, services and technology;
- approximately 35% on development of NIO’s manufacturing facilities and roll-out of NIO’s supply chain; and
- approximately 25% on sales and marketing, as well as other working capital needs.

If the initial purchasers exercise their option to purchase additional Notes, NIO expects to use a portion of the net proceeds from the sale of the additional Notes to enter into additional capped call transactions with the capped call option counterparties and the remainder of the net proceeds for the same purposes described above.

The foregoing represents NIO’s current intentions to use and allocate the net proceeds of this offering based upon NIO’s present plans and business conditions. NIO’s management, however, will have significant flexibility and discretion to apply these net proceeds. If an unforeseen event occurs or business conditions change, NIO may use these proceeds differently than as described above.

Assuming that NIO converts the full amount of the net proceeds into Renminbi, a 10% appreciation of the U.S. dollar against Renminbi, from a rate of RMB6.8680 to US\$1.00 as of September 28, 2018 to a rate of RMB7.5548 to US\$1.00, will result in an increase of RMB438.7 million in the net proceeds. Conversely, a 10% depreciation of the U.S. dollar against the Renminbi, from a rate of RMB6.8680 to US\$1.00 as of September 28, 2018 to a rate of RMB6.1812 to US\$1.00, will result in a decrease of RMB438.7 million in the net proceeds.

Participation by principal shareholders:	An entity affiliated with Tencent Holdings Limited, one of NIO's principal shareholders, and an entity affiliated with Hillhouse Capital Management Ltd., another one of NIO's principal shareholders, will purchase US\$30 million and US\$5 million, respectively, principal amount of the Notes in this offering on the same terms as the other Notes being offered.
Repurchase of Notes by NIO at the option of the holder:	<p>Holder of the Notes have the right to require NIO to repurchase for cash all or part of their Notes on February 1, 2022 at a repurchase price equal to 100% of the principal amount of the Notes to be repurchased, <i>plus</i> accrued and unpaid interest to, but excluding, the repurchase date.</p>
Optional redemption for changes in the tax laws of the relevant jurisdiction:	<p>If NIO has, or on the next interest payment date would, become obligated to pay any additional amounts (other than <i>de minimis</i> amounts) as a result of (i) any change or amendment that is publicly announced and becomes effective on or after the date hereof in the laws or any rules or regulations of a relevant jurisdiction, or (ii) any change that is publicly announced and becomes effective on or after the date hereof in an interpretation, administration or application of such laws, rules or regulations, as further described under "Description of the Notes—Optional redemption for changes in the tax laws of the relevant jurisdiction" in the Preliminary Offering Memorandum, NIO may, at its option, redeem all but not part of the Notes at a redemption price equal to 100% of the principal amount of the Notes to be redeemed plus accrued and unpaid interest, if any, to, but not including, the redemption date and any additional amounts with respect to such redemption price.</p> <p>Upon NIO's giving a notice of redemption, a holder may elect not to have its Notes redeemed, in which case such holder would not be entitled to receive the additional amounts due as a result of such change in tax law referred to in "Description of the Notes—Additional amounts" in the Preliminary Offering Memorandum after the redemption date.</p>
Fundamental change:	<p>If NIO undergoes a "fundamental change" (as defined under "Description of the Notes—Fundamental change permits holders to require us to repurchase notes" in the Preliminary Offering Memorandum), subject to certain conditions, holders may require NIO to repurchase for cash all or part of their Notes in principal amounts of US\$1,000 or an integral multiple thereof. The fundamental change repurchase price will be equal to 100% of the principal amount of the Notes to be repurchased, <i>plus</i> accrued and unpaid interest to, but excluding, the fundamental change repurchase date.</p>

Additional amounts:

All payments and deliveries made by, or on behalf of, NIO or any successor to NIO under or with respect to the Notes, including, but not limited to, payments of principal (including, if applicable, the redemption price, the repurchase price and the fundamental change repurchase price), premium, if any, payments of interest and deliveries of ADSs or any other consideration due (together with payments of cash for any fractional ADS or other consideration, if applicable) upon conversion, will be made without withholding, deduction or reduction, unless such withholding, deduction or reduction is required by law or by regulation or governmental policy having the force of law. In the event that any such withholding, deduction or reduction is so required by certain jurisdictions, NIO will pay or deliver such additional amounts as may be necessary to ensure that the net amount received by the beneficial owners of the Notes after such withholding, deduction or reduction (and after deducting any taxes on the additional amounts) will equal the amounts that would have been received by such beneficial owners had no such withholding, deduction or reduction been required, subject to certain exceptions set forth under “Description of the Notes—Additional amounts” in the Preliminary Offering Memorandum.

Adjustment to ADSs delivered upon conversion upon a make-whole fundamental change or NIO’s election to redeem the Notes for changes in tax laws:

The following table sets forth the number of additional ADSs to be received per US\$1,000 principal amount of Notes that are converted in connection with (i) a “make-whole fundamental change” as described in the Preliminary Offering Memorandum, based on the ADS price and effective date of the make-whole fundamental change or (ii) NIO’s election to redeem the Notes for changes in tax laws as if the applicable redemption reference date were the “effective date” and the applicable redemption price were the “ADS price”, as described in the Preliminary Offering Memorandum:

Effective Date	ADS Price												
	<u>\$7.46</u>	<u>\$8.75</u>	<u>\$9.51</u>	<u>\$10.25</u>	<u>\$11.50</u>	<u>\$13.00</u>	<u>\$15.00</u>	<u>\$17.00</u>	<u>\$20.00</u>	<u>\$23.00</u>	<u>\$27.00</u>	<u>\$30.00</u>	<u>\$33.00</u>
February 4, 2019	28.9123	21.1200	17.3870	14.5356	10.9470	7.9862	5.3967	3.7147	2.1360	1.1943	0.4778	0.1797	0.0242
February 1, 2020	28.9123	20.7691	16.7960	13.8254	10.1835	7.2777	4.8227	3.2735	1.8510	1.0161	0.3889	0.1357	0.0133
February 1, 2021	28.9123	19.7246	15.5005	12.4566	8.8878	6.1831	4.0013	2.6741	1.4850	0.7974	0.2863	0.0853	0.0018
February 1, 2022	28.9123	16.7246	12.9012	10.1561	6.9861	4.6731	2.9133	1.9035	1.0350	0.5404	0.1722	0.0343	0.0000
February 1, 2023	28.9123	14.3337	10.0400	7.1980	4.3096	2.5723	1.4993	0.9682	0.5305	0.2717	0.0733	0.0073	0.0000
February 1, 2024	28.9123	9.1497	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000

The exact ADS prices and effective dates may not be set forth in the table above, in which case:

- If the ADS price is between two ADS prices in the table or the effective date is between two effective dates in the table, the number of additional ADSs will be determined by a straight-line interpolation between the number of additional ADSs set forth for the higher and lower ADS prices and the earlier and later effective dates, as applicable, based on a 365-day year.
- If the ADS price is greater than US\$33.00 per ADS (subject to adjustment in the same manner as the ADS prices set forth in the column headings of the table above), no additional ADSs will be added to the conversion rate.
- If the ADS price is less than US\$7.46 per ADS (subject to adjustment in the same manner as the ADS prices set forth in the column headings of the table above), no additional ADSs will be added to the conversion rate.

Notwithstanding the foregoing, in no event will the conversion rate per US\$1,000 principal amount of the Notes exceed 134.0482 ADSs, subject to adjustment in the same manner as the conversion rate as set forth under “Description of the Notes—Conversion rights—Conversion rate adjustments” in the Preliminary Offering Memorandum.

Capitalization and Indebtedness:

The following table sets forth our capitalization as of September 30, 2018:

- on an actual basis;
- on an as adjusted basis to give effect to the issuance and sale by us of US\$650 million aggregate principal amount of notes in this offering, assuming the initial purchasers do not exercise their option to purchase additional notes, before deducting estimated initial purchasers’ discounts and commissions and estimated issuance expenses, and excluding our use of a portion of the net proceeds of this offering, as described in the “Use of Proceeds” to pay the costs of the capped call transactions and the zero-strike call option transactions. In the as adjusted information, the principal amount of the notes is recorded as convertible notes in long-term debt and debt issuance cost is recorded as reduction to the long-term debt and is amortized as interest expenses using the effective interest method. The costs we paid for the capped call transactions and the zero-strike call option transactions are recorded as deduction of additional paid-in capital within total shareholders’ equity.

The as adjusted information below is illustrative only. You should read this table together with our audited consolidated financial statements and unaudited interim condensed financial statements and the related notes thereto included in this offering memorandum and the information under “Management’s Discussion and Analysis of Financial Condition and Results of Operations.”

	As of September 30, 2018			
	Actual		As adjusted	
	RMB	US\$	RMB	US\$
	(in thousands) (unaudited)			
<b>Current Assets</b>				
Cash and cash equivalents	6,743,487	981,871	9,235,884	1,344,771
Restricted cash	32,536	4,737	32,536	4,737
Short-term investments	2,377,384	346,154	2,377,384	346,154
<b>Non-current Assets</b>				
Long-term restricted cash	37,825	5,507	37,825	5,507
<b>Current Liabilities</b>				
Short-term loan	430,583	62,694	430,583	62,694
Long-term loan, current portion	168,940	24,598	168,940	24,598
<b>Non-Current Liabilities</b>				
Long-term loan, non-current portion	1,079,202	157,135	1,079,202	157,135
Convertible notes <sup>1</sup>	—	—	4,387,278	638,800
<b>Mezzanine Equity:</b>				
Redeemable non-controlling interests	1,296,299	188,745	1,296,299	188,745
<b>Total Mezzanine Equity</b>	1,296,299	188,745	1,296,299	188,745
<b>Shareholders’ Equity:</b>				
Treasury shares	(9,186)	(1,338)	(9,186)	(1,338)
Class A ordinary shares	1,303	189	1,303	189
Class B ordinary shares	218	32	218	32
Class C ordinary shares	246	36	246	36
Additional paid-in capital <sup>1</sup>	40,762,274	5,935,101	38,867,393	5,659,201
Accumulated deficit	(31,523,325)	(4,589,884)	(31,523,325)	(4,589,884)
Accumulated other comprehensive loss	(71,888)	(10,467)	(71,888)	(10,467)
<b>Total NIO Inc. Shareholders’ Equity</b>	9,159,642	1,333,669	7,264,761	1,057,769
Noncontrolling interests	2,531	369	2,531	369
<b>Total Shareholders’ Equity</b>	9,162,173	1,334,038	7,267,292	1,058,138
<b>Total Capitalization</b>	11,537,674	1,679,918	14,030,071	2,042,818

(1) In accordance with ASC 470-20, a convertible debt instrument that may be wholly or partially settled in cash is required to be separated into liability and equity components. Upon issuance, a debt discount, if any, is recognized as a decrease in debt component and an increase in equity. The debt component accretes up to the principal amount over the expected term of the debt. ASC 470-20 does not affect the actual amount that we are required to repay. The amount shown in the table above for the Notes does not necessarily reflect the application of ASC 470-20 in entirety, and only reflects the aggregate principal amount of the Notes, net of debt issuance costs, without reflecting the debt discount, if any, and any tax impact.



In addition to reflecting the information set forth above, the Preliminary Offering Memorandum is hereby supplemented, amended and modified as follows (page references are to page numbers in the Preliminary Offering Memorandum), which reflect certain updated information. Unless otherwise specified, additions are shown in double-underline and deletions are shown in ~~strikethrough~~:

*The section "Plan of Distribution—No sale of similar securities" on pages 264-265 of the Preliminary Offering Memorandum is amended by this pricing supplement as follows:*

"Our directors who are our shareholders have agreed that, without the prior written consent of the initial purchasers, they will not during the restricted period:

- offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend, or otherwise transfer or dispose of, directly or indirectly, any ADSs or Class A ordinary shares or any other securities convertible into or exercisable or exchangeable for ADSs or Class A ordinary shares; or
- enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the ADSs or Class A ordinary shares,

whether any transaction described above is to be settled by delivery of our Class A ordinary shares or ADSs or such other securities, in cash or otherwise. In addition, each such person agrees that, without the prior written consent of the initial purchasers, such person will not, during the restricted period, make any demand for, or exercise any right with respect to, the registration of any of our Class A ordinary shares or ADSs or any security convertible into or exercisable or exchangeable for our Class A ordinary shares or ADSs.

The restrictions described in the immediately preceding paragraph do not apply to:

- transactions relating to our Class A ordinary shares or ADSs or other securities acquired in open market transactions after the completion of the offering of the notes; provided that no filing under the Exchange Act or other public announcement is required or voluntarily made in connection with subsequent sales of our Class A ordinary shares or ADSs or other securities acquired in such open market transactions;

- transfers of our Class A ordinary shares or ADSs or any security convertible into our Class A ordinary shares or ADSs as a bona fide gift;
- transfers or distributions of our Class A ordinary shares or ADSs or any security convertible into our Class A ordinary shares or ADSs to affiliates, limited partners or shareholders of the such person;
- the establishment of a trading plan pursuant to Rule 10b5-1 under the Exchange Act for the transfer of our Class A ordinary shares or ADSs, provided that (i) the plan does not provide for the transfer of our Class A ordinary shares or ADSs during the restricted period and (ii) no public announcement or filing under the Exchange Act is required of or voluntarily made by or on behalf of us regarding the establishment of such plan; or
- transactions by operation of law, including pursuant to an order of a court (including a domestic order or a negotiated divorce settlement) or regulatory agency, provided that no public announcement shall be required or made voluntarily during the restricted period in connection with such transaction.

**In addition, the Tencent entities have signed lock-up agreements which are substantially similar to the lock-up agreements signed by these directors.**

The initial purchasers, in their sole discretion, may release our Class A ordinary shares and ADSs and other securities subject to the lock-up agreements described above in whole or in part at any time.”

#### **General**

This communication is intended for the sole use of the person to whom it is provided by the sender.

**This communication shall not constitute an offer to sell or the solicitation of an offer to buy securities 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 laws of any such state.**

**The Notes, the ADSs deliverable upon conversion of the Notes and the Class A ordinary shares represented thereby have not been, and will not be, registered under the Securities Act or any state securities laws. Accordingly, the Notes are being offered and sold only to “qualified institutional buyers” as defined in Rule 144A promulgated under the Securities Act and to certain non-U.S. persons in offshore transactions in reliance on Regulation S under the Securities Act. The Notes are not transferable except in accordance with the restrictions described under “Transfer restrictions” in the Preliminary Offering Memorandum.**

*[Remainder of Page Intentionally Blank]*

NIO Inc.

*and*

The Bank of New York Mellon as Trustee

**INDENTURE**

dated as of February 4, 2019

**US\$650,000,000 4.50% CONVERTIBLE SENIOR NOTES DUE 2024**

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INDENTURE dated as of February 4, 2019 between NIO INC., a Cayman Islands exempted company, as issuer (the “**Company**,” as more fully set forth in Section 1.01) and THE BANK OF NEW YORK MELLON, a banking organization organized and existing under the laws of the State of New York, as trustee (the “**Trustee**,” as more fully set forth in Section 1.01).

WITNESSETH:

WHEREAS, for its lawful corporate purposes, the Company has duly authorized the issuance of its 4.50% Convertible Senior Notes due 2024 (the “**Notes**”), initially in an aggregate principal amount not to exceed US\$650,000,000 (as increased by an amount equal to the aggregate principal amount of any additional Notes purchased by the Initial Purchasers pursuant to the exercise of their option to purchase additional Notes as set forth in the Purchase Agreement), subject to Section 2.10, and in order to provide the terms and conditions upon which the Notes are to be authenticated, issued and delivered, the Company has duly authorized the execution and delivery of this Indenture; and

WHEREAS, the Form of Note, the certificate of authentication to be borne by each Note, the Form of Notice of Conversion, the Form of Fundamental Change Repurchase Notice, the Form of Repurchase Notice and the Form of Assignment and Transfer to be borne by the Notes are to be substantially in the forms hereinafter provided; and

WHEREAS, all acts and things necessary to make the Notes, when executed by the Company and authenticated and delivered by the Trustee, as in this Indenture provided, the valid, binding and legal obligations of the Company, and this Indenture a valid agreement according to its terms, have been done and performed, and the execution of this Indenture and the issuance hereunder of the Notes have in all respects been duly authorized.

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

That in order to declare the terms and conditions upon which the Notes are, and are to be, authenticated, issued and delivered, and in consideration of the premises and of the purchase and acceptance of the Notes by the Holders thereof, the Company covenants and agrees with the Trustee for the equal and proportionate benefit of the respective Holders from time to time of the Notes (except as otherwise provided below), as follows:

ARTICLE 1  
DEFINITIONS

Section 1.01 *Definitions.* The terms defined in this Section 1.01 (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Indenture and of any indenture supplemental hereto shall have the respective meanings specified in this Section 1.01. The words “herein,” “hereof,” “hereunder,” and words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision. The terms defined in this Article include the plural as well as the singular.

“**Additional ADSs**” shall have the meaning specified in Section 14.03(a).

“**Additional Amounts**” shall have the meaning specified in Section 4.07(a).

“**Additional Interest**” means all amounts, if any, payable pursuant to Section 4.06(d), Section 4.06(e) and Section 6.03, as applicable.

“**ADS**” means an American Depositary Share, issued pursuant to the Unrestricted Deposit Agreement or Restricted Deposit Agreement, as applicable, representing one Ordinary Share of the Company as of the date of this Indenture, and deposited with the ADS Custodian.

“**ADS Custodian**” means Deutsche Bank AG, Hong Kong Branch, with respect to the ADSs delivered pursuant to the Unrestricted Deposit Agreement or the Restricted Deposit Agreement, as applicable, or any successor entity thereto.

“**ADS Depository**” means Deutsche Bank Trust Company Americas, as depository for the ADSs.

“**ADS Price**” shall have the meaning specified in Section 14.03(b).

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

“**Affiliate Notes**” means Regulation S Notes that are held or beneficially owned by an entity affiliated with Tencent Holdings Limited or an entity affiliated with Hillhouse Capital Management Ltd. that purchased such Notes in the initial offering, to the extent the Company believes that such holder or beneficial owner is an “affiliate” of the Company (as defined in Rule 144) and “**Affiliate Note**” means any of them.

“**Agents**” means the Paying Agent, the Transfer Agent, the Note Registrar and the Conversion Agent.

“**Applicable PRC Rate**” means (i) in the case of deduction or withholding of People’s Republic of China income tax, 10%, (ii) in the case of deduction or withholding of, or reduction for, People’s Republic of China value added tax (including any related local levies), 6.72%, or (iii) in the case of deduction or withholding of, or reduction for, both People’s Republic of China income tax and People’s Republic of China value added tax (including any related local levies), 16.72%.

“**applicable taxes**” shall have the meaning specified in Section 4.07(a).

“**BNY Mellon Group**” shall have the meaning specified in Section 7.02.

“**Board of Directors**” means the board of directors of the Company or a committee of such board duly authorized to act for it hereunder.

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

“**Business Day**” means, with respect to any Note, each Monday, Tuesday, Wednesday, Thursday and Friday that is not a day on which banking institutions in the State of New York or the Cayman Islands are authorized or obligated by law or executive order to close.

“**Capital Stock**” means, for any entity, any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) stock issued by that entity.

“**Change in Tax Law**” shall have the meaning specified in Section 16.01.

“**Clause A Distribution**” shall have the meaning specified in Section 14.04(c).

“**Clause B Distribution**” shall have the meaning specified in Section 14.04(c).

“**Clause C Distribution**” shall have the meaning specified in Section 14.04(c).

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

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

“**Commission**” means the U.S. Securities and Exchange Commission.

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

“**Company**” shall have the meaning specified in the first paragraph of this Indenture, and subject to the provisions of Article 11, shall include its successors and assigns.

“**Company Notice**” shall have the meaning specified in Section 15.01(a).

“**Company Order**” means a written order of the Company, signed by an Officer of the Company and delivered to the Trustee.

“**Consolidated Affiliated Entity**” means, with respect to any Person, any corporation, association or other entity which is or is required to be consolidated with such Person under Accounting Standards Codification subtopic 810-10, Consolidation: Overall (including any changes, amendments or supplements thereto) or, if such person prepares its financial statements in accordance with accounting principles other than the accounting principles generally accepted in the United States of America, the equivalent of Accounting Standards Codification subtopic 810-10, Consolidation: Overall under such accounting principles.

“**Conversion Agent**” shall have the meaning specified in Section 4.02.

“**Conversion Date**” shall have the meaning specified in Section 14.02(c).

“**Conversion Obligation**” shall have the meaning specified in Section 14.01.

“**Conversion Rate**” shall have the meaning specified in Section 14.01.

“**Corporate Trust Office**” means the corporate trust office of the Trustee at which at any time its corporate trust business shall be administered, which office at the date hereof is located at 240 Greenwich Street, New York, NY 10286, USA, and shall include a reference to The Bank of New York Mellon, Hong Kong Branch, Level 24, Three Pacific Place, 1 Queen’s Road East, Hong Kong, Attention: Global Corporate Trust – NIO Inc., Facsimile No.: +852-2295.3283, or such other address as the Trustee may designate from time to time by notice to the Holders and the Company, or the corporate trust office of any successor trustee (or such other address as such successor trustee may designate from time to time by notice to the Holders and the Company). “**Default**” means any event that is, or after notice or passage of time, or both, would be, an Event of Default.

“**Defaulted Amounts**” means any amounts on any Note (including, without limitation, the Redemption Price, the Repurchase Price, the Fundamental Change Repurchase Price, principal and interest) that are payable but are not punctually paid or duly provided for.

“**Depository**” means, with respect to each Global Note, the Person specified in Section 2.05(c) and Section 2.05(e) as the Depository with respect to such Notes, until a successor shall have been appointed and become such pursuant to the applicable provisions of this Indenture, and thereafter, “**Depository**” shall mean or include such successor.

“**Distributed Property**” shall have the meaning specified in Section 14.04(c).

“**Effective Date**” shall have the meaning specified in Section 14.03(c).

“**Event of Default**” shall have the meaning specified in Section 6.01.

“**Ex-Dividend Date**” means the first date on which the ADSs trade on the applicable exchange or in the applicable market, regular way, without the right to receive the issuance, dividend or distribution in question, from the Company or, if applicable, from the seller of the ADSs 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, and the rules and regulations promulgated thereunder.

“**Expiring Rights**” means any rights, options or warrants to purchase Ordinary Shares or ADSs that expire on or prior to the Maturity Date.

“**FATCA**” shall have the meaning specified in Section 4.07(a)(i)(D).

“**Form of Assignment and Transfer**” shall mean the “Form of Assignment and Transfer” attached as Attachment 4 to the Form of Note attached hereto as Exhibit A.

“**Form of Fundamental Change Repurchase Notice**” shall mean the “Form of Fundamental Change Repurchase Notice” attached as Attachment 2 to the Form of Note attached hereto as Exhibit A.

“**Form of Notice of Conversion**” shall mean the “Form of Notice of Conversion” attached as Attachment 1 to the Form of Note attached hereto as Exhibit A.

“**Form of Repurchase Notice**” shall mean the “Form of Repurchase Notice” attached as Attachment 3 to the Form of Note attached hereto as Exhibit A.

“**Fractional ADS**” shall have the meaning specified in Section 14.02(a).

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

(a) (A) A “person” or “group” within the meaning of Section 13(d) of the Exchange Act, other than the Company, its Subsidiaries, the employee benefit plans of the Company and its Subsidiaries and the Permitted Holders, files a Schedule TO or any schedule, form or report under the Exchange Act disclosing that such person or group has become the direct or indirect “beneficial owner,” as defined in Rule 13d-3 under the Exchange Act, of: (i) the Company’s ordinary share capital (including ordinary share capital held in the form of ADSs) representing more than 50% of the voting power of the Company’s ordinary share capital, or (ii) more than 50% of the outstanding Ordinary Shares (including Ordinary Shares held in the form of ADSs), or (B) the Permitted Holders (together with any of their respective affiliates that directly or indirectly through one or more intermediaries is controlling, is controlled by, or is under common control with, any or all of the Permitted Holders) have become the direct or indirect “beneficial owners”, as defined in Rule 13d-3 under the Exchange Act, of Ordinary Shares (including Ordinary Shares held in the form of ADSs) representing, in the aggregate, more than 65% of the outstanding Ordinary Shares (including Ordinary Shares held in the form of ADSs), based on any Schedule TO or any schedule, form or report under the Exchange Act disclosing the same filed by any one or more of the Permitted Holders;

(b) the consummation of (A) any recapitalization, reclassification or change of the Ordinary Shares or the ADSs (other than changes resulting from a subdivision or combination) as a result of which the Ordinary Shares or the ADSs would be converted into, or exchanged for, stock, other securities, other property or assets; (B) any share exchange, consolidation or merger of the Company pursuant to which the Ordinary Shares or the ADSs will be converted into cash, securities or other property; or (C) any sale, lease or other transfer in one transaction or a series of transactions of all or substantially all of the consolidated assets of the Company and its Subsidiaries and Consolidated Affiliated Entities, taken as a whole, to any Person other than one of the Company’s wholly-owned Subsidiaries; *provided, however*, that a transaction described in clause (B) in which the holders of all classes of the Company’s ordinary share capital (including ordinary share capital held in the form of ADSs) immediately prior to such transaction own, directly or indirectly, more than 50% of all classes of Common Equity of the continuing or surviving corporation or transferee or the parent thereof immediately after such transaction in substantially the same proportions vis-a-vis each other as such ownership immediately prior to such transaction shall not be a Fundamental Change pursuant to this clause (b);

(c) the shareholders of the Company approve any plan or proposal for the liquidation or dissolution of the Company;

(d) the ADSs (or other Common Equity or ADSs in respect of Common Equity underlying the Notes) cease to be listed or quoted on any of The New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or any of their respective successors); or

(e) any change in or amendment to the laws, regulations and rules of the People's Republic of China or the official interpretation or official application thereof (a "**Change in Law**") that results in (x) the Company, its Subsidiaries and its Consolidated Affiliated Entities (collectively, the "**Company Group**") (as in existence immediately subsequent to such Change in Law), as a whole, being legally prohibited from operating substantially all of the business operations conducted by the Company Group (as in existence immediately prior to such Change in Law) as of the last date of the period described in the Company's consolidated financial statements for the most recent fiscal quarter and (y) the Company's being unable to continue to derive substantially all of the economic benefits from the business operations conducted by the Company Group (as in existence immediately prior to such Change in Law) in the same manner as reflected in the Company's consolidated financial statements for the most recent fiscal quarter;

*provided, however*, that a transaction or event described in clause (b) above shall not constitute a Fundamental Change, if at least 90% of the consideration received or to be received by holders of the ADSs, excluding cash payments for Fractional ADSs, in connection with such transaction or event consists of shares of Common Equity or ADSs in respect of Common Equity that are listed or quoted on any of The New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or any of their respective successors) or will be so listed or quoted when issued or exchanged in connection with such transaction or event that would otherwise constitute a Fundamental Change under clause (b) of the definition thereof and as a result of such transaction or event, the Notes become convertible into such consideration, excluding cash payments for Fractional ADSs; and *provided further* that an event that is not considered a Fundamental Change pursuant to this proviso shall not be a Fundamental Change solely because such event could also be subject to clause (a) above.

"**Fundamental Change Company Notice**" shall have the meaning specified in Section 15.02(c).

"**Fundamental Change Repurchase Date**" shall have the meaning specified in Section 15.02(a).

"**Fundamental Change Repurchase Notice**" shall have the meaning specified in Section 15.02(b)(i).

“**Fundamental Change Repurchase Price**” shall have the meaning specified in Section 15.02(a).

“**Global Note**” shall have the meaning specified in Section 2.05(b).

“**Holder**,” as applied to any Note, or other similar terms (but excluding the term “beneficial holder”), shall mean any Person in whose name at the time a particular Note is registered on the Note Register.

“**Indenture**” means this instrument as originally executed or, if amended or supplemented as herein provided, as so amended or supplemented.

“**Initial Purchasers**” means Credit Suisse Securities (USA) LLC, J.P. Morgan Securities LLC, Morgan Stanley & Co. and Goldman Sachs (Asia) LLC as representatives of the several “Purchasers” (as defined in the Purchase Agreement).

“**Interest Payment Date**” means each February 1 and August 1 of each year or, if the relevant date is not a Business Day, the immediately following Business Day, beginning on August 1, 2019.

“**Last Reported Sale Price**” of the ADSs on any date means the closing sale price per ADS (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 ADSs are traded. If the ADSs are not listed for trading on a U.S. national or regional securities exchange on the relevant date, the “Last Reported Sale Price” shall be the last quoted bid price for the ADSs in the over-the-counter market on the relevant date as reported by OTC Markets Group Inc. or a similar organization. If the ADSs are not so quoted, the “Last Reported Sale Price” shall be the average of the mid-point of the last bid and ask prices for the ADSs on the relevant date from each of at least three nationally recognized independent investment banking firms selected by the Company for this purpose.

“**Make-Whole Fundamental Change**” means any transaction or event described in clause (a), (b), (d) or (e) of the definition of Fundamental Change (determined after giving effect to any exceptions to or exclusions from such definition, including in the *proviso* immediately succeeding clause (e) of the definition thereof, but without regard to the *proviso* in clause (b) of the definition thereof).

“**Maturity Date**” means February 1, 2024.

“**Merger Event**” shall have the meaning specified in Section 14.07(a).

“**Note**” or “**Notes**” shall have the meaning specified in the first paragraph of the recitals of this Indenture.

“**Notes Fungibility Date**” means the date, if any, following the Resale Restriction Termination Date on which all of the Rule 144A Notes and all of the Regulation S Notes (other than the Affiliate Notes) are no longer Restricted Securities, do not bear the restrictive legend required by Section 2.05(c), are fungible for U.S. securities law purposes and are assigned an identical, unrestricted CUSIP number.

“**Note Register**” shall have the meaning specified in Section 2.05(a).

“**Note Registrar**” shall have the meaning specified in Section 2.05(a).

“**Notice of Conversion**” shall have the meaning specified in Section 14.02(b).

“**Offering Memorandum**” means the preliminary offering memorandum dated January 29, 2019, as supplemented by the pricing term sheet dated January 30, 2019, relating to the offering and sale of the Notes.

“**Officer**” means, with respect to the Company, the President, the Chief Executive Officer, the Chief Financial Officer the Treasurer, the Secretary, any Executive or Senior Vice President or any Vice President (whether or not designated by a number or numbers or word or words added before or after the title “Vice President”).

“**Officers’ Certificate**,” when used with respect to the Company, means a certificate that is delivered to the Trustee and that is signed by (a) two Officers of the Company or (b) one Officer of the Company and one of any Assistant Treasurer, any Assistant Secretary or General Counsel or the Controller of the Company. Each such certificate shall include the statements provided for in Section 17.06 if and to the extent required by the provisions of such Section. One of the Officers giving an Officers’ Certificate pursuant to Section 4.09 shall be the principal executive, financial or accounting officer of the Company.

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

“**Opinion of Counsel**” means an opinion in writing signed by legal counsel and in a form reasonably acceptable to the Trustee, who may be counsel to the Company, or other counsel acceptable to the Trustee, that is delivered to the Trustee. Each such opinion shall include the statements provided for in Section 17.06 if and to the extent required by the provisions of such Section 17.06.

“**Ordinary Shares**” means Class A ordinary shares of the Company, par value US\$0.00025 per share, at the date of this Indenture, subject to Section 14.07.

“**outstanding**,” when used with reference to Notes, shall, subject to the provisions of Section 8.04, mean, as of any particular time, all Notes authenticated and delivered by the Trustee under this Indenture, except:

(a) Notes theretofore canceled by the Note Registrar or accepted by the Note Registrar for cancellation;

(b) Notes, or portions thereof, that have become due and payable and in respect of which monies in the necessary amount shall have been deposited with the Trustee or with any Paying Agent (other than the Company) or shall have been set aside and segregated in trust by the Company (if the Company shall act as its own Paying Agent);



(c) Notes that have been paid pursuant to Section 2.06 or Notes in lieu of which, or in substitution for which, other Notes shall have been authenticated and delivered pursuant to the terms of Section 2.06 unless proof satisfactory to the Trustee is presented that any such Notes are held by protected purchasers in due course;

(d) Notes converted pursuant to Article 14 and required to be cancelled pursuant to Section 2.08;

(e) Notes redeemed pursuant to Article 16; and

(f) Notes repurchased by the Company pursuant to the third sentence of Section 2.10.

“**Paying Agent**” shall have the meaning specified in Section 4.02.

“**Permitted Holders**” means Mr. Bin Li and Tencent Holdings Limited, together with any other respective “person” or “group” subject to aggregation with respect to the Ordinary Shares (including Ordinary Shares held in the form of ADSs) with any of the aforementioned person and entity under Section 13(d) of the Exchange Act.

“**Person**” means an individual, a corporation, a limited liability company, an association, a partnership, a joint venture, a joint stock company, a trust, an unincorporated organization or a government or an agency or a political subdivision thereof.

“**Physical Notes**” means permanent certificated Notes in registered form issued in denominations of US\$1,000 principal amount and multiples thereof.

“**Predecessor Note**” of any particular Note means every previous Note evidencing all or a portion of the same debt as that evidenced by such particular Note; and, for the purposes of this definition, any Note authenticated and delivered under Section 2.06 in lieu of or in exchange for a mutilated, lost, destroyed or stolen Note shall be deemed to evidence the same debt as the mutilated, lost, destroyed or stolen Note that it replaces.

“**Purchase Agreement**” means that certain Purchase Agreement, dated as of January 30, 2018, among the Company and the Initial Purchasers.

“**Record Date**” means, with respect to any dividend, distribution or other transaction or event in which the holders of the Ordinary Shares (directly or in the form of ADSs) (or other applicable security) have the right to receive any cash, securities or other property or in which the Ordinary Shares (directly or in the form of ADSs) (or such other security) are exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of security holders entitled to receive such cash, securities or other property (whether such date is fixed by the Board of Directors, statute, contract or otherwise).

“**Redemption Date**” shall have the meaning specified in Section 16.01.

“**Redemption Reference Date**” shall have the meaning specified in Section 14.03(g).

“**Redemption Reference Price**” shall have the meaning specified in Section 16.01.

“**Redemption Price**” shall have the meaning specified in Section 16.01.

“**Reference Property**” shall have the meaning specified in Section 14.07(a).

“**Regular Record Date**,” with respect to any Interest Payment Date, shall mean the January 15 or July 15 (whether or not such day is a Business Day) immediately preceding the applicable February 1 or August 1 Interest Payment Date, respectively.

“**Regulation S**” means Regulation S under the Securities Act or any successor to such regulation.

“**Regulation S Notes**” means the Notes initially offered and sold outside the United States pursuant to Regulation S.

“**Relevant Jurisdiction**” shall have the meaning specified in Section 4.07(a).

“**Relevant Taxing Jurisdiction**” shall have the meaning specified in Section 4.07(a).

“**Repurchase Date**” shall have the meaning specified in Section 15.01(a).

“**Repurchase Expiration Time**” shall have the meaning specified in Section 15.01(a).

“**Repurchase Notice**” shall have the meaning specified in Section 15.01(a).

“**Repurchase Price**” shall have the meaning specified in Section 15.01(a).

“**Resale Restriction Termination Date**” shall have the meaning specified in Section 2.05(c).

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

“**Restricted Deposit Agreement**” means the deposit agreement for restricted securities dated as of or about the date hereof by and among the Company, the ADS Depository and the holders and beneficial owners of the restricted ADSs delivered thereunder or, if amended or supplemented as provided therein, as so amended or supplemented.

“**Restricted Securities**” shall have the meaning specified in Section 2.05(c).

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

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

“**Rule 144A Notes**” means the notes initially offered and sold pursuant to Rule 144A.

“**Securities Act**” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“**Significant Subsidiary**” means a Subsidiary of the Company that meets the definition of “significant subsidiary” in Article 1, Rule 1-02 of Regulation S-X under the Exchange Act. Each of the Company’s Consolidated Affiliated Entities will be deemed to be a “subsidiary” for purposes of the definition of “significant subsidiary” in Article 1, Rule 1-02 of Regulation S-X.

“**Spin-Off**” shall have the meaning specified in Section 14.04(c).

“**Subsidiary**” means, with respect to any Person, any corporation, association, partnership or other business entity of which more than 50% of the total voting power of shares of Capital Stock or other interests (including partnership interests) entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers, general partners or trustees thereof is at the time owned or controlled, directly or indirectly, by (i) such Person; (ii) such Person and one or more Subsidiaries of such Person; or (iii) one or more Subsidiaries of such Person.

“**Successor Company**” shall have the meaning specified in Section 11.01(a).

“**Trading Day**” means a day on which (i) trading in the ADSs (or other security for which a closing sale price must be determined) generally occurs on the New York Stock Exchange or, if the ADSs (or such other security) are not then listed on the New York Stock Exchange, on the principal other U.S. national or regional securities exchange on which the ADSs (or such other security) are then listed or, if the ADSs (or such other security) are not then listed on a U.S. national or regional securities exchange, on the principal other market on which the ADSs (or such other security) are then traded and (ii) a Last Reported Sale Price for the ADSs (or closing sale price for such other security) is available on such securities exchange or market; *provided* that if the ADSs (or such other security) are not so listed or traded, “Trading Day” means a Business Day.

“**transfer**” shall have the meaning specified in Section 2.05(c) and Section 2.05(e), as applicable.

“**Transfer Agent**” shall have the meaning specified in Section 4.02.

“**Trigger Event**” shall have the meaning specified in Section 14.04(c).

“**Trust Indenture Act**” means the Trust Indenture Act of 1939, as amended, as it was in force at the date of execution of this Indenture; *provided, however,* that in the event the Trust Indenture Act of 1939 is amended after the date hereof, the term “Trust Indenture Act” shall mean, to the extent required by such amendment, the Trust Indenture Act of 1939, as so amended.

“**Trustee**” means the Person named as the “Trustee” in the first paragraph of this Indenture until a successor trustee shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “Trustee” shall mean or include each Person who is then a Trustee hereunder.

“**unit of Reference Property**” shall have the meaning specified in Section 14.07(a).

“**Unrestricted Deposit Agreement**” means the deposit agreement dated as of September 11, 2018 by and among the Company, the ADS Depository and the holders and beneficial owners of the ADSs delivered thereunder or, if amended or supplemented as provided therein, as so amended or supplemented.

“**U.S. Person**” shall have the meaning as such term is defined under Regulation S.

“**Valuation Period**” shall have the meaning specified in Section 14.04(c).

Section 1.02 *References to Interest.* Unless the context otherwise requires, any reference to interest on, or in respect of, any Note in this Indenture shall be deemed to include Additional Interest if, in such context, Additional Interest is, was or would be payable pursuant to any of Section 4.06(d), Section 4.06(e) and Section 6.03. Unless the context otherwise requires, any express mention of Additional Interest in any provision hereof shall not be construed as excluding Additional Interest in those provisions hereof where such express mention is not made.

## ARTICLE 2 ISSUE, DESCRIPTION, EXECUTION, REGISTRATION AND EXCHANGE OF NOTES

Section 2.01 *Designation and Amount.* The Notes shall be designated as the “4.50% Convertible Senior Notes due 2024.” The aggregate principal amount of Notes that may be authenticated and delivered under this Indenture is initially limited to US\$650,000,000 (as increased by an amount equal to the aggregate principal amount of any additional Notes purchased by the Initial Purchasers pursuant to the exercise of their option to purchase additional Notes as set forth in the Purchase Agreement), subject to Section 2.10 and except for Notes authenticated and delivered upon registration or transfer of, or in exchange for, or in lieu of other Notes pursuant to Section 2.05, Section 2.06, Section 2.07, Section 10.04, Section 14.02 and Section 15.04.

Section 2.02 *Form of Notes.* The Notes and the Trustee’s certificate of authentication to be borne by such Notes shall be substantially in the respective forms set forth in Exhibit A, the terms and provisions of which shall constitute, and are hereby expressly incorporated in and made a part of this Indenture. To the extent applicable, the Company and the Trustee, by their execution and delivery of this Indenture, expressly agree to such terms and provisions and to be bound thereby.

Any Global Note may be endorsed with or have incorporated in the text thereof such legends or recitals or changes not inconsistent with the provisions of this Indenture as may be required by the Depository, or as may be required to comply with any applicable law or any regulation thereunder or with the rules and regulations of any securities exchange or automated quotation system upon which the Notes may be listed or traded or designated for issuance or to conform with any usage with respect thereto, or to indicate any special limitations or restrictions to which any particular Notes are subject.

Any of the Notes may have such letters, numbers or other marks of identification and such notations, legends or endorsements as the Officers executing the same may approve (execution thereof to be conclusive evidence of such approval) and as are not inconsistent with the provisions of this Indenture, or as may be required to comply with any law or with any rule or regulation made pursuant thereto or with any rule or regulation of any securities exchange or automated quotation system on which the Notes may be listed or designated for issuance, or to conform to usage or to indicate any special limitations or restrictions to which any particular Notes are subject.

Each Global Note shall represent such principal amount of the outstanding Notes as shall be specified therein and shall provide that it shall represent the aggregate principal amount of outstanding Notes from time to time endorsed thereon and that the aggregate principal amount of outstanding Notes represented thereby may from time to time be increased or reduced to reflect redemptions, repurchases, cancellations, conversions, transfers or exchanges permitted hereby. Any endorsement of the Global Note to reflect the amount of any increase or decrease in the amount of outstanding Notes represented thereby shall be made by the Trustee or the Note Registrar in such manner and upon instructions given by the Holder of such Notes in accordance with this Indenture. Payment of principal (including the Redemption Price, the Repurchase Price and the Fundamental Change Repurchase Price, if applicable) of, and accrued and unpaid interest on, the Global Note shall be made to the Holder of such Note on the date of payment, unless a record date or other means of determining Holders eligible to receive payment is provided for herein.

Section 2.03 *Date and Denomination of Notes; Payments of Interest and Defaulted Amounts.* (a) The Notes shall be issuable in registered form without coupons in denominations of US\$1,000 principal amount and integral multiples thereof. Each Note shall be dated the date of its authentication and shall bear interest from, and including, the date specified on the face of such Note. Accrued interest on the Notes shall be computed on the basis of a 360-day year composed of twelve 30-day months and, for partial months, on the basis of actual days elapsed over a 30-day month.

(b) The Person in whose name any Note (or its Predecessor Note) is registered on the Note Register at the close of business on any Regular Record Date with respect to any Interest Payment Date shall be entitled to receive the interest payable on such Interest Payment Date. Interest shall be payable at the office or agency of the Company maintained by the Company for such purposes in the Borough of Manhattan, The City of New York, which shall initially be the Corporate Trust Office. The Company shall pay or cause the Paying Agent to pay interest (i) on any Physical Notes (A) to Holders holding Physical Notes having an aggregate principal amount of US\$5,000,000 or less, by check mailed (at the Company's expense) to the Holders of these Notes at their address as it appears in the Note Register and (B) to Holders holding Physical Notes having an aggregate principal amount of more than US\$5,000,000, either by check mailed (at the Company's expense) to such Holders or, upon application by such Holder to the Note Registrar not later than the relevant Regular Record Date, by wire transfer in immediately available funds to that Holder's account within the United States, which application shall remain in effect until the Holder notifies, in writing, the Note Registrar to the contrary or (ii) on any Global Note by wire transfer of immediately available funds to the account of the Depository or its nominee.

(c) Any Defaulted Amounts shall forthwith cease to be payable to the Holder on the relevant payment date but shall accrue interest per annum at the rate per annum borne by the Notes *plus* one percent, subject to the enforceability thereof under applicable law, from, and including, such relevant payment date, and such Defaulted Amounts together with such interest thereon shall be paid by the Company, at its election in each case, as provided in clause (i) or (ii) below:

(i) The Company may elect to make payment of any Defaulted Amounts to the Persons in whose names the Notes (or their respective Predecessor Notes) are registered at the close of business on a special record date for the payment of such Defaulted Amounts, which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of the Defaulted Amounts proposed to be paid on each Note and the date of the proposed payment (which shall be not less than 25 days after the receipt by the Trustee of such notice, unless the Trustee in its sole discretion shall consent to an earlier date), and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount to be paid in respect of such Defaulted Amounts or shall make arrangements satisfactory to the Trustee for such deposit on or prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Amounts as in this clause provided. Thereupon the Company shall fix a special record date for the payment of such Defaulted Amounts which shall be not more than 15 days and not less than 10 days prior to the date of the proposed payment, and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment. The Company shall promptly notify the Trustee in writing of such special record date and the Trustee, in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Amounts and the special record date therefor to be mailed, first-class postage prepaid (at the Company's expense), to each Holder at its address as it appears in the Note Register, not less than 10 days prior to such special record date. Notice of the proposed payment of such Defaulted Amounts and the special record date therefor having been so mailed, such Defaulted Amounts shall be paid to the Persons in whose names the Notes (or their respective Predecessor Notes) are registered at the close of business on such special record date and shall no longer be payable pursuant to the following clause (ii) of this Section 2.03(c).

(ii) The Company may make payment of any Defaulted Amounts in any other lawful manner not inconsistent with the requirements of any securities exchange or automated quotation system on which the Notes may be listed or designated for issuance, and upon such notice as may be required by such exchange or automated quotation system, if, after notice given by the Company to the Trustee of the proposed payment pursuant to this clause, such manner of payment shall be deemed practicable by the Trustee.

Section 2.04 *Execution, Authentication and Delivery of Notes.* The Notes shall be signed in the name and on behalf of the Company by the manual or facsimile signature of its Chief Executive Officer, President, Chief Financial Officer, Treasurer, Secretary or any of its Executive or Senior Vice Presidents. With the delivery of this Indenture, the Company is furnishing, and from time to time thereafter may furnish, a certificate substantially in the form of Exhibit B (an “**Authorization Certificate**”) identifying and certifying the incumbency and specimen (and/or facsimile) signatures of its active authorized Officers. Until the Trustee receives a subsequent Authorization Certificate, the Trustee shall be entitled to conclusively rely on the last Authorization Certificate delivered to it for purposes of determining the relevant authorized Officers. Typographical and other minor errors or defects in any signature shall not affect the validity or enforceability of any Note which has been duly authenticated and delivered by the Trustee.

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Notes executed by the Company to the Trustee for authentication, together with a Company Order for the authentication and delivery of such Notes, and the Trustee in accordance with such Company Order shall authenticate and deliver such Notes, without any further action by the Company hereunder.

The Company Order shall specify the amount of Notes to be authenticated (including the initial amount of Rule 144A Notes and the initial amount of Regulation S Notes), the applicable rate at which interest will accrue on such Notes, the date on which the original issuance of such Notes is to be authenticated, the date from which interest will begin to accrue, the date or dates on which interest on such Notes will be payable and the date on which the principal of such Notes will be payable and other terms relating to such Notes. The Trustee shall thereupon authenticate and deliver said Notes to or upon the written order of the Company (as set forth in such Company Order).

The Trustee shall have the right to decline to authenticate and deliver any Notes under this Section (a) unless and until it receives from the Company a Company Order instructing it to so authenticate and deliver such Notes and, if requested by the Trustee, an Officers’ Certificate and an Opinion of Counsel in accordance with Section 17.06 hereof; (b) if the Trustee determines that such action may not lawfully be taken; or (c) if the Trustee determines that such action would expose to Trustee to personal liability, unless indemnity and/or security and/or pre-funding satisfactory to the Trustee against such liability is provided to the Trustee and the Note Registrar.

Only such Notes as shall bear thereon a certificate of authentication substantially in the form set forth on the form of Note attached as Exhibit A hereto, executed manually or by facsimile by an authorized officer of the Trustee, shall be entitled to the benefits of this Indenture or be valid or obligatory for any purpose. Such certificate by the Trustee upon any Note executed by the Company shall be conclusive evidence that the Note so authenticated has been duly authenticated and delivered hereunder and that the Holder is entitled to the benefits of this Indenture.

In case any Officer of the Company who shall have signed any of the Notes shall cease to be such Officer before the Notes so signed shall have been authenticated and delivered by the Trustee, or disposed of by the Company, such Notes nevertheless may be authenticated and delivered or disposed of as though the Person who signed such Notes had not ceased to be such Officer of the Company; and any Note may be signed on behalf of the Company by such Persons as, at the actual date of the execution of such Note, shall be the Officers of the Company, although at the date of the execution of this Indenture any such Person was not such an Officer.

Section 2.05 *Exchange and Registration of Transfer of Notes; Restrictions on Transfer; Depositary.* (a) The Company shall cause to be kept at the Corporate Trust Office a register (the register maintained in such office or in any other office or agency of the Company designated pursuant to Section 4.02, the “**Note Register**”) in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Notes and of transfers of Notes. Such register shall be in written form or in any form capable of being converted into written form within a reasonable period of time. The Bank of New York Mellon is hereby initially appointed the “**Note Registrar**” and “**Transfer Agent**” for the purpose of registering Notes and transfers of Notes as herein provided. The Company may appoint one or more co-Note Registrars in accordance with Section 4.02.

Prior to the Notes Fungibility Date, upon surrender for registration of transfer of any Rule 144A Note or Regulation S Note, as the case may be, to the Note Registrar or any co-Note Registrar, and satisfaction of the requirements for such transfer set forth in this Section 2.05, the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Rule 144A Notes or Regulation S Notes, as the case may be, of any authorized denominations and of a like aggregate principal amount and bearing such restrictive legends as may be required by this Indenture. Following the Notes Fungibility Date, upon surrender for registration of transfer of any Note (other than an Affiliate Note) to the Note Registrar or any co-Note Registrar, and satisfaction of the requirements for such transfer set forth in this Section 2.05, the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Notes of any authorized denominations and of a like aggregate principal amount and not bearing the restrictive legends required by Section 2.05(c).

Prior to the Notes Fungibility Date, Rule 144A Notes and Regulation S Notes, as the case may be, may be exchanged for other Rule 144A Notes or Regulation S Notes, as the case may be, of any authorized denominations and of a like aggregate principal amount, upon surrender of the Rule 144A Notes or Regulation S Notes, as the case may be, to be exchanged at any such office or agency maintained by the Company pursuant to Section 4.02. Whenever any Rule 144A Notes or Regulation S Notes, as the case may be, are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Rule 144A Notes or Regulation S Notes, as the case may be, that the Holder making the exchange is entitled to receive, bearing registration numbers not contemporaneously outstanding. Following the Notes Fungibility Date, Notes (other than an Affiliate Note) may be exchanged for other Notes of any authorized denominations and of a like aggregate principal amount but not bearing the restrictive legend required by Section 2.05(c), upon surrender of the Notes to be exchanged at any such office or agency maintained by the Company pursuant to Section 4.02. Whenever any Notes are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Notes that the Holder making the exchange is entitled to receive, bearing registration numbers not contemporaneously outstanding.



All Notes presented or surrendered for registration of transfer or for exchange, repurchase or conversion shall (if so required by the Company, the Trustee, the Note Registrar or any co-Note Registrar) be duly endorsed, or be accompanied by a written instrument or instruments of transfer in form satisfactory to the Company and duly executed, by the Holder thereof or its attorney-in-fact duly authorized in writing.

No service charge shall be imposed by the Company, the Transfer Agent, the Note Registrar, any co-Note Registrar or the Paying Agent for any exchange or registration of transfer of Notes, but the Company may require a Holder to pay a sum sufficient to cover any documentary, stamp, issue, transfer or similar tax required in connection therewith as a result of the name of the Holder of new Notes issued upon such exchange or registration of transfer being different from the name of the Holder of the old Notes surrendered for exchange or registration of transfer. The Company shall pay the ADS Depository's fees for issuance of the ADSs.

None of the Company, the Trustee, the Note Registrar or any co-Note Registrar shall be required to exchange or register a transfer of (i) any Notes surrendered for conversion or, if a portion of any Note is surrendered for conversion, such portion thereof surrendered for conversion, (ii) any Notes, or a portion of any Note, surrendered for repurchase (and not withdrawn) in accordance with Article 15 or (iii) any Notes selected for redemption in accordance with Article 16.

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

The Trustee shall have no responsibility or obligation to any direct or indirect participant or any other Person with respect to the accuracy of the books or records, or the acts or omissions, of the Depository or its nominee or of any participant or member thereof, with respect to any ownership interest in the Notes or with respect to the delivery to any direct or indirect participant or other Person (other than the Depository and any other registered Holder of Notes) of any notice (including any notice of redemption pursuant to Article 16) or the payment of any amount, under or with respect to such Notes. All notices and communications to be given to the Holders and all payments to be made to Holders under the Notes 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 Note). The rights of beneficial owners in any Global Note shall be exercised only through the Depository subject to the customary procedures of the Depository. The Trustee may rely and shall be fully protected in relying upon information furnished by the Depository with respect to its direct or indirect participants.

The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Note (including any transfers between or among direct or indirect participants in any Global Note) other than to require delivery of such certificates as are expressly required by, and to do so if and when expressly required by, the terms of this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

(b) So long as the Notes are eligible for book-entry settlement with the Depository, unless otherwise required by law, subject to the fourth paragraph from the end of Section 2.05(c) all Notes shall be represented by one or more Notes in global form (each, a “**Global Note**”) registered in the name of the Depository or the nominee of the Depository. The transfer and exchange of beneficial interests in a Global Note that does not involve the issuance of a Physical Note shall be effected through the Depository in accordance with this Indenture (including the restrictions on transfer set forth herein) and the procedures of the Depository therefor. Prior to the Notes Fungibility Date, the Rule 144A Notes shall be represented by one or more Global Notes and the Regulation S Notes shall be represented by one or more separate Global Notes. Following the Notes Fungibility Date, the Rule 144A Notes and the Regulation S Notes (other than the Affiliate Notes) may be represented by one or more of the same Global Notes.

(c) Every Note that bears or is required under this Section 2.05(c) to bear the legend set forth in this Section 2.05(c) (together with any ADSs (including the Ordinary Shares represented thereby) delivered upon conversion of the Notes that are required to bear the legend set forth in Section 2.05(d), collectively, the “**Restricted Securities**”) shall be subject to the restrictions on transfer set forth in this Section 2.05(c) (including the legend set forth below), unless such restrictions on transfer shall be eliminated or otherwise waived by written consent of the Company, and the Holder of each such Restricted Security, by such Holder’s acceptance thereof, agrees to be bound by all such restrictions on transfer. As used in this Section 2.05(c) and Section 2.05(d), the term “**transfer**” encompasses any sale, pledge, transfer or other disposition whatsoever of any Restricted Security.

Until the date (the “**Resale Restriction Termination Date**”) that is the later of (1) the date that is one year after the last date of original issuance of the Notes, or such shorter period of time as permitted by Rule 144 under the Securities Act or any successor provision thereto, and (2) such later date, if any, as may be required by applicable law, any certificate evidencing such Note (and all securities issued in exchange therefor or substitution thereof, other than ADSs (including the Ordinary Shares represented thereby) issued upon conversion thereof, which shall bear the legend set forth in Section 2.05(d), if applicable) shall bear a legend in substantially the following form (unless such Notes have been transferred pursuant to a registration statement that has become or been declared effective under the Securities Act and that continues to be effective at the time of such transfer, or pursuant to the exemption from registration provided by Rule 144 under the Securities Act or any similar provision then in force under the Securities Act, or unless otherwise agreed by the Company in writing, with notice thereof to the Trustee):

THIS SECURITY, THE AMERICAN DEPOSITARY SHARES DELIVERABLE UPON CONVERSION OF THIS SECURITY AND THE ORDINARY SHARES REPRESENTED THEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), ARE "RESTRICTED SECURITIES" WITHIN THE MEANING OF RULES 144 UNDER THE SECURITIES ACT OR CONTRACTUALLY RESTRICTED SECURITIES, AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN, THE ACQUIRER:

(1) REPRESENTS THAT IT AND ANY ACCOUNT FOR WHICH IT IS ACTING IS (A) A "QUALIFIED INSTITUTIONAL BUYER" (WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT) OR (B) NOT A U.S. PERSON AND LOCATED OUTSIDE THE UNITED STATES (WITHIN THE MEANING OF REGULATIONS UNDER THE SECURITIES ACT) AND THAT IT EXERCISES SOLE INVESTMENT DISCRETION WITH RESPECT TO EACH SUCH ACCOUNT AND THAT IT AND ANY SUCH ACCOUNT IS NOT AN AFFILIATE OF NIO INC. (THE "COMPANY") (OTHER THAN AN ENTITY AFFILIATED WITH TENCENT HOLDINGS LIMITED AND AN ENTITY AFFILIATED WITH HILLHOUSE CAPITAL MANAGEMENT LTD. THAT PURCHASED REGULATIONS NOTES UPON THE ORIGINAL ISSUANCE THEREOF AND THEIR RESPECTIVE AFFILIATES), AND

(2) AGREES FOR THE BENEFIT OF THE COMPANY THAT IT WILL NOT OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER THIS SECURITY OR ANY BENEFICIAL INTEREST HEREIN PRIOR TO THE DATE THAT IS THE LATER OF (X) ONE YEAR AFTER THE LAST ORIGINAL ISSUE DATE HEREOF OR SUCH SHORTER PERIOD OF TIME AS PERMITTED BY RULE 144 UNDER THE SECURITIES ACT OR ANY SUCCESSOR PROVISION THERETO AND (Y) SUCH LATER DATE, IF ANY, AS MAY BE REQUIRED BY APPLICABLE LAW, EXCEPT:

- (A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF, OR
- (B) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BECOME EFFECTIVE UNDER THE SECURITIES ACT, OR
- (C) TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, OR
- (D) TO A NON-U.S. PERSON LOCATED OUTSIDE THE UNITED STATES IN ACCORDANCE WITH REGULATIONS UNDER THE SECURITIES ACT, OR
- (E) PURSUANT TO AN EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT (IF AVAILABLE).

PRIOR TO THE REGISTRATION OF ANY TRANSFER IN ACCORDANCE WITH (2)(E) ABOVE, THE COMPANY, THE DEPOSITARY AND THE TRUSTEE RESERVE THE RIGHT TO REQUIRE THE DELIVERY OF SUCH LEGAL OPINIONS, CERTIFICATIONS OR OTHER EVIDENCE AS MAY REASONABLY BE REQUIRED IN ORDER TO DETERMINE THAT THE PROPOSED TRANSFER IS BEING MADE IN COMPLIANCE WITH THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS. NO REPRESENTATION IS MADE AS TO THE AVAILABILITY OF ANY EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

NO AFFILIATE (AS DEFINED IN RULE 144 UNDER THE SECURITIES ACT) OF THE COMPANY OR PERSON THAT HAS BEEN AN AFFILIATE (AS DEFINED IN RULE 144 UNDER THE SECURITIES ACT) OF THE COMPANY DURING THE THREE IMMEDIATELY PRECEDING MONTHS (OTHER THAN AN ENTITY AFFILIATED WITH TENCENT HOLDINGS LIMITED AND AN ENTITY AFFILIATED WITH HILLHOUSE CAPITAL MANAGEMENT LTD. THAT PURCHASED REGULATION S NOTES UPON THE ORIGINAL ISSUANCE THEREOF AND THEIR RESPECTIVE AFFILIATES) MAY PURCHASE, OTHERWISE ACQUIRE OR OWN THIS NOTE, THE AMERICAN DEPOSITARY SHARES DELIVERABLE UPON CONVERSION HEREOF AND THE ORDINARY SHARES REPRESENTED THEREBY, OR A BENEFICIAL INTEREST HEREIN.

No transfer of any Note prior to the Resale Restriction Termination Date will be registered by the Note Registrar unless the applicable box on the Form of Assignment and Transfer has been checked. Notwithstanding the foregoing, Notes which in whole or in part constitute an Affiliate Note shall at all times bear the foregoing legend unless removed in connection with a transfer pursuant to a registration statement that has become effective under the Securities Act and that continues to be effective at the time of such transfer, or sold pursuant to the exemption from registration provided by Rule 144).

Any Note other than an Affiliate Note (or security issued in exchange or substitution thereof) as to which such restrictions on transfer shall have expired in accordance with their terms may, upon surrender of such Note for exchange to the Note Registrar in accordance with the provisions of this Section 2.05, be exchanged for a new Note or Notes, of like tenor and aggregate principal amount, which shall not bear the restrictive legend required by this Section 2.05(c) and shall not be assigned a restricted CUSIP number. The Company shall be entitled to instruct the Trustee in writing to so surrender any Global Note as to which such restrictions on transfer shall have expired in accordance with their terms for exchange, and, upon such instruction, the Trustee shall so surrender such Global Note for exchange; and any new Global Note so exchanged therefor shall not bear the restrictive legend specified in this Section 2.05(c) and shall not be assigned a restricted CUSIP number. The Company shall promptly notify the Trustee in writing upon the occurrence of the Resale Restriction Termination Date and after a registration statement, if any, with respect to the Notes or the ADSs (including the Ordinary Shares represented thereby) issued upon conversion of the Notes has been declared effective under the Securities Act.

Notwithstanding any other provisions of this Indenture (other than the provisions set forth in this Section 2.05(c)), a Global Note may not be transferred as a whole or in part except (i) 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 or by the Depositary or any such nominee to a successor Depositary or a nominee of such successor Depositary and (ii) for transfers of portions of a Global Note in certificated form made upon request of a member of, or a participant in, the Depositary (for itself or on behalf of a beneficial owner) by written notice given to the Trustee by or on behalf of the Depositary in accordance with customary procedures of the Depositary and in compliance with this Section 2.05(c).

The Depository shall be a clearing agency registered under the Exchange Act. The Company initially appoints The Depository Trust Company to act as Depository with respect to each Global Note. Initially, each Global Note shall be issued to the Depository, registered in the name of Cede & Co., as the nominee of the Depository, and deposited with the Bank of New York Mellon as custodian for Cede & Co.

If (i) the Depository notifies the Company at any time that the Depository is unwilling or unable to continue as depository for the Global Notes and a successor depository is not appointed within 90 days, (ii) the Depository ceases to be registered as a clearing agency under the Exchange Act and a successor depository is not appointed within 90 days or (iii) an Event of Default with respect to the Notes has occurred and is continuing and a beneficial owner of any Note requests that its beneficial interest therein be issued as a Physical Note, the Company shall execute, and the Trustee, upon receipt of an Officers' Certificate and a Company Order for the authentication and delivery of Notes, shall authenticate and deliver (x) in the case of clause (iii), a Physical Note to such beneficial owner in a principal amount equal to the principal amount of such Note corresponding to such beneficial owner's beneficial interest and (y) in the case of clause (i) or (ii), Physical Notes to each beneficial owner of the related Global Notes (or a portion thereof) in an aggregate principal amount equal to the aggregate principal amount of such Global Notes in exchange for such Global Notes, and upon delivery of the Global Notes to the Note Registrar such Global Notes shall be canceled.

Physical Notes issued in exchange for all or a part of the Global Note pursuant to this Section 2.05(c) shall be registered in such names and in such authorized denominations as the Depository, pursuant to instructions from its direct or indirect participants or otherwise, shall instruct the Note Registrar in writing. Upon execution and authentication, the Note Registrar shall deliver such Physical Notes to the Persons in whose names such Physical Notes are so registered.

At such time as all interests in a Global Note have been converted, canceled, repurchased, redeemed or transferred, such Global Note shall be, upon receipt thereof, canceled by the Note Registrar in accordance with standing procedures and existing instructions of the Depository. At any time prior to such cancellation, if any interest in a Global Note is exchanged for Physical Notes, converted, canceled, repurchased, redeemed or transferred to a transferee who receives Physical Notes therefor or any Physical Note is exchanged or transferred for part of such Global Note, the principal amount of such Global Note shall, in accordance with the standing procedures and existing instructions of the Depository, be appropriately reduced or increased, as the case may be, and an endorsement shall be made on such Global Note, by the Note Registrar, to reflect such reduction or increase.

None of the Company, the Trustee, the Paying Agent, any agent of the Company or any agent of the Trustee shall have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests of a Global Note or maintaining, supervising or reviewing any records relating to such beneficial ownership interests.

(d) Until the Resale Restriction Termination Date, any certificate representing ADSs (including the Ordinary Shares represented thereby) issued upon conversion of such Note shall bear a legend in substantially the following form (unless the Note or such ADSs (including the Ordinary Shares represented thereby) has been transferred pursuant to a registration statement that has become or been declared effective under the Securities Act and that continues to be effective at the time of such transfer, or pursuant to the exemption from registration provided by Rule 144 or any similar provision then in force under the Securities Act, or such ADS or the Ordinary Shares represented thereby have been issued upon conversion of Notes that have been transferred pursuant to a registration statement that has become or been declared effective under the Securities Act and that continues to be effective at the time of such transfer, or pursuant to the exemption from registration provided by Rule 144 under the Securities Act or any similar provision then in force under the Securities Act, or unless otherwise agreed by the Company with written notice thereof to the Note Registrar and any transfer agent for the ADSs):

THE AMERICAN DEPOSITARY SHARES EVIDENCED HEREBY AND THE ORDINARY SHARES REPRESENTED THEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), ARE "RESTRICTED SECURITIES" WITHIN THE MEANING OF RULE 144 UNDER THE SECURITIES ACT OR CONTRACTUALLY RESTRICTED SECURITIES, AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN, THE ACQUIRER:

(1) REPRESENTS THAT IT AND ANY ACCOUNT FOR WHICH IT IS ACTING IS (A) A "QUALIFIED INSTITUTIONAL BUYER" (WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT) OR (B) NOT A U.S. PERSON AND LOCATED OUTSIDE THE UNITED STATES (WITHIN THE MEANING OF REGULATION S UNDER THE SECURITIES ACT) AND THAT IT EXERCISES SOLE INVESTMENT DISCRETION WITH RESPECT TO EACH SUCH ACCOUNT AND THAT IT AND ANY SUCH ACCOUNT IS NOT AN AFFILIATE OF NIO INC. (THE "COMPANY") (OTHER THAN AN ENTITY AFFILIATED WITH TENCENT HOLDINGS LIMITED AND AN ENTITY AFFILIATED WITH HILLHOUSE CAPITAL MANAGEMENT LTD. THAT PURCHASED REGULATION S NOTES UPON THE ORIGINAL ISSUANCE THEREOF, UPON CONVERSION OF WHICH THE AMERICAN DEPOSITARY SHARES EVIDENCED HEREBY HAVE BEEN DELIVERED, AND THEIR RESPECTIVE AFFILIATES), AND

(2) AGREES FOR THE BENEFIT OF THE COMPANY THAT IT WILL NOT OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER THIS SECURITY OR ANY BENEFICIAL INTEREST HEREIN PRIOR TO THE DATE THAT IS THE LATER OF (X) ONE YEAR AFTER THE LAST ORIGINAL ISSUE DATE OF THE SERIES OF NOTES UPON THE CONVERSION OF WHICH THIS SECURITY WAS ISSUED OR SUCH SHORTER PERIOD OF TIME AS PERMITTED BY RULE 144 UNDER THE SECURITIES ACT OR ANY SUCCESSOR PROVISION THERETO AND (Y) SUCH LATER DATE, IF ANY, AS MAY BE REQUIRED BY APPLICABLE LAW, EXCEPT:

- (A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF, OR
- (B) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BECOME EFFECTIVE UNDER THE SECURITIES ACT, OR
- (C) TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, OR
- (D) TO A NON-U.S. PERSON LOCATED OUTSIDE THE UNITED STATES IN ACCORDANCE WITH REGULATIONS UNDER THE SECURITIES ACT, OR
- (E) PURSUANT TO AN EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT (IF AVAILABLE).

PRIOR TO THE REGISTRATION OF ANY TRANSFER IN ACCORDANCE WITH (2)(E) ABOVE, THE COMPANY, THE DEPOSITARY AND THE TRANSFER AGENT FOR THE COMPANY'S AMERICAN DEPOSITARY SHARES RESERVE THE RIGHT TO REQUIRE THE DELIVERY OF SUCH LEGAL OPINIONS, CERTIFICATIONS OR OTHER EVIDENCE AS MAY REASONABLY BE REQUIRED IN ORDER TO DETERMINE THAT THE PROPOSED TRANSFER IS BEING MADE IN COMPLIANCE WITH THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS. NO REPRESENTATION IS MADE AS TO THE AVAILABILITY OF ANY EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

NO AFFILIATE (AS DEFINED IN RULE 144 UNDER THE SECURITIES ACT) OF THE COMPANY OR PERSON THAT HAS BEEN AN AFFILIATE (AS DEFINED IN RULE 144 UNDER THE SECURITIES ACT) OF THE COMPANY DURING THE THREE IMMEDIATELY PRECEDING MONTHS (OTHER THAN AN ENTITY AFFILIATED WITH TENCENT HOLDINGS LIMITED AND AN ENTITY AFFILIATED WITH HILLHOUSE CAPITAL MANAGEMENT LTD. THAT PURCHASED REGULATIONS NOTES UPON THE ORIGINAL ISSUANCE THEREOF, UPON CONVERSION OF WHICH THE AMERICAN DEPOSITARY SHARES EVIDENCED HEREBY HAVE BEEN DELIVERED, AND THEIR RESPECTIVE AFFILIATES) MAY PURCHASE, OTHERWISE ACQUIRE OR OWN THE AMERICAN DEPOSITARY SHARES EVIDENCED HEREBY OR A BENEFICIAL INTEREST THEREIN.

Any such ADSs as to which such restrictions on transfer shall have expired in accordance with their terms may, upon surrender of the certificates representing such ADSs for exchange in accordance with the procedures of the transfer agent for the ADSs and the Restricted Deposit Agreement, as applicable, be exchanged for a new certificate or certificates for a like aggregate number of ADSs, which shall not bear the restrictive legend required by this Section 2.05(d).

Notwithstanding the foregoing, any ADSs received upon conversion of an Affiliate Note shall at all times bear the foregoing legend unless removed in connection with a transfer pursuant to a registration statement that has become effective under the Securities Act and that continues to be effective at the time of such transfer, or sold pursuant to the exemption from registration provided by Rule 144.

(e) Any Note or ADS delivered upon the conversion or exchange of any Note that is repurchased or owned by any Affiliate of the Company (including any Affiliate Note) may not be resold by such Affiliate unless registered under the Securities Act or resold pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act in a transaction that results in such Note or ADS, as the case may be, no longer being a "restricted security" (as defined under Rule 144 under the Securities Act). The Company shall cause any Note that is repurchased or owned by it to be surrendered to the Note Registrar for cancellation in accordance with Section 2.08.

(f) Until the Resale Restriction Termination Date, prior to any sale of Regulation S Notes, the ADSs deliverable upon conversion thereof or the Ordinary Shares represented thereby, to a qualified institutional buyer in compliance with Rule 144A, the Holder thereof shall deliver to the Trustee, Transfer Agent and/or Depositary, as the case may be, written confirmation that the prospective purchaser is a Person such Holder reasonably believes is a "qualified institutional buyer" (within the meaning of Rule 144A) that is purchasing for its own account or for the account of another qualified institutional buyer and to whom notice is given that the transfer is being made in reliance on Rule 144A.

Section 2.06 *Mutilated, Destroyed, Lost or Stolen Notes.* In case any Note shall become mutilated or be destroyed, lost or stolen, the Company in its discretion may execute, and upon receipt of a Company Order, the Trustee shall authenticate and deliver, a new Note, bearing a registration number not contemporaneously outstanding, in exchange and substitution for the mutilated Note, or in lieu of and in substitution for the Note so destroyed, lost or stolen. In every case the applicant for a substituted Note shall furnish to the Company and to the Trustee such security and/or indemnity as may be required by them to save each of them harmless from any loss, liability, cost or expense caused by or connected with such substitution, and, in every case of destruction, loss or theft, the applicant shall also furnish to the Company and to the Trustee evidence to their satisfaction of the destruction, loss or theft of such Note and of the ownership thereof.

The Trustee may authenticate any such substituted Note and deliver the same upon the receipt of such security and/or indemnity as the Trustee and the Company may require. No service charge shall be imposed by the Company, the Transfer Agent, the Note Registrar, any co-Note Registrar or the Paying Agent upon the issuance of any substitute Note, but the Company may require a Holder to pay a sum sufficient to cover any documentary, stamp, issue, transfer or similar tax required in connection therewith as a result of the name of the Holder of the new substitute Note being different from the name of the Holder of the old Note that became mutilated or was destroyed, lost or stolen. In case any Note that has matured or is about to mature or has been surrendered for repurchase (and not withdrawn) in accordance with Article 15 or has been selected for redemption in accordance with Article 16 or is about to be converted in accordance with Article 14 shall become mutilated or be destroyed, lost or stolen, the Company may, in its sole discretion, instead of issuing a substitute Note, pay or authorize the payment of or convert or authorize the conversion of the same (without surrender thereof except in the case of a mutilated Note), as the case may be, if the applicant for such payment or conversion shall furnish to the Company and to the Trustee such security and/or indemnity as may be required by them to save each of them harmless for any loss, liability, cost or expense caused by or connected with such substitution, and, in every case of destruction, loss or theft, evidence satisfactory to the Company, and the Trustee evidence of their satisfaction of the destruction, loss or theft of such Note and of the ownership thereof.



Every substitute Note issued pursuant to the provisions of this Section 2.06 by virtue of the fact that any Note is destroyed, lost or stolen shall constitute an additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Note shall be found at any time, and shall be entitled to all the benefits of (but shall be subject to all the limitations set forth in) this Indenture equally and proportionately with any and all other Notes duly issued hereunder. To the extent permitted by law, all Notes shall be held and owned upon the express condition that the foregoing provisions are exclusive with respect to the replacement, payment, redemption, conversion or repurchase of mutilated, destroyed, lost or stolen Notes and shall preclude any and all other rights or remedies notwithstanding any law or statute existing or hereafter enacted to the contrary with respect to the replacement, payment, redemption, conversion or repurchase of negotiable instruments or other securities without their surrender.

Section 2.07 *Temporary Notes.* Pending the preparation of Physical Notes, the Company may execute and the Trustee shall, upon receipt of a Company Order, authenticate and deliver temporary Notes (printed or lithographed). Temporary Notes shall be issuable in any authorized denomination, and substantially in the form of the Physical Notes but with such omissions, insertions and variations as may be appropriate for temporary Notes, all as may be determined by the Company. Every such temporary Note shall be executed by the Company and authenticated by the Trustee upon the same conditions and in substantially the same manner, and with the same effect, as the Physical Notes. Without unreasonable delay, the Company shall execute and deliver to the Trustee Physical Notes (other than any Global Note) and thereupon any or all temporary Notes (other than any Global Note) may be surrendered in exchange therefor, at each office or agency maintained by the Company pursuant to Section 4.02 and the Trustee shall upon receipt of a Company Order authenticate and deliver in exchange for such temporary Notes an equal aggregate principal amount of Physical Notes. Such exchange shall be made by the Company at its own expense and without any charge therefor. Until so exchanged, the temporary Notes shall in all respects be entitled to the same benefits and subject to the same limitations under this Indenture as Physical Notes authenticated and delivered hereunder.

Section 2.08 *Cancellation of Notes Paid, Converted, Etc.* The Company shall cause all Notes surrendered for the purpose of payment, repurchase, redemption, registration of transfer or exchange or conversion, if surrendered to any Person other than the Note Registrar (including any of the Company's agents, Subsidiaries or Affiliates), to be delivered and surrendered to the Note Registrar for cancellation. All Notes delivered to the Note Registrar shall be canceled promptly by it, and no Notes shall be authenticated in exchange thereof except as expressly permitted by any of the provisions of this Indenture. The Note Registrar shall dispose of canceled Notes in accordance with its customary procedures and, after such disposition, shall deliver a certificate of such cancellation and disposition to the Company, at the Company's written request in a Company Order.

Section 2.09 *CUSIP Numbers.* The Company in issuing the Notes may use “CUSIP” numbers (if then generally in use), and, if so, the Trustee shall use “CUSIP” numbers in all notices issued to Holders as a convenience to such Holders; *provided* that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Notes or on such notice and that reliance may be placed only on the other identification numbers printed on the Notes. The Company shall promptly notify the Trustee in writing of any change in the “CUSIP” numbers. Prior to the Notes Fungibility Date, the Rule 144A Notes and the Regulation S Notes shall have different “CUSIP” numbers. Following the Notes Fungibility Date, the Rule 144A Notes and the Regulation S Notes shall have the same “CUSIP” number; *provided* the Company shall cause any Affiliate Notes to bear a different “CUSIP” or “ISIN” number.

Section 2.10 *Additional Notes; Repurchases.* The Company may, without the consent of the Holders and notwithstanding Section 2.01, reopen this Indenture and issue additional Notes hereunder with the same terms as the Notes initially issued hereunder (except for any differences in the issue price, the issue date and interest accrued, if any, and, if applicable, restrictions on transfer in respect of such additional Notes) in an unlimited aggregate principal amount; *provided* that if any such additional Notes are not fungible with the Notes initially issued hereunder for U.S. federal income tax or securities law purposes, such additional Notes shall have a separate CUSIP number from both the Rule 144A Notes and the Regulation S Notes. Prior to the issuance of any such additional Notes, the Company shall deliver to the Trustee a Company Order, an Officers’ Certificate and an Opinion of Counsel, such Officers’ Certificate and Opinion of Counsel to cover such matters, in addition to those required by Section 17.06, as the Trustee shall reasonably request. In addition, the Company may, to the extent permitted by law, and directly or indirectly (regardless of whether such Notes are surrendered to the Company), repurchase Notes in the open market or otherwise, whether by the Company or through its Subsidiaries or through a private or public tender or exchange offer or through counterparties to private agreements. The Company shall cause any Notes so repurchased to be surrendered to the Note Registrar for cancellation in accordance with Section 2.08 and upon receipt of a Company Order, the Note Registrar shall cancel all Notes so surrendered and such Notes shall no longer be considered outstanding under this Indenture upon their cancellation. The Company may also enter into cash-settled swaps or other derivatives with respect to the Notes. For the avoidance of doubt, any Notes underlying such cash-settled swaps or other derivatives shall not be required to be surrendered to the Note Registrar for cancellation in accordance with Section 2.08 and will continue to be considered outstanding for purposes of this Indenture, subject to the provisions of Section 8.04.

ARTICLE 3  
SATISFACTION AND DISCHARGE

Section 3.01 *Satisfaction and Discharge.* This Indenture shall upon request of the Company contained in an Officers' Certificate cease to be of further effect, and the Trustee, at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture, when (a) (i) all Notes theretofore authenticated and delivered (other than (x) Notes which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 2.06 and (y) Notes for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust, as provided in Section 4.04(d)) have been delivered to the Note Registrar for cancellation; or (ii) the Company has deposited with the Paying Agent or delivered to Holders, as applicable, after the Notes have become due and payable, whether on the Maturity Date, a Redemption Date, the Repurchase Date, any Fundamental Change Repurchase Date, upon conversion or otherwise, cash or cash and ADSs (solely to satisfy the Company's Conversion Obligation, if applicable), sufficient to pay all of the outstanding Notes and all other sums due and payable under this Indenture by the Company; and (b) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture have been complied with. Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Company to the Trustee under Section 7.06 shall survive.

ARTICLE 4  
PARTICULAR COVENANTS OF THE COMPANY

Section 4.01 *Payment of Principal and Interest.* The Company covenants and agrees that it will cause to be paid the principal (including the Redemption Price, the Repurchase Price and the Fundamental Change Repurchase Price, if applicable) of, and accrued and unpaid interest on, each of the Notes at the places, at the respective times and in the manner provided herein and in the Notes.

Section 4.02 *Maintenance of Office or Agency.* The Company will maintain in the Borough of Manhattan, The City of New York, an office or agency (which will be the Corporate Trust Office initially) where the Notes may be surrendered for registration of transfer or exchange or for presentation for payment or repurchase ("**Paying Agent**") or for conversion ("**Conversion Agent**") and where notices and demands to or upon the Company in respect of the Notes and this Indenture may be served. The Company will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office, *provided, however*, that the legal service of process against the Company shall in no circumstance be made at an office or agency of the Trustee.

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

The Company hereby initially designates The Bank of New York Mellon as the Paying Agent, Note Registrar, Transfer Agent and Conversion Agent and the Corporate Trust Office and the office or agency of The Bank of New York Mellon in the Borough of Manhattan, The City of New York, each shall be considered as one such office or agency of the Company for each of the aforesaid purposes.

Section 4.03 *Appointments to Fill Vacancies in Trustee's Office.* The Company, whenever necessary to avoid or fill a vacancy in the office of Trustee, will appoint, in the manner provided in Section 7.09, a trustee, so that there shall at all times be a trustee hereunder.

Section 4.04 *Provisions as to Paying Agent.* (a) If the Company shall appoint a Paying Agent other than the Trustee, the Company will cause such Paying Agent to execute and deliver to the Trustee an instrument in which such agent shall agree with the Trustee, subject to the provisions of this Section 4.04:

(i) that it will hold all sums held by it as such agent for the payment of the principal (including the Redemption Price, the Repurchase Price and the Fundamental Change Repurchase Price, if applicable) of, and accrued and unpaid interest on, the Notes for the benefit of the Holders of the Notes;

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

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

The Company shall, on or before each due date of the principal (including the Redemption Price, the Repurchase Price and the Fundamental Change Repurchase Price, if applicable) of, or accrued and unpaid interest on, the Notes, deposit with the Paying Agent a sum sufficient to pay such principal (including the Redemption Price, the Repurchase Price and the Fundamental Change Repurchase Price, if applicable) or accrued and unpaid interest and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee of any failure to take such action; *provided* that such deposit must be received by the Paying Agent by 10:00 a.m., New York City time, one Business Day prior to the relevant due date. The Paying Agent shall not be bound to make any payment until it has received, in immediately available and cleared funds, an amount which shall be sufficient to pay, as applicable, the aggregate amount of principal (including the Redemption Price, the Repurchase Price and the Fundamental Change Repurchase Price, if applicable) of, or accrued and unpaid interest on, the Notes when such principal or interest shall become due and payable. The Paying Agent shall not be responsible or liable for any delay in making the payment if it does not receive funds before 10:00 a.m. one Business Day prior to the payment date. The Company shall use reasonable efforts to procure that, before 10:00 a.m., New York City time, on the second Business Day before each payment date, the bank effecting payment for it has confirmed by facsimile to the Paying Agent the payment instructions relating to such payment.

(b) If the Company shall act as its own Paying Agent, it will, on or before each due date of the principal (including the Redemption Price, the Repurchase Price and the Fundamental Change Repurchase Price, if applicable) of, and accrued and unpaid interest on, the Notes, set aside, segregate and hold in trust for the benefit of the Holders of the Notes a sum sufficient to pay such principal (including the Redemption Price, the Repurchase Price and the Fundamental Change Repurchase Price, if applicable) and accrued and unpaid interest so becoming due and will promptly notify the Trustee in writing of any failure to take such action and of any failure by the Company to make any payment of the principal (including the Redemption Price, the Repurchase Price and the Fundamental Change Repurchase Price, if applicable) of, or accrued and unpaid interest on, the Notes when the same shall become due and payable. Upon an Event of Default under Section 6.01(i) or Section 6.01(j) hereof, the Trustee shall automatically become the Paying Agent.

(c) Anything in this Section 4.04 to the contrary notwithstanding, the Company may, at any time, for the purpose of obtaining a satisfaction and discharge of this Indenture, or for any other reason, pay, cause to be paid or deliver to the Trustee all sums or amounts held by the Company in trust or by any Paying Agent as required by this Section 4.04, such sums or amounts to be held by the Trustee upon the trusts herein contained and upon such payment or delivery by the Company or any Paying Agent to the Trustee, the Company or such Paying Agent shall be released from all further liability but only with respect to such sums or amounts.

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

Section 4.05 *Existence*. Subject to Article 11, the Company shall do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence. The Company shall promptly provide the Trustee with written notice of any change to its name, jurisdiction of incorporation or change to its corporate organization.

Section 4.06 *Rule 144A Information Requirement and Annual Reports.* (a) At any time the Company is not subject to Section 13 or 15(d) of the Exchange Act, the Company shall, so long as any of the Notes, any ADSs deliverable upon conversion thereof or any Ordinary Shares underlying ADSs deliverable upon conversion thereof shall, at such time, constitute “restricted securities” within the meaning of Rule 144(a)(3) under the Securities Act, promptly provide to the Trustee and shall, upon written request, provide to any Holder, beneficial owner or prospective purchaser of such Notes or the ADSs deliverable upon conversion of such Notes, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act to facilitate the resale of such Notes or ADSs pursuant to Rule 144A. The Company shall take such further action as any Holder or beneficial owner of such Notes or such ADSs may reasonably request to the extent from time to time required to enable such Holder or beneficial owner to sell such Notes or ADSs in accordance with Rule 144A, as such rule may be amended from time to time.

(b) The Company shall provide to the Trustee within 15 days after the same are required to be filed with the Commission, copies of any documents or reports that the Company is required to file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act (giving effect to any applicable grace period provided by Rule 12b-25 under the Exchange Act). Any such document or report that the Company files with the Commission via the Commission’s EDGAR system (or any successor thereto) shall be deemed to be provided to the Trustee for purposes of this Section 4.06(b) at the time such documents are filed via the EDGAR system (or any successor thereto). The Trustee shall have no obligation to determine if and when the Company’s statements or reports are publically available and/or accessible electronically.

(c) Delivery of the reports and documents described in subsection (b) above to the Trustee is for informational purposes only, and the Trustee’s receipt of such shall not constitute actual or constructive notice or knowledge of any information contained therein or determinable from information contained therein, including the Company’s compliance with any of its covenants hereunder (as to which the Trustee is entitled to conclusively rely on an Officers’ Certificate).

(d) If, at any time during the six-month period beginning on, and including, the date that is six months after the last date of original issuance of the Notes, the Company fails to timely file any document or report that it is required to file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act, as applicable (after (i) giving effect to all applicable grace periods thereunder and (ii) other than reports on Form 6-K to the extent such reports are not required to satisfy the “current public information” requirements of Rule 144), or the Notes are not otherwise freely tradable by Holders other than the Company’s Affiliates or Holders that were the Company’s Affiliates at any time during the three months immediately preceding (as a result of restrictions pursuant to U.S. securities laws or the terms of this Indenture or the Notes), the Company shall pay or cause the Paying Agent to pay Additional Interest on the Notes. Such Additional Interest shall accrue on the Notes at the rate of 0.50% per annum of the principal amount of the Notes outstanding for each day during such period for which the Company’s failure to file has occurred and is continuing or the period during which the Notes are not freely tradable, as the case may be. As used in this Section 4.06(d), documents or reports that the Company is required to “file” with the Commission pursuant to Section 13 or 15(d) of the Exchange Act does not include documents or reports that the Company furnishes to the Commission pursuant to Section 13 or 15(d) of the Exchange Act.

(e) If, and for so long as, the restrictive legend on the Notes specified in Section 2.05(c) has not been removed, the Notes are assigned a restricted CUSIP or the Notes are not otherwise freely tradable by Holders other than the Company's Affiliates or Holders that were the Company's Affiliates at any time during the three months immediately preceding (without restrictions pursuant to U.S. securities laws or the terms of this Indenture or the Notes) as of the 370th day after the last date of original issuance of the Notes, the Company shall pay or cause the Paying Agent to pay Additional Interest on the Notes at a rate equal to 0.50% per annum of the principal amount of Notes outstanding until the restrictive legend on the Notes has been removed in accordance with Section 2.05(c), the Notes have been assigned an unrestricted CUSIP and the Notes are freely tradable by Holders other than the Company's Affiliates or Holders that were the Company's Affiliates at any time during the three months immediately preceding (without restrictions pursuant to U.S. securities laws or the terms of this Indenture or the Notes).

(f) Additional Interest will be payable in arrears on each Interest Payment Date following accrual in the same manner as regular interest on the Notes.

(g) The Additional Interest that is payable in accordance with Section 4.06(d) or Section 4.06(e) shall be in addition to, and not in lieu of, any Additional Interest that may be payable as a result of the Company's election pursuant to Section 6.03. In no event shall Additional Interest accrue on any day under the terms of this Indenture (taking any Additional Interest payable pursuant to Section 4.06(d) and Section 4.06(e) together with any Additional Interest payable pursuant to Section 6.03) at an annual rate in excess of 0.50%, in the aggregate, for any violation or Default caused by the Company's failure to be current in respect of its Exchange Act reporting obligations.

(h) If Additional Interest is payable by the Company pursuant to Section 4.06(d) or Section 4.06(e), the Company shall deliver to the Trustee an Officers' Certificate to that effect stating (i) the amount of such Additional Interest that is payable and (ii) the date on which such Additional Interest is payable. Unless and until a Responsible Officer of the Trustee receives at the Corporate Trust Office such a certificate, the Trustee may assume without inquiry that no such Additional Interest is payable. If the Company has paid such Additional Interest directly to the Persons entitled to it, the Company shall deliver to the Trustee an Officers' Certificate setting forth the particulars of such payment.

Section 4.07 *Additional Amounts.* (a) All payments and deliveries made by, or on behalf of, the Company or any successor to the Company under or with respect to this Indenture and the Notes, including, but not limited to, payments of principal (including, if applicable, the Redemption Price, the Repurchase Price and the Fundamental Change Repurchase Price), premium, if any, payments of interest and deliveries of ADSs or any other consideration due on conversion of a Note (together with payments of cash for any Fractional ADS or other consideration) upon conversion of the Notes, shall be made without withholding, deduction or reduction for any other collection at source for, or on account of, any present or future taxes, duties, assessments or governmental charges of whatever nature imposed or levied (including any penalties and interest related thereto) (“**applicable taxes**”) by or within any jurisdiction in which the Company or any successor to the Company is, for tax purposes, incorporated, organized or resident or doing business (each, as applicable, a “**Relevant Taxing Jurisdiction**”) or through which payment is made or deemed made (together with each Relevant Taxing Jurisdiction, a “**Relevant Jurisdiction**,” and in each case, any political subdivision or taxing authority thereof or therein) unless such withholding, deduction or reduction is required by law or by regulation or governmental policy having the force of law. In the event that any such withholding, deduction or reduction is so required, the Company or any successor to the Company shall pay or deliver to each Holder such additional amounts of cash, ADSs or other consideration, as applicable (“**Additional Amounts**”) as may be necessary to ensure that the net amount received by the beneficial owner of the Notes after such withholding, deduction or reduction (and after deducting any taxes on the Additional Amounts) shall equal the amounts that would have been received by such beneficial owner had no such withholding, deduction or reduction been required; *provided* that no Additional Amounts shall be payable:

(i) for or on account of:

(A) any applicable taxes that would not have been imposed but for:

(1) the existence of any present or former connection between the relevant Holder or beneficial owner of such Note and the Relevant Jurisdiction, other than merely acquiring or holding such Note, receiving ADSs (together with the payment of cash for any Fractional ADS) or other consideration upon conversion of such Note or the receipt of payments or the exercise or enforcement of rights thereunder, including, without limitation, such Holder or beneficial owner being or having been a national, domiciliary or resident of such Relevant Jurisdiction or treated as a resident thereof or being or having been physically present or engaged in a trade or business therein or having had a permanent establishment therein;

(2) the presentation of such Note (in cases in which presentation is required) more than 30 days after the later of the date on which the payment of the principal of (including the Redemption Price, the Repurchase Price and Fundamental Change Repurchase Price, if applicable) and interest on, such Note or the delivery of ADSs (together with payment of cash for any Fractional ADS) upon conversion of such Note became due and payable pursuant to the terms thereof or was made or duly provided for;

(3) the failure of the Holder or beneficial owner to comply with a timely written request from the Company or any successor of the Company, addressed to the Holder, to the extent such Holder or beneficial owner is legally entitled, to provide certification, information, documents or other evidence concerning such Holder’s or beneficial owner’s nationality, residence, identity or connection with the Relevant Taxing Jurisdiction, or to make any declaration or satisfy any other reporting requirement relating to such matters, if and to the extent that due and timely compliance with such request is required by statute, regulation or administrative practice of the Relevant Jurisdiction in order to reduce or eliminate any withholding or deduction as to which Additional Amounts would have otherwise been payable to such Holder or beneficial owner; or



(4) the presentation of such Note (in cases in which presentation is required) for payment in the Relevant Jurisdiction, unless such Note could not have been presented for payment elsewhere;

(B) any estate, inheritance, gift, sale, transfer, personal property or similar applicable tax or any excise or similar taxes imposed with respect to a transfer;

(C) any applicable tax that is payable otherwise than by withholding, deduction or reduction for any other collection at source from payments or deliveries under or with respect to the Notes;

(D) any applicable tax required to be withheld or deducted under Sections 1471 to 1474 of the Code (or any amended or successor versions of such Sections) (“**FATCA**”), any regulations or other official guidance thereunder, any intergovernmental agreement or agreement pursuant to Section 1471(b)(1) of the Code entered into in connection with FATCA, or any law, regulation or other official guidance enacted in any jurisdiction implementing FATCA or an intergovernmental agreement; or

(E) any combination of applicable taxes referred to in the preceding clauses (A), (B), (C) or (D); or

(ii) with respect to any payment of the principal of (including the Redemption Price, the Repurchase Price and the Fundamental Change Repurchase Price, if applicable), and interest on, such Note or the delivery of ADSs (together with payment of cash for any Fractional ADS) upon conversion of such Note to a Holder, if the Holder is a fiduciary, partnership or person other than the sole beneficial owner of that payment to the extent that such payment would be required to be included in the income under the laws of the Relevant Jurisdiction, for tax purposes, of a beneficiary or settlor with respect to the fiduciary, a partner or member of that partnership or a beneficial owner who would not have been entitled to such Additional Amounts had that beneficiary, settlor, partner, member or beneficial owner been the Holder thereof.

(b) If the Company or its successor becomes obligated to pay Additional Amounts with respect to any payment or delivery under or with respect to the Notes, the Company or its successor shall deliver to the Trustee and the Paying Agent, if other than the Trustee, on a date that is at least 30 days prior to the date of that payment or delivery (unless the obligation to pay Additional Amounts arises after the 30th day prior to that payment date, in which case the Company or its successor shall notify the Trustee and the Paying Agent promptly thereafter) an Officers’ Certificate stating the fact that Additional Amounts will be payable and the amount estimated to be so payable. The Officers’ Certificate must also set forth any other information reasonably necessary to enable the Paying Agent or the Conversion Agent, as the case may be, to pay Additional Amounts to Holders on the relevant payment date. The Trustee and the Paying Agent shall be entitled to rely solely on such Officers’ Certificate as conclusive proof that such payments are necessary. The Company or its successor shall provide the Trustee and the Paying Agent with documentation reasonably satisfactory to the Trustee evidencing the payment of Additional Amounts.

(c) The Company or its successor shall make all withholdings and deductions required by law and shall remit the full amount deducted or withheld to the relevant tax authority in accordance with applicable law. Upon request, the Company or its successor shall provide to the Trustee an official receipt or, if official receipts are not obtainable, an Officers' Certificate evidencing the payment of any applicable taxes so deducted or withheld. Copies of those receipts or other documentation, as the case may be, shall be made available by the Trustee to the Holders of the Notes upon written request.

(d) Any reference in this Indenture or the Notes in any context to the delivery of ADSs (together with payment of cash for any Fractional ADS) or other consideration upon conversion of any Note or the payment of principal of (including the Redemption Price, the Repurchase Price and Fundamental Change Repurchase Price, if applicable) and any premium or interest (including any Additional Interest) on any Note or any other amount payable with respect to such Note, shall be deemed to include payment of Additional Amounts to the extent that, in such context, Additional Amounts are, were or would be payable with respect to that amount pursuant to this Section 4.07.

(e) Notwithstanding any other provisions, the Company or its successor, the Trustee and the Paying Agent shall be entitled to make any withholding or deduction pursuant to FATCA.

(f) If the Company or its successor is required to make any deduction or withholding from any payments or deliveries with respect to the Notes, it will deliver to the Trustee official tax receipts evidencing the remittance to the relevant tax authorities of the amounts so withheld or deducted.

(g) The foregoing obligations shall survive termination or discharge of this Indenture.

Section 4.08 *Stay, Extension and Usury Laws.* The Company covenants (to the extent that it may lawfully do so) that it shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law or other law that would prohibit or forgive the Company from paying all or any portion of the principal of or interest on the Notes as contemplated herein, wherever enacted, now or at any time hereafter in force, or that may affect the covenants or the performance of this Indenture; and the Company (to the extent it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

Section 4.09 *Compliance Certificate; Statements as to Defaults.* The Company shall deliver to the Trustee within 120 days after the end of each fiscal year of the Company (beginning with the fiscal year ending on December 31, 2019) an Officers' Certificate stating that a review has been conducted of the Company's activities under this Indenture and the Company has fulfilled its obligations hereunder, and whether the authorized Officers thereof have knowledge of any Default by the Company that occurred during the previous year that is then continuing and, if so, specifying each such Default and the nature thereof.

In addition, the Company shall deliver to the Trustee, as soon as possible, and in any event within 30 days after the Company becomes aware of the occurrence of any Default if such Default is then continuing, an Officers' Certificate setting forth the details of such Default, its status and the action that the Company is taking or proposing to take in respect thereof. The Trustee shall have no responsibility to take any steps to ascertain whether any Event of Default or Default has occurred, and until (i) a Responsible Officer of the Trustee has received an Officers' Certificate regarding such an occurrence, or (ii) the Trustee has received written notice at the Corporate Trust Office from the Holders of at least 25% in aggregate principal amount of the Notes then outstanding regarding such an occurrence, the Trustee is entitled to assume, without liability, that no Event of Default or Default has occurred.

Section 4.10 *Further Instruments and Acts.* The Company will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purposes of this Indenture.

ARTICLE 5  
LISTS OF HOLDERS AND REPORTS BY THE COMPANY AND THE TRUSTEE

Section 5.01 *Lists of Holders.* The Company covenants and agrees that it will furnish or cause to be furnished to the Trustee, semi-annually, not more than 15 days after each January 15 and July 15 in each year beginning with July 15, 2019, and at such other times as the Trustee may request in writing, within 30 days after receipt by the Company of any such request (or such lesser time as the Trustee may reasonably request in order to enable it to timely provide any notice to be provided by it hereunder), a list in such form as the Trustee may reasonably require of the names and addresses of the Holders as of a date not more than 15 days (or such other date as the Trustee may reasonably request in order to so provide any such notices) prior to the time such information is furnished, except that no such list need be furnished so long as the Bank of New York Mellon is acting as Note Registrar.

Section 5.02 *Preservation and Disclosure of Lists.* The Trustee shall preserve, in as current a form as is reasonably practicable, all information as to the names and addresses of the Holders contained in the most recent list furnished to it as provided in Section 5.01 or maintained by the Trustee in its capacity as Note Registrar, if so acting. The Trustee may destroy any list furnished to it as provided in Section 5.01 upon receipt of a new list so furnished.

ARTICLE 6  
DEFAULTS AND REMEDIES

Section 6.01 *Events of Default*. The following events shall be “**Events of Default**” with respect to the Notes:

- (a) default in any payment of interest or Additional Amounts, if any, on any Note when due and payable and the default continues for a period of 30 days;
- (b) default in the payment of principal of any Note when due and payable on the Maturity Date, upon redemption, upon any required repurchase, upon declaration of acceleration or otherwise;
- (c) failure by the Company to comply with its obligation to convert the Notes in accordance with this Indenture upon exercise of a Holder’s conversion right and such failure continues for a period of five Business Days;
- (d) failure by the Company to issue a Fundamental Change Company Notice in accordance with Section 15.02(c) or notice of a Make-Whole Fundamental Change in accordance with Section 14.03(a), in each case, when due and such failure continues for a period of five Business Days;
- (e) failure by the Company to comply with its obligations under Article 11;
- (f) failure by the Company for 60 days after written notice from the Trustee or by the Trustee at the request of the Holders of at least 25% in aggregate principal amount of the Notes then outstanding has been received by the Company to comply with any of its other agreements contained in the Notes or this Indenture;
- (g) default by the Company or any Significant Subsidiary of the Company with respect to any mortgage, agreement or other instrument under which there may be outstanding, or by which there may be secured or evidenced, any indebtedness for money borrowed in excess of US\$50 million (or the foreign currency equivalent thereof) in the aggregate of the Company and/or any such Significant Subsidiary, whether such indebtedness now exists or shall hereafter be created (i) resulting in such indebtedness becoming or being declared due and payable or (ii) constituting a failure to pay the principal or interest of any such debt when due and payable at its stated maturity, upon required repurchase, upon declaration of acceleration or otherwise;
- (h) a final judgment for the payment of US\$50 million (or the foreign currency equivalent thereof) or more (excluding any amounts covered by insurance) rendered against the Company or any Significant Subsidiary of the Company, which judgment is not paid, bonded or otherwise discharged or stayed within 60 days after (i) the date on which the right to appeal thereof has expired if no such appeal has commenced, or (ii) the date on which all rights to appeal have been extinguished;
- (i) the Company or any Significant Subsidiary shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to the Company or any such Significant Subsidiary or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of the Company or any such Significant Subsidiary or any substantial part of its property, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due; or

(j) an involuntary case or other proceeding shall be commenced against the Company or any Significant Subsidiary seeking liquidation, reorganization or other relief with respect to the Company or such Significant Subsidiary or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of the Company or such Significant Subsidiary or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of 30 consecutive days.

Section 6.02 *Acceleration; Rescission and Annulment.* If one or more Events of Default shall have occurred and be continuing (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body), then, and in each and every such case (other than an Event of Default specified in Section 6.01(i) or Section 6.01(j) with respect to the Company or any of its Significant Subsidiaries), unless the principal of all of the Notes shall have already become due and payable, the Trustee may by notice in writing to the Company, or the Holders of at least 25% in aggregate principal amount of the Notes then outstanding determined in accordance with Section 8.04, by notice in writing to the Company and to the Trustee may, and the Trustee at the request of such Holders shall (subject to being indemnified and/or secured and/or pre-funded to its satisfaction), declare 100% of the principal of, and accrued and unpaid interest on, all the Notes to be due and payable immediately, and upon any such declaration the same shall become and shall automatically be immediately due and payable, notwithstanding anything contained in this Indenture or in the Notes to the contrary. If an Event of Default specified in Section 6.01(i) or Section 6.01(j) with respect to the Company or any of its Significant Subsidiaries occurs and is continuing, 100% of the principal of, and accrued and unpaid interest on, all Notes shall become and shall automatically be immediately due and payable without any action on the part of the Trustee. If an Event of Default occurs and is continuing, all agents of the Company appointed under this Indenture will be required to act on the direction of the Trustee.

The immediately preceding paragraph, however, is subject to the conditions that if, at any time after the principal of the Notes shall have been so declared due and payable, and before any judgment or decree for the payment of the monies due shall have been obtained or entered as hereinafter provided, the Company shall pay or shall deposit with the Trustee a sum sufficient to pay installments of accrued and unpaid interest upon all Notes and the principal of any and all Notes that shall have become due otherwise than by acceleration (with interest on overdue installments of accrued and unpaid interest to the extent that payment of such interest is enforceable under applicable law, and on such principal at the rate per annum borne by the Notes *plus* one percent) and amounts due to the Trustee pursuant to Section 7.06, and if (1) rescission would not conflict with any judgment or decree of a court of competent jurisdiction and (2) any and all existing Events of Default under this Indenture, other than the nonpayment of the principal of and accrued and unpaid interest on Notes that shall have become due solely by such acceleration, shall have been cured or waived pursuant to Section 6.09, then and in every such case (except as provided in the immediately succeeding sentence) the Holders of a majority in aggregate principal amount of the Notes then outstanding, by written notice to the Company and to the Trustee, may waive all Defaults or Events of Default with respect to the Notes and rescind and annul such declaration and its consequences and such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Indenture; but no such waiver or rescission and annulment shall extend to or shall affect any subsequent Default or Event of Default, or shall impair any right consequent thereon. Notwithstanding anything to the contrary herein, no such waiver or rescission and annulment shall extend to or shall affect any Default or Event of Default resulting from (i) the nonpayment of the principal of, or accrued and unpaid interest on, any Notes, (ii) a failure to repurchase any Notes when required or (iii) a failure to pay or deliver, as the case may be, the consideration due upon conversion of the Notes.

Section 6.03 *Additional Interest.* Notwithstanding anything in this Indenture or in the Notes to the contrary, to the extent the Company elects, the sole remedy for Event of Default relating to the Company's failure to comply with its obligations as set forth in Section 4.06(b) shall after the occurrence of such an Event of Default consist exclusively of the right to receive Additional Interest on the Notes at a rate equal to:

(a) 0.25% per annum of the principal amount of the Notes outstanding for each day during the period beginning on, and including, the date on which such an Event of Default first occurs and ending on the earlier of (i) the date on which such Event of Default is cured or validly waived and (ii) the 90th day immediately following, and including, the date on which such Event of Default first occurred; and

(b) if such Event of Default has not been cured or validly waived prior to the 91st day immediately following, and including, the date on which such Event of Default first occurred, 0.50% per annum of the principal amount of the Notes outstanding for each day during the period beginning on, and including, the 91st day immediately following, and including, the date on which such an Event of Default first occurred and ending on the earlier of (i) the date on which such Event of Default is cured or validly waived and (ii) the 180th day immediately following, and including, the date on which such Event of Default first occurred.

Interest payable pursuant to this Section 6.03 shall be in addition to, not in lieu of, any Additional Interest payable pursuant to Section 4.06(d) or Section 4.06(e). In no event shall Additional Interest accrue on the Notes on any day under this Indenture (taking any Additional Interest payable pursuant to this Section 6.03 together with any Additional Interest payable pursuant to Section 4.06(d) and Section 4.06(e)) at an annual rate accruing in excess of 0.50%, in the aggregate, for any violation or Default caused by the Company's failure to be current in respect of its Exchange Act reporting obligations. If the Company so elects, such Additional Interest shall be payable in the same manner and on the same dates as regular interest on the Notes. On the 181st day after such Event of Default (if the Event of Default with respect to the Company's obligations under Section 4.06(b) is not cured or waived prior to such 181st day), the Notes will be subject to acceleration as provided in Section 6.02. In the event the Company does not elect to pay Additional Interest following an Event of Default in accordance with this Section 6.03 or the Company elected to make such payment but does not pay the Additional Interest when due, the Notes shall be subject to acceleration as provided in Section 6.02.

In order to elect to pay Additional Interest as the sole remedy during the first 180 days after the occurrence of any Event of Default described in the immediately preceding paragraph, the Company must notify in writing all Holders of the Notes, the Trustee and the Paying Agent of such election prior to the beginning of such 180-day period. Upon the failure to timely give such notice, the Notes shall be immediately subject to acceleration as provided in Section 6.02.

Section 6.04 *Payments of Notes on Default; Suit Therefor.* If an Event of Default described in clause (a) or (b) of Section 6.01 shall have occurred, the Company shall, upon demand of the Trustee acting in its own discretion or at the request of Holders of at least 25% in aggregate principal amount of the Notes then outstanding determined in accordance with Section 8.04 and subject to indemnity and/or security and/or pre-funding satisfactory to the Trustee, pay to the Trustee, for the benefit of the Holders of the Notes, the whole amount then due and payable on the Notes for principal and interest, if any, with interest on any overdue principal and interest, if any, at the rate per annum borne by the Notes at such time *plus* one percent, and, in addition thereto, such further amount as shall be sufficient to cover any amounts due to the Trustee under Section 7.06. If the Company shall fail to pay such amounts forthwith upon such demand, the Trustee, in its own name and as trustee of an express trust, may institute a judicial proceeding for the collection of the sums so due and unpaid, may prosecute such proceeding to judgment or final decree and may enforce the same against the Company or any other obligor upon the Notes and collect the moneys adjudged or decreed to be payable in the manner provided by law out of the property of the Company or any other obligor upon the Notes, wherever situated.

In the event there shall be pending proceedings for the bankruptcy or for the reorganization of the Company or any other obligor on the Notes under Title 11 of the United States Code, or any other applicable law, or in case a receiver, assignee or trustee in bankruptcy or reorganization, liquidator, sequestrator or similar official shall have been appointed for or taken possession of the Company or such other obligor, the property of the Company or such other obligor, or in the event of any other judicial proceedings relative to the Company or such other obligor upon the Notes, or to the creditors or property of the Company or such other obligor, the Trustee, irrespective of whether the principal of the Notes shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand pursuant to the provisions of this Section 6.04, shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the whole amount of principal and accrued and unpaid interest, if any, in respect of the Notes, and, in case of any judicial proceedings, to file such proofs of claim and other papers or documents and to take such other actions as it may deem necessary or advisable in order to have the claims of the Trustee (including any claim for the compensation, properly incurred expenses, properly incurred disbursements and advances of the Trustee, its agents and counsel) and of the Holders allowed in such judicial proceedings relative to the Company or any other obligor on the Notes, its or their creditors, or its or their property, and to collect and receive any monies or other property payable or deliverable on any such claims, and to distribute the same after the deduction of any amounts due to the Trustee under Section 7.06; and any receiver, assignee or trustee in bankruptcy or reorganization, liquidator, custodian or similar official is hereby authorized by each of the Holders to make such payments to the Trustee, as administrative expenses, and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it for compensation, properly incurred expenses, advances and properly incurred disbursements, including agents and counsel fees and expenses, and including any other amounts due to the Trustee under Section 7.06, incurred by it up to the date of such distribution. To the extent that such payment of compensation, properly incurred expenses, advances and properly incurred disbursements out of the estate in any such proceedings shall be denied for any reason, payment of the same shall be secured by a lien on, and shall be paid out of, any and all distributions, dividends, monies, securities and other property that the Holders of the Notes may be entitled to receive in such proceedings, whether in liquidation or under any plan of reorganization or arrangement or otherwise.

Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting such Holder or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

All rights of action and of asserting claims under this Indenture, or under any of the Notes, may be enforced by the Trustee without the possession of any of the Notes, or the production thereof at any trial or other proceeding relative thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its own name or as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the compensation, properly incurred expenses, properly incurred disbursements and advances of the Trustee, its agents and counsel, be for the ratable benefit of the Holders of the Notes.

In any proceedings brought by the Trustee (and in any proceedings involving the interpretation of any provision of this Indenture to which the Trustee shall be a party) the Trustee shall be held to represent all the Holders of the Notes, and it shall not be necessary to make any Holders of the Notes parties to any such proceedings.

In case the Trustee shall have proceeded to enforce any right under this Indenture and such proceedings shall have been discontinued or abandoned because of any waiver pursuant to Section 6.09 or any rescission and annulment pursuant to Section 6.02 or for any other reason or shall have been determined adversely to the Trustee, then and in every such case the Company, the Holders, and the Trustee shall, subject to any determination in such proceeding, be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of the Company, the Holders, and the Trustee shall continue as though no such proceeding had been instituted.



Section 6.05 *Application of Monies Collected by Trustee.* Any monies collected by the Trustee pursuant to this Article 6 with respect to the Notes shall be applied in the following order, at the date or dates fixed by the Trustee for the distribution of such monies, upon presentation of the several Notes, and stamping thereon the payment, if only partially paid, and upon surrender thereof, if fully paid:

**First**, to the payment of all amounts due the Trustee, including to its agents and counsel, under Section 7.06 and any payments due to the Paying Agent, the Transfer Agent, the Conversion Agent and the Note Registrar;

**Second**, in case the principal of the outstanding Notes shall not have become due and be unpaid, to the payment of interest on, the Notes in default in the order of the date due of the payments of such interest, with interest (to the extent that such interest has been collected by the Trustee) upon such overdue payments at the rate per annum borne by the Notes at such time (including, without duplication, any additional interest on such overdue payments pursuant to Section 6.04), such payments to be made ratably to the Persons entitled thereto;

**Third**, in case the principal of the outstanding Notes shall have become due, by declaration or otherwise, and be unpaid to the payment of the whole amount (including, if applicable, the payment of the Redemption Price, Repurchase Price or Fundamental Change Repurchase Price and any cash due upon conversion) then owing and unpaid upon the Notes for principal and interest, if any, with interest on the overdue principal and, to the extent that such interest has been collected by the Trustee, upon overdue installments of interest at the rate per annum borne by the Notes at such time *plus* one percent, and in case such monies shall be insufficient to pay in full the whole amounts so due and unpaid upon the Notes, then to the payment of such principal (including, if applicable, the Redemption Price, Repurchase Price or Fundamental Change Repurchase Price and the cash due upon conversion) and interest without preference or priority of principal over interest, or of interest over principal or of any installment of interest over any other installment of interest, or of any Note over any other Note, ratably to the aggregate of such principal (including, if applicable, the Redemption Price, Repurchase Price or Fundamental Change Repurchase Price) and accrued and unpaid interest; and

**Fourth**, to the payment of the remainder, if any, to the Company.

Section 6.06 *Proceedings by Holders.* Except to enforce the right to receive payment of principal (including, if applicable, the Redemption Price, the Repurchase Price or Fundamental Change Repurchase Price) or interest when due, or the right to receive payment or delivery of the consideration due upon conversion, no Holder of any Note shall have any right by virtue of or by availing of any provision of this Indenture to institute any suit, action or proceeding in equity or at law upon or under or with respect to this Indenture, or for the appointment of a receiver, trustee, liquidator, custodian or other similar official, or for any other remedy hereunder, unless:

- (a) such Holder previously shall have given to the Trustee written notice of an Event of Default and of the continuance thereof, as herein provided;
- (b) Holders of at least 25% in aggregate principal amount of the Notes then outstanding shall have made written request upon the Trustee to institute such action, suit or proceeding in its own name as Trustee hereunder;
- (c) such Holders shall have offered to the Trustee such security and/or indemnity and/or pre-funding satisfactory to it against any loss, liability or expense to be incurred therein or thereby;

(d) the Trustee for 60 days after its receipt of such notice, request and offer of security and/or indemnity and/or pre-funding, shall have neglected or refused to institute any such action, suit or proceeding; and

(e) no direction that, in the opinion of the Trustee, is inconsistent with such written request shall have been given to the Trustee by the Holders of a majority of the aggregate principal amount of the Notes then outstanding within such 60-day period pursuant to Section 6.09,

it being understood and intended, and being expressly covenanted by the taker and Holder of every Note with every other taker and Holder and the Trustee that no one or more Holders shall have any right in any manner whatever by virtue of or by availing of any provision of this Indenture to affect, disturb or prejudice the rights of any other Holder, or to obtain or seek to obtain priority over or preference to any other such Holder, or to enforce any right under this Indenture, except in the manner herein provided and for the equal, ratable and common benefit of all Holders (except as otherwise provided herein). For the protection and enforcement of this Section 6.06, each and every Holder and the Trustee shall be entitled to such relief as can be given either at law or in equity.

Notwithstanding any other provision of this Indenture and any provision of any Note, the right of any Holder to receive payment or delivery, as the case may be, of (x) the principal (including the Redemption Price, the Repurchase Price and the Fundamental Change Repurchase Price, if applicable) of, (y) accrued and unpaid interest on, and (z) the consideration due upon conversion of, such Note, on or after the respective due dates expressed or provided for in such Note or in this Indenture, or to institute suit for the enforcement of any such payment or delivery, as the case may be, on or after such respective dates against the Company shall not be impaired or affected without the consent of such Holder.

Section 6.07 *Proceedings by Trustee.* In case of an Event of Default, the Trustee may in its discretion proceed to protect and enforce the rights vested in it by this Indenture by such appropriate judicial proceedings as are necessary to protect and enforce any of such rights, either by suit in equity or by action at law or by proceeding in bankruptcy or otherwise, whether for the specific enforcement of any covenant or agreement contained in this Indenture or in aid of the exercise of any power granted in this Indenture, or to enforce any other legal or equitable right vested in the Trustee by this Indenture or by law.

Section 6.08 *Remedies Cumulative and Continuing.* Except as provided in the last paragraph of Section 2.06, all powers and remedies given by this Article 6 to the Trustee or to the Holders shall, to the extent permitted by law, be deemed cumulative and not exclusive of any thereof or of any other powers and remedies available to the Trustee or the Holders of the Notes, by judicial proceedings or otherwise, to enforce the performance or observance of the covenants and agreements contained in this Indenture, and no delay or omission of the Trustee or of any Holder of any of the Notes to exercise any right or power accruing upon any Default or Event of Default shall impair any such right or power, or shall be construed to be a waiver of any such Default or Event of Default or any acquiescence therein; and, subject to the provisions of Section 6.06, every power and remedy given by this Article 6 or by law to the Trustee or to the Holders may be exercised from time to time, and as often as shall be deemed expedient, by the Trustee or by the Holders.

Section 6.09 *Direction of Proceedings and Waiver of Defaults by Majority of Holders.* The Holders of a majority of the aggregate principal amount of the Notes at the time outstanding determined in accordance with Section 8.04 shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee with respect to Notes; *provided, however,* that (a) such direction shall not be in conflict with any rule of law or with this Indenture, and (b) the Trustee may take any other action deemed proper by the Trustee that is not inconsistent with such direction. The Trustee may refuse to follow any direction that would involve the Trustee in personal liability, or if it is not provided with security and/or indemnity and/or pre-funding to its satisfaction, or that the Trustee determines is unduly prejudicial to the rights of any other Holder. In addition, the Trustee will not be required to expend its own funds under any circumstances. The Holders of a majority in aggregate principal amount of the Notes at the time outstanding determined in accordance with Section 8.04 may on behalf of the Holders of all of the Notes waive any past Default or Event of Default hereunder and its consequences except (i) a default in the payment of accrued and unpaid interest on, or the principal (including, if applicable, the Redemption Price, Repurchase Price or Fundamental Change Repurchase Price) of, the Notes when due that has not been cured pursuant to the provisions of Section 6.02, (ii) a failure by the Company to pay or deliver, or cause to be delivered, as the case may be, the consideration due upon conversion of the Notes or (iii) a default in respect of a covenant or provision hereof which under Article 10 cannot be modified or amended without the consent of each Holder of an outstanding Note affected. Upon any such waiver the Company, the Trustee and the Holders of the Notes shall be restored to their former positions and rights hereunder; but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereon. Whenever any Default or Event of Default hereunder shall have been waived as permitted by this Section 6.09, said Default or Event of Default shall for all purposes of the Notes and this Indenture be deemed to have been cured and to be not continuing; but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereon.

Section 6.10 *Notice of Defaults and Events of Default.* If a Default or Event of Default occurs and is continuing and is notified in writing to the Trustee, the Trustee shall, within 90 days after the occurrence and continuance of such Default or Event of Default, mail to all Holders (at the Company's expense) as the names and addresses of such Holders appear upon the Note Register, notice of all Defaults so notified in writing, unless such Defaults shall have been cured or waived before the giving of such notice; *provided* that the Trustee shall not be deemed to have knowledge of any occurrence of a Default or Event unless it has received written notice. Except in the case of a Default in the payment of the principal of (including the Redemption Price, the Repurchase Price and the Fundamental Change Repurchase Price, if applicable), or accrued and unpaid interest on, any of the Notes or a Default in the payment or delivery of the consideration due upon conversion, the Trustee shall be protected in withholding such notice if and so long as the Trustee's board of directors, a Responsible Officer, an executive committee or a committee of Responsible Officers of the Trustee (in its sole discretion) in good faith determines that the withholding of such notice is in the interests of the Holders.

Section 6.11 *Undertaking to Pay Costs.* All parties to this Indenture agree, and each Holder of any Note by its acceptance thereof shall be deemed to have agreed, that any court may, in its discretion, require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit and that such court may in its discretion assess costs, including attorneys' fees and expenses, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; *provided* that the provisions of this Section 6.11 (to the extent permitted by law) shall not apply to any suit instituted by or against the Trustee, to any suit instituted by any Holder, or group of Holders, holding in the aggregate more than 10% in principal amount of the Notes at the time outstanding determined in accordance with Section 8.04, or to any suit instituted by any Holder for the enforcement of the payment of the principal of or accrued and unpaid interest on any Note (including, but not limited to, the Redemption Price and the Repurchase Price and Fundamental Change Repurchase Price with respect to the Notes being repurchased as provided in this Indenture) on or after the due date expressed or provided for in such Note or to any suit for the enforcement of the right to convert any Note in accordance with the provisions of Article 14.

ARTICLE 7  
CONCERNING THE TRUSTEE

Section 7.01 *Duties and Responsibilities of Trustee.* The Trustee, prior to the occurrence of an Event of Default and after the curing or waiver of all Events of Default that may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture and no implied covenants or obligations will be read into the Indenture against the Trustee. In case an Event of Default, of which the Trustee has actual written notice, has occurred that has not been cured or waived the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs; *provided* that if an Event of Default occurs and is continuing, the Trustee will be under no obligation to exercise any of the rights or powers under this Indenture at the request or direction of any of the Holders unless such Holders have offered to the Trustee indemnity and/or security and/or pre-funding satisfactory to it against the costs, liabilities or expenses that might be incurred by it in compliance with such request or direction.

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

- (a) prior to the occurrence of an Event of Default and after the curing or waiving of all Events of Default that may have occurred:
  - (i) the duties and obligations of the Trustee shall be determined solely by the express provisions of this Indenture, and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of gross negligence and willful misconduct on the part of the Trustee, as proven in a final decision of a court of competent jurisdiction, the Trustee may conclusively and without liability rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but, in the case of any such certificates or opinions that by any provisions hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of any mathematical calculations or other facts, statements, opinions or conclusions stated therein);

(b) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer or Responsible Officers of the Trustee, unless it shall be proved in a final decision in a court of competent jurisdiction that the Trustee was grossly negligent in ascertaining the pertinent facts;

(c) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of not less than a majority of the aggregate principal amount of the Notes at the time outstanding determined as provided in Section 8.04 relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture;

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

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

(f) if any party fails to deliver a notice relating to an event the fact of which, pursuant to this Indenture, requires notice to be sent to the Trustee, the Trustee may conclusively and without liability rely on its failure to receive such notice as reason to act as if no such event occurred;

(g) [RESERVED]

(h) in the event that the Trustee is also acting as Note Registrar, Paying Agent, Conversion Agent or Transfer Agent hereunder, the rights, immunities, privileges, disclaimers from liability and protections (including the right to compensation and indemnity) afforded to the Trustee pursuant to this Article 7 shall also be afforded to such Note Registrar, Paying Agent, Conversion Agent or Transfer Agent;

(i) the Trustee shall have no duty to inquire, no duty to determine and no duty to monitor as to the performance of the Company's covenants in this Indenture or the financial performance of the Company; the Trustee shall be entitled to assume, until it has received written notice in accordance with this Indenture, that the Company is properly performing its duties hereunder;

(j) the Trustee shall be under no obligation to enforce any of the provisions of this Indenture unless it is instructed by Holders of at least 25% of the aggregate principal amount of outstanding Notes and is provided with security and/or indemnity and/or pre-funding satisfactory to it;

(k) the Trustee will be under no obligation to exercise any of its rights or powers under this Indenture at the request or direction of any of the Holders unless such Holders have offered to the Trustee indemnity and/or security and/or pre-funding satisfactory to it against any costs, expenses and liabilities that might be incurred by it in compliance with such requests or direction.

(l) before the Trustee acts or refrains from acting, it may require an Officers' Certificate or an Opinion of Counsel prepared and delivered at the cost of the Company conforming to Section 17.06 and the Trustee and the Agents may rely conclusively on such certificate or opinion and will not be liable for any action it takes or omits to take in good faith in reliance on such Officers' Certificate or Opinion of Counsel;

(m) in connection with the exercise by it of its trusts, powers, authorities or discretions (including, without limitation, any modification, waiver, authorization or determination), the Trustee shall have regard to the general interests of the Holders as a class but shall not have regard to any interests arising from circumstances particular to individual Holders (whatever their number) and in particular, but without limitation, shall not have regard to the consequences of the exercise of its trusts, powers, authorities or discretions for individual Holders (whatever their number) resulting from their being for any purpose domiciled or resident in, or otherwise connected with, or subject to the jurisdiction of, any country, state or territory; and

(n) the Trustee is not obliged to do or omit to do anything which in its reasonable opinion, would or may be illegal or would constitute a breach of any fiduciary duty or duty of confidentiality, or any law, rule, regulation, or any decree, order or judgment of any court, or practice, request, direction, notice, announcement or similar action (whether or not having the force of law) of any relevant government, government agency, regulatory authority, stock exchange or self-regulatory organization to which the Trustee is subject. The Trustee may without liability to do anything which is, in its reasonable opinion, necessary to comply with any such law, directive or regulations.

None of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers.

Section 7.02 *Reliance on Documents, Opinions, Etc.* Except as otherwise provided in Section 7.01:

(a) the Trustee may conclusively and without liability rely and shall be fully protected in acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, Note, coupon or other paper or document (whether in its original or facsimile form) believed by it in good faith to be genuine and to have been signed or presented by the proper party or parties;

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

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

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

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

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

(g) under no circumstances and notwithstanding any contrary provision included herein, neither the Trustee, the Paying Agent, the Conversion Agent nor the Note Registrar shall be responsible or liable for special, indirect, punitive, or consequential damages or loss of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether any of them have been advised of the likelihood of such loss or damage and regardless of the form of action; this provision shall remain in full force and effect notwithstanding the discharge of the Notes, the termination of this Indenture or the resignation, replacement or removal of the Trustee, the Paying Agent, the Conversion Agent and the Note Registrar;

(h) the Trustee, the Paying Agent, the Conversion Agent and the Note Registrar may refrain from taking any action in any jurisdiction if the taking of such action in that jurisdiction would, in its opinion based upon legal advice in the relevant jurisdiction, be contrary to any law of that jurisdiction or, to the extent applicable, of New York; furthermore, the Trustee may also refrain from taking such action if it would otherwise render it liable to any person in that jurisdiction or New York or if, in its opinion based on such legal advice, it would not have the power to do the relevant thing in that jurisdiction by virtue of any applicable law in that jurisdiction or in New York or if it is determined by any court or other competent authority in that jurisdiction that it does not have such power;

(i) the Company understands that The Bank of New York Mellon Corporation is a global financial organization that operates in and provides services and products to clients through its affiliates, branches, representative offices and/or subsidiaries located in multiple jurisdictions (collectively, the “**BNY Mellon Group**” and each a “**BNY Mellon Entity**”). The BNY Mellon Group may: (i) use and/or centralize in one or more BNY Mellon Entity in connection with its performance of the functions, duties and services provided and any other obligations under this Indenture and/or the Notes and in certain other activities (the “**Centralized Functions**”), including, without limitation, audit, accounting, tax, administration, risk management, credit, legal, compliance, operation, sales and marketing, product communication, relationship management, information technology, records and data storage, performance measurement, data aggregation and the compilation and analysis of information and data regarding the Company (which, for purposes of this sub-Section 7.02(i), includes the name and business contact information for the employees and representatives of the Company and any personal data) and the accounts established pursuant to the transactions contemplated in this Indenture and/or the Notes (“**Client Information**”); and (ii) use third party service providers to store, maintain and process Client Information (“**Outsourced Functions**”). Notwithstanding anything to the contrary contained elsewhere in this Indenture and/or the Notes and solely in connection with the Centralized Functions and/or Outsourced Functions, the Company consents to the: (i) collection, use and storage of, and authorizes the BNY Mellon Group to collect, use and store, Client Information within and outside of any jurisdiction, including without limitation Australia, the European Economic Area, Hong Kong, the PRC, Japan, Singapore, India, the British Virgin Islands and the United States of America; and (ii) disclosure of, and authorizes the BNY Mellon Group to disclose, Client Information to: (A) any other BNY Mellon Entity (and their respective officers, directors and employees); and (B) third-party service providers (but solely in connection with Outsourced Functions) who are required to maintain the confidentiality of Client Information. In addition, the BNY Mellon Group may aggregate Client Information with other data collected and/or calculated by the BNY Mellon Group, and the BNY Mellon Group will own all such aggregated data, provided that the BNY Mellon Group shall not distribute the aggregated data in a format that identifies Client Information with the Company specifically. The Company represents to the BNY Mellon Group that it is authorized to consent to the foregoing and that the disclosure of Client Information in connection with the Centralized Functions and/or Outsourced Functions does not violate any relevant data protection legislation. The Company also consents to the disclosure of Client Information to governmental, tax, regulatory, law enforcement and other authorities in jurisdictions where the BNY Mellon Group operates and otherwise as required by law, rule, or guideline (including any tax and swap trade data reporting regulations);

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

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



(l) the Trustee shall not be responsible or liable for any action it takes or omits to take in good faith which it reasonably believes to be authorized or within its rights or powers;

(m) the Trustee shall not be responsible or liable for any action taken or omitted by it in good faith at the direction, in accordance with Section 6.09, of the Holders of not less than a majority in aggregate principal amount of the Notes at the time outstanding determined in accordance with Section 8.04 as to the time, method and place of conducting any proceeding for any remedy available to the Trustee or the exercising of any power conferred by this Indenture; and

(n) the Trustee shall not be responsible or any inaccuracy in the information obtained from the Company or for any inaccuracy or omission in the records which may result from such information or any failure by the Trustee to perform its duties as set forth herein as a result of any inaccuracy or incompleteness of such information; and

(o) neither the Trustee nor any agent thereof shall have any responsibility or liability for any actions taken or not taken by the Depository.

Section 7.03 *No Responsibility for Recitals, Etc.* The recitals, statements, warranties and representations contained herein and in the Notes (except in the Trustee's certificate of authentication) shall be taken as the statements of the Company, and the Trustee assumes no responsibility for the correctness of the same. The Trustee makes no representations as to the accuracy or correctness of the same or for any failure by the Company or any other party to disclose events that may have occurred and may affect the significance or accuracy of such information, or the execution, legality, effectiveness, adequacy, genuineness, validity, enforceability or admissibility in evidence of this Indenture or of the Notes. The Trustee shall not be accountable for the use or application by the Company of any Notes or the proceeds of any Notes authenticated and delivered by the Trustee in conformity with the provisions of this Indenture. Notwithstanding the generality of the foregoing, each Holder shall be solely responsible for making its own independent appraisal of, and investigation into, the financial condition, creditworthiness, condition, affairs, status and nature of the Company, and the Trustee shall not at any time have any responsibility for the same and each Holder shall not rely on the Trustee in respect thereof.

Section 7.04 *Trustee, Paying Agents, Conversion Agents or Note Registrar May Own Notes.* The Trustee, any Paying Agent, any Conversion Agent or Note Registrar, in its individual or any other capacity, may engage in business and contractual relationships with the Company or its Affiliates and may become the owner or pledgee of Notes with the same rights it would have if it were not the Trustee, Paying Agent, Conversion Agent or Note Registrar, and nothing herein shall obligate any of them to account for any profits earned from any business or transactional relationship.

Section 7.05 *Monies to Be Held in Trust.* All monies received by the Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received. Money held by the Trustee in trust or by the Paying Agent hereunder need not be segregated from other funds except to the extent required by law. Neither the Trustee nor the Paying Agent shall be under any liability for interest on any money received by it hereunder.

Section 7.06 *Compensation and Expenses of Trustee.* (a) The Company covenants and agrees to pay to the Trustee from time to time, and the Trustee shall be entitled to, compensation for all services rendered by it hereunder in any capacity (which shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust) as mutually agreed to in writing between the Trustee and the Company (which sum shall be paid free and clear of deduction and withholding on account of taxation, set-off and counterclaim), and the Company will pay or reimburse the Trustee upon its request for all properly incurred expenses, disbursements and advances properly incurred or made by the Trustee in accordance with any of the provisions of this Indenture in any capacity thereunder (including the compensation and the properly incurred expenses and disbursements of its agents and counsel and of all Persons not regularly in its employ) except any such expense, disbursement or advance as shall have been caused by its gross negligence or willful misconduct as proven in a final decision in a court of competent jurisdiction. The Company also covenants to indemnify the Trustee (which for the purposes of this Section 7.06 shall be deemed to include its officers, directors, agents and employees) in any capacity under this Indenture (including without limitation as Note Registrar, Transfer Agent, Conversion Agent and Paying Agent) and any other document or transaction entered into in connection herewith, and to hold it harmless against, any loss, claim, damage, liability or expense (whether arising from third party claims or claims by or against the Company) incurred without gross negligence or willful misconduct on the part of the Trustee, its officers, directors, agents or employees, as the case may be, as proven in a final decision of a court of competent jurisdiction, and arising out of or in connection with the acceptance or administration of this Indenture or in any other capacity hereunder, including the costs and expenses of defending themselves against any claim of liability in the process of enforcing this indemnity. The obligations of the Company under this Section 7.06 to compensate or indemnify the Trustee and to pay or reimburse the Trustee for expenses, disbursements and advances shall be secured by a senior claim to which the Notes are hereby made subordinate on all money or property held or collected by the Trustee, except, subject to the effect of Section 6.05, funds held in trust herewith for the benefit of the Holders of particular Notes. The Trustee's right to receive payment of any amounts due under this Section 7.06 shall not be subordinate to any other liability or indebtedness of the Company. The indemnity under this Section 7.06(a) is payable upon demand by the Trustee. The obligation of the Company under this Section 7.06(a) shall survive the satisfaction and discharge of the Notes, the termination or discharge of this Indenture and the resignation, replacement or removal of the Trustee. The indemnification provided in this Section 7.06(a) shall extend to the officers, directors, agents and employees of the Trustee. Subject to Section 7.02(e), any negligence or misconduct of any agent, delegate, attorney or representative, in each case, of the Trustee, shall not affect indemnification of the Trustee.

Without prejudice to any other rights available to the Trustee under applicable law, when the Trustee and its agents incur expenses or render services after an Event of Default specified in Section 6.01(i) or Section 6.01(j) occurs, the expenses and the compensation for the services are intended to constitute expenses of administration under any bankruptcy, insolvency or similar laws. If a Default or Event of Default shall have occurred or if the Trustee finds it expedient or necessary or is requested by the Company and/or the Holders to undertake duties which are of an exceptional nature or otherwise outside the scope of the Trustee's normal duties under this Indenture, the Company will pay such additional remuneration as the Company and the Trustee may separately agree in writing.

(b) The Paying Agent, the Conversion Agent and the Note Registrar shall be entitled to the compensation to be agreed upon in writing with the Company for all services rendered by it under this Indenture, and the Company agrees promptly to pay such compensation and to reimburse the Paying Agent, the Conversion Agent and the Note Registrar for its out-of-pocket expenses (including fees and expenses of counsel) properly incurred by it in connection with the services rendered by it under this Indenture. The Company hereby agrees to indemnify the Paying Agent, the Conversion Agent and the Note Registrar and their respective officers, directors, agents and employees and any successors thereto for, and to hold it harmless against, any loss, liability or expense (including fees and expenses of counsel) properly incurred without gross negligence or willful misconduct on its part arising out of or in connection with its acting as the Paying Agent, the Conversion Agent and the Note Registrar hereunder. The obligations of the Company under this paragraph (b) shall survive the payment of the Notes, the termination or discharge of the Indenture and the resignation, replacement or removal of the Paying Agent, the Conversion Agent and the Note Registrar.

Section 7.07 *Officers' Certificate as Evidence.* Except as otherwise provided in Section 7.01, whenever in the administration of the provisions of this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or omitting any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by an Officers' Certificate delivered to the Trustee, and such Officers' Certificate shall be full warrant to the Trustee for any action taken or omitted by it under the provisions of this Indenture upon the faith thereof.

Section 7.08 *Eligibility of Trustee.* There shall at all times be a Trustee hereunder which shall be a Person that is eligible pursuant to the Trust Indenture Act to act as such and has a combined capital and surplus of at least US\$50,000,000. If such Person publishes reports of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such Person shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

Section 7.09 *Resignation or Removal of Trustee.* (a) The Trustee may at any time resign by giving 60 days written notice of such resignation to the Company and by mailing notice thereof to the Holders at their addresses as they shall appear on the Note Register. Upon receiving such notice of resignation, the Company shall promptly appoint a successor trustee by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the resigning Trustee and one copy to the successor trustee. If no successor trustee shall have been so appointed and have accepted appointment within 30 days after the mailing of such notice of resignation to the Holders, the resigning Trustee may appoint a successor trustee on behalf of and at the expense of the Company or it may at the expense of the Company petition any court of competent jurisdiction for the appointment of a successor trustee, or any Holder who has been a bona fide holder of a Note or Notes for at least six months may, subject to the provisions of Section 6.11, on behalf of himself or herself and all others similarly situated, petition any such court for the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, appoint a successor trustee.

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

(i) the Trustee shall cease to be eligible in accordance with the provisions of Section 7.08 and shall fail to resign after written request therefor by the Company or by any such Holder, or

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

then, in either case, the Company may by a Board Resolution remove the Trustee and appoint a successor trustee by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the Trustee so removed and one copy to the successor trustee, or, subject to the provisions of Section 6.11, any Holder who has been a bona fide holder of a Note or Notes 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 Trustee and the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, remove the Trustee and appoint a successor trustee.

(c) The Holders of a majority in aggregate principal amount of the Notes at the time outstanding, as determined in accordance with Section 8.04, may at any time remove the Trustee and nominate a successor trustee that shall be deemed appointed as successor trustee unless within ten days after notice to the Company of such nomination the Company objects thereto, in which case the Trustee so removed or any Holder, upon the terms and conditions and otherwise as in Section 7.09(a) provided, may petition any court of competent jurisdiction for an appointment of a successor trustee.

(d) Any resignation or removal of the Trustee and appointment of a successor trustee pursuant to any of the provisions of this Section 7.09 shall become effective upon acceptance of appointment by the successor trustee as provided in Section 7.10.

Section 7.10 *Acceptance by Successor Trustee.* Any successor trustee appointed as provided in Section 7.09 shall execute, acknowledge and deliver to the Company and to its predecessor trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor trustee shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations of its predecessor hereunder, with like effect as if originally named as Trustee herein; but, nevertheless, on the written request of the Company or of the successor trustee, the trustee ceasing to act shall, upon payment of any amounts then due to it pursuant to the provisions of Section 7.06, execute and deliver an instrument transferring to such successor trustee all the rights and powers of the trustee so ceasing to act. Upon request of any such successor trustee, the Company shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor trustee all such rights and powers. Any trustee ceasing to act shall, nevertheless, retain a senior claim to which the Notes are hereby made subordinate on all money or property held or collected by such trustee as such, except for funds held in trust for the benefit of Holders of particular Notes, to secure any amounts then due to it pursuant to the provisions of Section 7.06.

No successor trustee shall accept appointment as provided in this Section 7.10 unless at the time of such acceptance such successor trustee shall be eligible under the provisions of Section 7.08.

Upon acceptance of appointment by a successor trustee as provided in this Section 7.10, each of the Company and the successor trustee, at the written direction and at the expense of the Company shall mail or cause to be mailed notice of the succession of such trustee hereunder to the Holders at their addresses as they shall appear on the Note Register. If the Company fails to mail such notice within ten days after acceptance of appointment by the successor trustee, the successor trustee shall cause such notice to be mailed at the expense of the Company.

Section 7.11 *Succession by Merger, Etc.* Any corporation or other entity into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation or other entity resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation or other entity succeeding to all or substantially all of the corporate trust business of the Trustee (including the administration of this Indenture), shall be the successor to the Trustee hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto; *provided* that in the case of any corporation or other entity succeeding to all or substantially all of the corporate trust business of the Trustee such corporation or other entity shall be eligible under the provisions of Section 7.08.

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

Section 7.12 *Trustee's Application for Instructions from the Company.* Any application by the Trustee for written instructions from the Company (other than with regard to any action proposed to be taken or omitted to be taken by the Trustee that affects the rights of the Holders of the Notes under this Indenture) may, at the option of the Trustee, set forth in writing any action proposed to be taken or omitted by the Trustee under this Indenture and the date on and/or after which such action shall be taken or such omission shall be effective. The Trustee shall not be liable for any action taken by, or omission of, the Trustee in accordance with a proposal included in such application on or after the date specified in such application (which date shall not be less than three Business Days after the date any officer that the Company has indicated to the Trustee should receive such application actually receives such application, unless any such officer shall have consented in writing to any earlier date), unless, prior to taking any such action (or the effective date in the case of any omission), the Trustee shall have received written instructions in accordance with this Indenture in response to such application specifying the action to be taken or omitted.

## ARTICLE 8 CONCERNING THE HOLDERS

Section 8.01 *Action by Holders.* Whenever in this Indenture it is provided that the Holders of a specified percentage of the aggregate principal amount of the Notes may take any action (including the making of any demand or request, the giving of any notice, consent or waiver or the taking of any other action), the fact that at the time of taking any such action, the Holders of such specified percentage have joined therein may be evidenced (a) by any instrument or any number of instruments of similar tenor executed by Holders in person or by agent or proxy appointed in writing, or (b) by the record of the Holders voting in favor thereof at any meeting of Holders duly called and held in accordance with the provisions of Article 9, or (c) by a combination of such instrument or instruments and any such record of such a meeting of Holders. Whenever the Company or the Trustee solicits the taking of any action by the Holders of the Notes, the Company or the Trustee may fix, but shall not be required to, in advance of such solicitation, a date as the record date for determining Holders entitled to take such action. The record date if one is selected shall be not more than fifteen days prior to the date of commencement of solicitation of such action.

Section 8.02 *Proof of Execution by Holders.* Subject to the provisions of Section 7.01, Section 7.02 and Section 9.05, proof of the execution of any instrument by a Holder or its agent or proxy shall be sufficient if made in accordance with such reasonable rules and regulations as may be prescribed by the Trustee or in such manner as shall be satisfactory to the Trustee. The holding of Notes shall be proved by the Note Register or by a certificate of the Note Registrar. The record of any Holders' meeting shall be proved in the manner provided in Section 9.06.

Section 8.03 *Who Are Deemed Absolute Owners.* The Company, the Trustee, any Paying Agent, any Conversion Agent and any Note Registrar may deem the Person in whose name a Note shall be registered upon the Note Register to be, and may treat it as, the absolute owner of such Note (whether or not such Note shall be overdue and notwithstanding any notation of ownership or other writing thereon made by any Person other than the Company or any Note Registrar) for the purpose of receiving payment of or on account of the principal of and (subject to Section 2.03) accrued and unpaid interest on such Note, for the purpose of conversion of such Note and for all other purposes; and neither the Company nor the Trustee nor any Paying Agent nor any Conversion Agent nor any Note Registrar shall be affected by any notice to the contrary. All such payments or deliveries so made to any Holder for the time being, or upon its order, shall be valid, and, to the extent of the sums or ADSs so paid or delivered, effectual to satisfy and discharge the liability for monies payable or ADSs deliverable upon any such Note.

Notwithstanding anything to the contrary in this Indenture or the Notes following an Event of Default, any Holder of a beneficial interest in a Global Note may directly enforce against the Company, without the consent, solicitation, proxy, authorization or any other action of the Depositary or any other Person, such Holder's right to exchange such beneficial interest for a Note in certificated form in accordance with the provisions of this Indenture.

Section 8.04 *Company-Owned Notes Disregarded.* In determining whether the Holders of the requisite aggregate principal amount of Notes have concurred in any direction, consent, waiver or other action under this Indenture, Notes that are owned by the Company, by any Subsidiary or Consolidated Affiliated Entity thereof or by any Affiliate of the Company or any Subsidiary or Consolidated Affiliated Entity thereof shall be disregarded and deemed not to be outstanding for the purpose of any such determination; *provided* that for the purposes of determining whether the Trustee shall be protected in relying on any such direction, consent, waiver or other action only Notes in respect of which a Responsible Officer is notified in writing shall be so disregarded. Notes so owned that have been pledged in good faith may be regarded as outstanding for the purposes of this Section 8.04 if the pledgee shall establish its right to so act with respect to such Notes and that the pledgee is not the Company, a Subsidiary or Consolidated Affiliated Entity thereof or an Affiliate of the Company or a Subsidiary or Consolidated Affiliated Entity thereof. Within five days of acquisition of the Notes by any of the above described persons or entities or at the request of the Trustee, the Company shall furnish to the Trustee promptly an Officers' Certificate listing and identifying all Notes, if any, known by the Company to be owned or held by or for the account of any of the above described Persons; and, subject to Section 7.01, the Trustee shall be entitled to accept such Officers' Certificate as conclusive evidence of the facts therein set forth and of the fact that all Notes not listed therein are outstanding for the purpose of any such determination.

Section 8.05 *Revocation of Consents; Future Holders Bound.* At any time prior to (but not after) the evidencing to the Trustee, as provided in Section 8.01, of the taking of any action by the Holders of the percentage of the aggregate principal amount of the Notes specified in this Indenture in connection with such action, any Holder of a Note that is shown by the evidence to be included in the Notes the Holders of which have consented to such action may, by filing written notice with the Trustee at its Corporate Trust Office and upon proof of holding as provided in Section 8.02, revoke such action so far as concerns such Note. Except as aforesaid, any such action taken by the Holder of any Note shall be conclusive and binding upon such Holder and upon all future Holders and owners of such Note and of any Notes issued in exchange or substitution therefor or upon registration of transfer thereof, irrespective of whether any notation in regard thereto is made upon such Note or any Note issued in exchange or substitution therefor or upon registration of transfer thereof.

ARTICLE 9  
HOLDERS' MEETINGS

Section 9.01 *Purpose of Meetings.* A meeting of Holders may be called at any time and from time to time pursuant to the provisions of this Article 9 for any of the following purposes:

- (a) to give any notice to the Company or to the Trustee or to give any directions to the Trustee permitted under this Indenture, or to consent to the waiving of any Default or Event of Default hereunder and its consequences, or to take any other action authorized to be taken by Holders pursuant to any of the provisions of Article 6;
- (b) to remove the Trustee and nominate a successor trustee pursuant to the provisions of Article 7;
- (c) to consent to the execution of an indenture or indentures supplemental hereto pursuant to the provisions of Section 10.02; or
- (d) to take any other action authorized to be taken by or on behalf of the Holders of any specified aggregate principal amount of the Notes under any other provision of this Indenture or under applicable law.

Section 9.02 *Call of Meetings by Trustee.* The Trustee may (in its sole discretion and without obligation) at any time call a meeting of Holders to take any action specified in Section 9.01, to be held at such time and at such place as the Trustee shall determine. Notice of every meeting of the Holders, setting forth the time and the place of such meeting and in general terms the action proposed to be taken at such meeting and the establishment of any record date pursuant to Section 8.01, shall be mailed to Holders of such Notes at their addresses as they shall appear on the Note Register. Such notice shall also be mailed to the Company. Such notices shall be mailed not less than 20 nor more than 90 days prior to the date fixed for the meeting.

Any meeting of Holders shall be valid without notice if the Holders of all Notes then outstanding are present in person or by proxy or if notice is waived before or after the meeting by the Holders of all Notes then outstanding, and if the Company and the Trustee are either present by duly authorized representatives or have, before or after the meeting, waived notice.

Section 9.03 *Call of Meetings by Company or Holders.* In case at any time the Company, pursuant to a Board Resolution, or the Holders of at least 10% of the aggregate principal amount of the Notes then outstanding, shall have requested the Company to call a meeting of Holders, by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Company shall not have mailed the notice of such meeting within 20 days after receipt of such request, then the Trustee or such Holders may determine the time and the place for such meeting and may call such meeting to take any action authorized in Section 9.01, by mailing notice thereof as provided in Section 9.02.

Section 9.04 *Qualifications for Voting.* To be entitled to vote at any meeting of Holders a Person shall (a) be a Holder of one or more Notes on the record date pertaining to such meeting or (b) be a Person appointed by an instrument in writing as proxy by a Holder of one or more Notes on the record date pertaining to such meeting. The only Persons who shall be entitled to be present or to speak at any meeting of Holders shall be the Persons entitled to vote at such meeting and their counsel and any representatives of the Trustee and its counsel and any representatives of the Company and its counsel.

Section 9.05 *Regulations.* Notwithstanding any other provisions of this Indenture, the Trustee may make such reasonable regulations as it may deem advisable for any meeting of Holders, in regard to proof of the holding of Notes and of the appointment of proxies, and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it shall think fit.



The Trustee shall, by an instrument in writing, appoint a temporary chairman of the meeting, unless the meeting shall have been called by the Company or by Holders as provided in Section 9.03, in which case the Company or the Holders calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a permanent secretary of the meeting shall be elected by vote of the Holders of a majority in principal amount of the Notes represented at the meeting and entitled to vote at the meeting.

Subject to the provisions of Section 8.04, at any meeting of Holders each Holder or proxyholder shall be entitled to one vote for each US\$1,000 principal amount of Notes held or represented by him or her; *provided, however*, that no vote shall be cast or counted at any meeting in respect of any Note challenged as not outstanding and ruled by the chairman of the meeting to be not outstanding. The chairman of the meeting shall have no right to vote other than by virtue of Notes held by it or instruments in writing as aforesaid duly designating it as the proxy to vote on behalf of other Holders. Any meeting of Holders duly called pursuant to the provisions of Section 9.02 or Section 9.03 may be adjourned from time to time by the Holders of a majority of the aggregate principal amount of Notes represented at the meeting, whether or not constituting a quorum, and the meeting may be held as so adjourned without further notice.

Minutes shall be made of all resolutions and proceedings at every meeting and, if purporting to be signed by the chairman of that meeting or of the next succeeding meeting of Holders of the Notes, shall be conclusive evidence of the matters in them. Until the contrary is proved every meeting for which minutes have been so made and signed shall be deemed to have been duly convened and held and all resolutions passed or proceedings transacted at it to have been duly passed and transacted.

Section 9.06 *Voting.* The vote upon any resolution submitted to any meeting of Holders shall be by written ballot on which shall be subscribed the signatures of the Holders or of their representatives by proxy and the outstanding principal amount of the Notes held or represented by them. The permanent chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in duplicate of all votes cast at the meeting. A record in duplicate of the proceedings of each meeting of Holders shall be prepared by the secretary of the meeting and there shall be attached to said record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more Persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that said notice was mailed as provided in Section 9.02. The record shall show the principal amount of the Notes voting in favor of or against any resolution. The record shall be signed and verified by the affidavits of the permanent chairman and secretary of the meeting and one of the duplicates shall be delivered to the Company and the other to the Trustee to be preserved by the Trustee, the latter to have attached thereto the ballots voted at the meeting.

Any record so signed and verified shall be conclusive evidence of the matters therein stated.

Section 9.07 *No Delay of Rights by Meeting.* Nothing contained in this Article 9 shall be deemed or construed to authorize or permit, by reason of any call of a meeting of Holders or any rights expressly or impliedly conferred hereunder to make such call, any hindrance or delay in the exercise of any right or rights conferred upon or reserved to the Trustee or to the Holders under any of the provisions of this Indenture or of the Notes.

ARTICLE 10  
SUPPLEMENTAL INDENTURES

Section 10.01 *Supplemental Indentures Without Consent of Holders.* The Company, when authorized by the resolutions of the Board of Directors, and the Trustee, at the Company's expense and direction, may from time to time and at any time amend or supplement this Indenture or the Notes for one or more of the following purposes:

- (a) to cure any ambiguity, omission, defect or inconsistency;
- (b) to provide for the assumption by a Successor Company of the obligations of the Company under this Indenture and the Notes pursuant to Article 11;
- (c) to add guarantees with respect to the Notes;
- (d) to secure the Notes;
- (e) to add to the covenants or Events of Defaults of the Company for the benefit of the Holders or surrender any right or power conferred upon the Company;
- (f) upon the occurrence of any transaction or event described in Section 14.07(a), to (i) provide that the Notes are convertible into Reference Property, subject to Section 14.02, and (ii) effect the related changes to the terms of the Notes described under Section 14.07(a), in each case, in accordance with Section 14.07;
- (g) to make any change that does not adversely affect the rights of any Holder;
- (h) comply with the rules of the Depositary; or
- (i) to conform the provisions of this Indenture or the Notes to the "Description of the Notes" section of the Offering Memorandum.

Upon the written request of the Company, the Trustee is hereby authorized to join with the Company in the execution of any such amendment or supplement to this Indenture or the Notes, to make any further appropriate agreements and stipulations that may be therein contained, but the Trustee shall not be obligated to, but may in its discretion, enter into any supplemental indenture that affects the Trustee's own rights, duties or immunities under this Indenture or otherwise. The Trustee shall seek an Officers' Certificate and an Opinion of Counsel, at the Company's expense, that any such amendment or supplement to this Indenture or the Notes is authorized and permitted by the terms of this Indenture and not contrary to law.

Any amendment or supplement to this Indenture or the Notes authorized by the provisions of this Section 10.01 may be executed by the Company and the Trustee without the consent of the Holders of any of the Notes at the time outstanding, notwithstanding any of the provisions of Section 10.02.

Section 10.02 *Supplemental Indentures with Consent of Holders.* With the consent (evidenced as provided in Article 8) of the Holders of at least a majority of the aggregate principal amount of the Notes then outstanding (determined in accordance with Article 8 and including, without limitation, consents obtained in connection with a repurchase of, or tender or exchange offer for, Notes), the Company, when authorized by the resolutions of the Board of Directors, and the Trustee, at the Company's expense, may from time to time and at any time enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or any supplemental indenture or of modifying in any manner the rights of the Holders; *provided, however,* that, without the consent of each Holder of an outstanding Note affected, no such supplemental indenture shall:

- (a) reduce the amount of Notes whose Holders must consent to an amendment or waiver;
- (b) reduce the rate of or extend the stated time for payment of interest on any Note;
- (c) reduce the principal of or extend the Maturity Date of any Note;
- (d) make any change that adversely affects the conversion rights of any Notes;
- (e) reduce the Repurchase Price payable on the Repurchase Date, the Fundamental Change Repurchase Price or the Redemption Price of any Note or amend or modify in any manner adverse to the Holders the Company's obligation to make such payments, whether through an amendment or waiver of provisions in the covenants, definitions or otherwise;
- (f) make any Note payable in a currency other than U.S. dollars;
- (g) change the ranking of the Notes;
- (h) impair the right of any Holder to receive payment of principal and interest on such Holder's Notes on or after the due dates therefor or to institute suit for the enforcement of any payment on or with respect to such Holder's Note;
- (i) change the Company's obligation to pay Additional Amounts on any Note; or
- (j) make any change in this Article 10 that requires each Holder's consent or in the waiver provisions in Section 6.02 or Section 6.09.

Upon the written request of the Company, and upon the filing with the Trustee of evidence of the consent of Holders as aforesaid and subject to Section 10.05, the Trustee shall join with the Company in the execution of such supplemental indenture unless (i) the Trustee has not received an Officers' Certificate and an Opinion of Counsel that such supplemental indenture is authorized and permitted by the terms of this Indenture and not contrary to law or (ii) such supplemental indenture affects the Trustee's own rights, duties or immunities under this Indenture or otherwise, in which case the Trustee may in its discretion, but shall not be obligated to, enter into such supplemental indenture.

Holders do not need under this Section 10.02 to approve the particular form of any proposed supplemental indenture. It shall be sufficient if such Holders approve the substance thereof. After any supplemental indenture becomes effective under Section 10.01 or Section 10.02, the Company shall mail to the Holders a notice briefly describing such supplemental indenture. However, the failure to give such notice to all the Holders, or any defect in the notice, will not impair or affect the validity of the supplemental indenture.

Section 10.03 *Effect of Supplemental Indentures.* Upon the execution of any supplemental indenture pursuant to the provisions of this Article 10, this Indenture shall be and be deemed to be modified and amended in accordance therewith and the respective rights, limitation of rights, obligations, duties and immunities under this Indenture of the Trustee, the Company and the Holders shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments and all the terms and conditions of any such supplemental indenture shall be and be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

Section 10.04 *Notation on Notes.* Notes authenticated and delivered after the execution of any supplemental indenture pursuant to the provisions of this Article 10 may, at the Company's expense, bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company or the Trustee shall so determine, new Notes so modified as to conform, in the opinion of the Trustee and the Board of Directors, to any modification of this Indenture contained in any such supplemental indenture may, at the Company's expense, be prepared and executed by the Company, authenticated by the Trustee upon receipt of a Company Order and delivered in exchange for the Notes then outstanding, upon surrender of such Notes then outstanding.

Section 10.05 *Evidence of Compliance of Supplemental Indenture to Be Furnished Trustee.* In addition to the documents required by Section 17.06, the Trustee shall receive an Officers' Certificate and an Opinion of Counsel as conclusive evidence that any supplemental indenture executed pursuant hereto complies with the requirements of this Article 10 and is permitted or authorized by this Indenture and is not contrary to law.

ARTICLE 11  
CONSOLIDATION, MERGER, SALE, CONVEYANCE AND LEASE

Section 11.01 *Company May Consolidate, Etc. on Certain Terms.* Subject to the provisions of Section 11.02, the Company shall not consolidate with, merge with or into, or sell, convey, transfer or lease all or substantially all of the consolidated assets of the Company, its Subsidiaries and its Consolidated Affiliated Entities, taken as a whole, to another Person, unless:

(a) the resulting, surviving or transferee Person (the “**Successor Company**”), if not the Company, shall be a corporation organized and existing under the laws of the Cayman Islands, the British Virgin Islands, Bermuda or Hong Kong and the Successor Company (if not the Company) shall expressly assume, by supplemental indenture all of the obligations of the Company under the Notes and this Indenture (including, for the avoidance of doubt, the obligation to pay Additional Amounts pursuant to Section 4.07);

(b) if the Company will not be the resulting or surviving corporation, the Company shall have, at or prior to the effective date of such transaction, delivered to the Trustee an Officers’ Certificate and an Opinion of Counsel, each stating that the execution and delivery of the supplemental indenture do not conflict with the requirements set forth in the Indenture and that all conditions precedent to the execution and delivery of such supplemental indenture have been satisfied; and

(c) immediately after giving effect to such transaction, no Default or Event of Default shall have occurred and be continuing under this Indenture.

For purposes of this Section 11.01, the sale, conveyance, transfer or lease of all or substantially all of the assets of one or more Subsidiaries or Consolidated Affiliated Entities of the Company to another Person, which properties and assets, if held by the Company instead of such Subsidiaries or Consolidated Affiliated Entities, would constitute all or substantially all of the assets of the Company on a consolidated basis, shall be deemed to be the sale, conveyance, transfer or lease of all or substantially all of the consolidated assets of the Company to another Person.

Section 11.02 *Successor Corporation to Be Substituted.* In case of any such consolidation, merger, sale, conveyance, transfer or lease and upon the assumption by the Successor Company, by supplemental indenture, executed and delivered to the Trustee and satisfactory in form to the Trustee, of the due and punctual payment of the principal of and accrued and unpaid interest on all of the Notes (including, for the avoidance of doubt, any Additional Amounts), the due and punctual delivery or payment, as the case may be, of any consideration due upon conversion of the Notes (including, for the avoidance of doubt, any Additional Amounts) and the due and punctual performance of all of the covenants and conditions of this Indenture to be performed by the Company, such Successor Company (if not the Company) shall succeed to and, except in the case of a lease of all or substantially all of the Company’s properties and assets, shall be substituted for the Company, with the same effect as if it had been named herein as the party of the first part. Such Successor Company thereupon may cause to be signed, and may issue either in its own name or in the name of the Company any or all of the Notes issuable hereunder which theretofore shall not have been signed by the Company and delivered to the Trustee; and, upon the order of such Successor Company instead of the Company and subject to all the terms, conditions and limitations in this Indenture prescribed, the Trustee shall authenticate and shall deliver, or cause to be authenticated and delivered, any Notes that previously shall have been signed and delivered by the Officers of the Company to the Trustee for authentication, and any Notes that such Successor Company thereafter shall cause to be signed and delivered to the Trustee for that purpose. All the Notes so issued shall in all respects have the same legal rank and benefit under this Indenture as the Notes theretofore or thereafter issued in accordance with the terms of this Indenture as though all of such Notes had been issued at the date of the execution hereof. In the event of any such consolidation, merger, sale, conveyance or transfer (but not in the case of a lease), upon compliance with this Article 11 the Person named as the “Company” in the first paragraph of this Indenture (or any successor that shall thereafter have become such in the manner prescribed in this Article 11) may be dissolved, wound up and liquidated at any time thereafter and, except in the case of a lease, such Person shall be released from its liabilities as obligor and maker of the Notes and from its obligations under this Indenture and the Notes.

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

Section 11.03 *Opinion of Counsel to Be Given to Trustee.* No consolidation, merger, sale, conveyance, transfer or lease shall be effective unless the Trustee shall receive an Officers' Certificate and an Opinion of Counsel as conclusive evidence that any such consolidation, merger, sale, conveyance, transfer or lease and any such assumption and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture, complies with the provisions of this Article 11, that all conditions precedent thereto have been satisfied and that the Notes and such supplemental indenture are the legal, valid and binding obligations of the Successor Company, enforceable against it in accordance with its terms, subject to customary assumptions, qualifications, and exceptions.

ARTICLE 12  
IMMUNITY OF INCORPORATORS, STOCKHOLDERS, OFFICERS AND DIRECTORS

Section 12.01 *Indenture and Notes Solely Corporate Obligations.* No recourse for the payment of the principal of or accrued and unpaid interest on any Note, nor for any claim based thereon or otherwise in respect thereof, and no recourse under or upon any obligation, covenant or agreement of the Company in this Indenture or in any supplemental indenture or in any Note, nor because of the creation of any indebtedness represented thereby, shall be had against any incorporator, stockholder, employee, agent, Officer or director or Subsidiary, as such, past, present or future, of the Company or of any successor corporation, either directly or through the Company or any successor corporation, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly understood that all such liability is hereby expressly waived and released as a condition of, and as a consideration for, the execution of this Indenture and the issue of the Notes.

ARTICLE 13  
INTENTIONALLY OMITTED

ARTICLE 14  
CONVERSION OF NOTES

Section 14.01 *Conversion Privilege.* Subject to and upon compliance with the provisions of this Article 14, each Holder of a Note shall have the right, at such Holder's option, to convert all or any portion (if the portion to be converted is US\$1,000 principal amount or an integral multiple thereof) of such Note at any time prior to the close of business on the second Business Day immediately preceding the Maturity Date into ADSs at an initial conversion rate of 105.1359 ADSs (subject to adjustment as provided in this Article 14, the "**Conversion Rate**") per US\$1,000 principal amount of Notes (subject to the settlement provisions of Section 14.02, the "**Conversion Obligation**").

Section 14.02 *Conversion Procedure; Settlement Upon Conversion.*

(a) Upon conversion of any Note, the Company shall cause to be delivered to the converting Holder, in respect of each US\$1,000 principal amount of Notes being converted, a number of ADSs equal to the Conversion Rate in effect immediately prior to the close of business on the relevant Conversion Date, together with a cash payment, if applicable, in lieu of any fractional ADSs (“**Fractional ADSs**”) (assuming delivery of the maximum number of ADSs due upon conversion that do not represent a fractional ADS) in accordance with subsection (j) of this Section 14.02, on the third Business Day immediately following the relevant Conversion Date; *provided that*, if a Conversion Date occurs (i) following the Regular Record Date immediately preceding the Maturity Date, subject to clause (ii) below, the Company shall cause such delivery (and payment, if applicable) to be made on the Maturity Date or (ii) after the Ordinary Shares have been replaced by the Reference Property consisting solely of cash in accordance with Section 14.07, the Company shall cause the consideration due in respect of the conversion to be paid to the converting Holder on the tenth Business Day immediately following the related Conversion Date. For the avoidance of doubt, neither the Trustee nor any Agent shall have any responsibility to deliver ADSs upon conversion of any Note to any person or deal with cash payments in relation to conversions, except for cash payments in lieu of any fractional ADS.

(b) Subject to Section 14.02(e), before any Holder of a Note shall be entitled to convert a Note as set forth above, such Holder shall (i) in the case of a Global Note, comply with the procedures of the Depository in effect at that time and, if required, pay funds equal to interest payable on the next Interest Payment Date to which such Holder is not entitled as set forth in Section 14.02(h), and complete, manually sign and deliver a duly completed irrevocable notice to the Conversion Agent as set forth in the Form of Notice of Conversion (or a facsimile thereof) (a “**Notice of Conversion**”) and (ii) in the case of a Physical Note (1) complete, manually sign and deliver a duly completed irrevocable Notice of Conversion to the Conversion Agent at the specified office of the Conversion Agent and state in writing therein the principal amount of Notes to be converted and the name or names (with addresses) in which such Holder wishes the certificate or certificates for any ADSs to be delivered upon settlement of the Conversion Obligation to be registered, (2) surrender such Notes, duly endorsed to the Company or in blank (and accompanied by appropriate endorsement and transfer documents), at the specified office of the Conversion Agent, (3) if required, furnish appropriate endorsements and transfer documents and (4) if required, pay funds equal to interest payable on the next Interest Payment Date to which such Holder is not entitled as set forth in Section 14.02(h). The Trustee (and if different, the Conversion Agent) shall notify the Company of any conversion pursuant to this Article 14 on the Conversion Date for such conversion. No Notice of Conversion with respect to any Notes may be delivered and no Notes may be surrendered by a Holder for conversion thereof if such Holder has also delivered a Repurchase Notice or Fundamental Change Repurchase Notice to the Company in respect of such Notes and not validly withdrawn such Repurchase Notice or Fundamental Change Repurchase Notice in accordance with Section 15.03. A Notice of Conversion shall be deposited in duplicate at the office of any Conversion Agent on any Business Day from 9:00 a.m. to 3:00 p.m. at the location of the Conversion Agent to which such Notice of Conversion is delivered. Any Notice of Conversion and any Physical Note (if issued) deposited outside the hours specified or on a day that is not a Business Day at the location of the Conversion Agent shall for all purposes be deemed to have been deposited with that Conversion Agent between 9:00 a.m. and 3:00 p.m. on the next Business Day.

If more than one Note shall be surrendered for conversion at one time by the same Holder, the Conversion Obligation with respect to such Notes shall be computed on the basis of the aggregate principal amount of the Notes (or specified portions thereof to the extent permitted thereby) so surrendered. None of the Agents of the Trustee shall have any responsibility whatsoever with respect to the issuance and delivery of the ADSs to the converting Holder.

(c) A Note shall be deemed to have been converted immediately prior to the close of business on the date (the “**Conversion Date**”) that the Holder has complied with the requirements set forth in subsection (b) above. The Company shall issue or cause to be issued, and deliver or cause to be delivered to such Holder, or such Holder’s nominee or nominees, certificates or a book-entry transfer through the Depository for the full number of ADSs to which such Holder shall be entitled in satisfaction of the Company’s Conversion Obligation.

(d) In case any Note shall be surrendered for partial conversion, the Company shall execute and instruct the Trustee who shall authenticate and deliver to or upon the written order of the Holder of the Note so surrendered a new Note or Notes in authorized denominations in an aggregate principal amount equal to the unconverted portion of the surrendered Note, without payment of any service charge by the converting Holder but, if required by the Company or Trustee, with payment of a sum sufficient to cover any transfer tax or similar governmental charge required by law or that may be imposed in connection therewith as a result of the name of the Holder of the new Notes issued upon such conversion being different from the name of the Holder of the old Notes surrendered for such conversion.

(e) If a Holder submits a Note for conversion, the Company shall pay any documentary, stamp, issue, transfer or similar tax due on the delivery of the ADSs upon conversion of the Notes (or the issuance of the underlying Ordinary Shares), unless the tax is due because the Holder requests such ADSs (or such Ordinary Shares) to be issued in a name other than the Holder’s name, in which case the Holder shall pay that tax. The Conversion Agent may refuse to deliver the certificates representing the ADSs (or the Ordinary Shares) being issued in a name other than the Holder’s name until the Trustee receives a sum sufficient to pay any tax that is due by such Holder in accordance with the immediately preceding sentence. The Company shall pay the ADS Depository’s fees for issuance of the ADSs.

(f) Except as provided in Section 14.04, no adjustment shall be made for dividends on any ADSs delivered upon the conversion of any Note as provided in this Article 14.

(g) Upon the conversion of an interest in a Global Note, the Trustee shall make a notation on such Global Note as to the reduction in the principal amount represented thereby. The Company shall notify the Trustee in writing of any conversion of Notes effected through any Conversion Agent other than the Trustee.



(h) Upon conversion, a Holder shall not receive any separate cash payment for accrued and unpaid interest, if any, except as set forth below. The Company's settlement of the Conversion Obligation shall be deemed to satisfy in full its obligation to pay the principal amount of the Note and accrued and unpaid interest, if any, to, but not including, the relevant Conversion Date. As a result, accrued and unpaid interest, if any, to, but not including, the relevant Conversion Date shall be deemed to be paid in full rather than cancelled, extinguished or forfeited. Notwithstanding the foregoing, if Notes are converted after the close of business on a Regular Record Date, Holders of such Notes as of the close of business on such Regular Record Date will receive the full amount of interest payable on such Notes on the corresponding Interest Payment Date notwithstanding the conversion. Notes surrendered for conversion during the period from the close of business on any Regular Record Date to the open of business on the immediately following Interest Payment Date must be accompanied by funds equal to the amount of interest payable on the Notes so converted; provided that no such payment shall be required (1) for conversions following the Regular Record Date immediately preceding the Maturity Date; (2) if the Company has specified a Redemption Date that is after a Regular Record Date and on or prior to the third Business Day immediately succeeding the corresponding Interest Payment Date; (3) if the Company has specified a Fundamental Change Repurchase Date that is after a Regular Record Date and on or prior to the third Business Day immediately succeeding the corresponding Interest Payment Date; or (4) to the extent of any Defaulted Amounts, if any Defaulted Amounts exist at the time of conversion with respect to such Note. Therefore, for the avoidance of doubt, all Holders of record as of the close of business on the Regular Record Date immediately preceding the Maturity Date shall receive the full interest payment due on the Maturity Date in cash regardless of whether their Notes have been converted following such Regular Record Date.

(i) The Person in whose name the certificate for any ADSs delivered upon conversion is registered shall be treated as a holder of record of such ADSs as of the close of business on the relevant Conversion Date. Upon a conversion of Notes, such Person shall no longer be a Holder of such Notes surrendered for conversion.

(j) The Company shall not issue any Fractional ADS upon conversion of the Notes and shall instead pay cash in lieu of any Fractional ADS deliverable upon conversion based on the Last Reported Sale Price of the ADSs on the relevant Conversion Date (or if such Conversion Date is not a Trading Day, the immediately preceding Trading Day).

(k) In accordance with the Unrestricted Deposit Agreement or the Restricted Deposit Agreement, as applicable, the Company shall issue to the ADS Custodian such Ordinary Shares required for the issuance of the ADSs upon conversion of the Notes, plus written delivery instructions (if requested by the ADS Depository or the ADS Custodian) for such ADSs, shall deliver such legal opinions and any other information or documentation and shall comply with the Unrestricted Deposit Agreement and the Restricted Deposit Agreement (as the case may be), in each case, as required by the ADS Depository or the ADS Custodian in connection with each issue of Ordinary Shares and issuance and delivery of ADSs.

Section 14.03 *Increased Conversion Rate Applicable to Certain Notes Surrendered in Connection with Make-Whole Fundamental Changes.* (a) If a Make-Whole Fundamental Change occurs prior to the Maturity Date and a Holder elects to convert its Notes in connection with such Make-Whole Fundamental Change, the Company shall, under the circumstances described below, increase the Conversion Rate for the Notes so surrendered for conversion by a number of additional ADSs (the “**Additional ADSs**”), as described below. A conversion of Notes shall be deemed for these purposes to be “in connection with” such Make-Whole Fundamental Change if the relevant Notice of Conversion is received by the Conversion Agent from, and including, the Effective Date of the Make-Whole Fundamental Change up to, and including, the second Business Day immediately prior to the related Fundamental Change Repurchase Date (or, in the case of a Make-Whole Fundamental Change that would have been a Fundamental Change but for the *proviso* in clause (b) of the definition thereof, the 35th Trading Day immediately following the Effective Date of such Make-Whole Fundamental Change). The Company shall provide written notification to Holders and the Trustee (and the Conversion Agent, if other than the Trustee) of the Effective Date of any Make-Whole Fundamental Change and issue a press release announcing such Effective Date no later than five Business Days after such Effective Date.

(b) Upon surrender of Notes for conversion in connection with a Make-Whole Fundamental Change, the Company shall cause to be delivered ADSs, including the Additional ADSs, in accordance with Section 14.02; *provided, however*, that if, at the effective time of a Make-Whole Fundamental Change described in clause (b) of the definition of Fundamental Change, the Reference Property following such Make-Whole Fundamental Change is composed entirely of cash, for any conversion of Notes following the Effective Date of such Make-Whole Fundamental Change, the Conversion Obligation shall be calculated based solely on the ADS Price for the transaction and shall be deemed to be an amount of cash per US\$1,000 principal amount of converted Notes equal to the Conversion Rate (including any adjustment for Additional ADSs), *multiplied by* such ADS Price.

(c) The number of Additional ADSs, if any, by which the Conversion Rate shall be increased shall be determined by reference to the table below, based on the date on which the Make-Whole Fundamental Change occurs or becomes effective (the “**Effective Date**”) and the price (the “**ADS Price**”) paid (or deemed to be paid) per ADS in the Make-Whole Fundamental Change. If the holders of the ADSs receive in exchange for their ADSs only cash in a Make-Whole Fundamental Change described in clause (b) of the definition of Fundamental Change, the ADS Price shall be the cash amount paid per ADS. Otherwise, the ADS Price shall be the average of the Last Reported Sale Prices of the ADSs over the five Trading Day period ending on, and including, the Trading Day immediately preceding the Effective Date of the Make-Whole Fundamental Change.

(d) The ADS Prices set forth in the column headings of the table below shall be adjusted as of any date on which the Conversion Rate of the Notes is otherwise adjusted. The adjusted ADS Prices shall equal the ADS Prices applicable immediately prior to such adjustment, *multiplied by* a fraction, the numerator of which is the Conversion Rate immediately prior to such adjustment giving rise to the ADS Price adjustment and the denominator of which is the Conversion Rate as so adjusted. The number of Additional ADSs set forth in the table below shall be adjusted in the same manner and at the same time as the Conversion Rate as set forth in Section 14.04.

(e) The following table sets forth the number of Additional ADSs to be received per US\$1,000 principal amount of Notes pursuant to this Section 14.03 for each ADS Price and Effective Date set forth below:

Effective Date	ADS Price												
	\$7.46	\$8.75	\$9.51	\$10.25	\$11.50	\$13.00	\$15.00	\$17.00	\$20.00	\$23.00	\$27.00	\$30.00	\$33.00
February 4, 2019	28.9123	21.1200	17.3870	14.5356	10.9470	7.9862	5.3967	3.7147	2.1360	1.1943	0.4778	0.1797	0.0242
February 1, 2020	28.9123	20.7691	16.7960	13.8254	10.1835	7.2777	4.8227	3.2735	1.8510	1.0161	0.3889	0.1357	0.0133
February 1, 2021	28.9123	19.7246	15.5005	12.4566	8.8878	6.1831	4.0013	2.6741	1.4850	0.7974	0.2863	0.0853	0.0018
February 1, 2022	28.9123	16.7246	12.9012	10.1561	6.9861	4.6731	2.9133	1.9035	1.0350	0.5404	0.1722	0.0343	0.0000
February 1, 2023	28.9123	14.3337	10.0400	7.1980	4.3096	2.5723	1.4993	0.9682	0.5305	0.2717	0.0733	0.0073	0.0000
February 1, 2024	28.9123	9.1497	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000

The exact ADS Prices and Effective Dates may not be set forth in the table above, in which case:

(i) if the ADS Price is between two ADS Prices in the table above or the Effective Date is between two Effective Dates in the table, the number of Additional ADSs shall be determined by a straight-line interpolation between the number of Additional ADSs set forth for the higher and lower ADS Prices and the earlier and later Effective Dates, as applicable, based on a 365-day year;

(ii) if the ADS Price is greater than US\$33.00 per ADS (subject to adjustment in the same manner as the ADS Prices set forth in the column headings of the table above pursuant to subsection (d) above), no Additional ADSs shall be added to the Conversion Rate; and

(iii) if the ADS Price is less than US\$7.46 per ADS (subject to adjustment in the same manner as the ADS Prices set forth in the column headings of the table above pursuant to subsection (d) above), no Additional ADSs shall be added to the Conversion Rate.

Notwithstanding the foregoing, in no event shall the Conversion Rate per US\$1,000 principal amount of Notes exceed 134.0482 ADSs, subject to adjustment in the same manner as the Conversion Rate pursuant to Section 14.04.

(f) Nothing in this Section 14.03 shall prevent an adjustment to the Conversion Rate pursuant to Section 14.04.

(g) If the Holder elects to convert its Notes in connection with the Company's election to redeem the Notes in respect of a Change in Tax Law pursuant to Section 16.01, the Conversion Rate shall be increased by a number of additional ADSs determined pursuant to this Section 14.03(g). The Company shall settle conversions of Notes as described in Section 14.02 and, for the avoidance of doubt, pay Additional Amounts, if any, with respect to any such conversion.

A conversion shall be deemed to be in connection with the Company's election to redeem the Notes in respect of a Change in Tax Law if such conversion occurs during the period from, and including, the date the Company provides the related notice of redemption to Holders until the close of business on the Business Day immediately preceding the Redemption Date (or, if the Company fails to pay the Redemption Price, such later date on which the Company pays the Redemption Price).

Simultaneously with providing such notice of redemption, the Company shall publish a notice containing this information in a newspaper of general circulation in The City of New York or publish the information on the Company's website or through such other public medium as the Company may use at that time.

The number of additional ADSs by which the Conversion Rate will be increased in the event the Company elects to redeem the Notes in respect of a Change in Tax Law will be determined by reference to the table in clause (e) above based on the Redemption Reference Date and the Redemption Reference Price (each as defined below), but determined for purposes of this Section 14.03(g) as if (x) the Holder had elected to convert its Notes in connection with a Make-Whole Fundamental Change, (y) the applicable "Redemption Reference Date" were the "Effective Date" as specified in clause (c) above and (z) the applicable "Redemption Reference Price" were the "ADS price" as specified in clause (c) above (and subject, for the avoidance of doubt, to the two paragraphs immediately following such table). For this purpose, the date on which the Company delivers notice of redemption is the "**Redemption Reference Date**" and the average of the Last Reported Sale Prices of the ADSs over the five Trading Day period immediately preceding the date the Company delivers such notice of redemption is the "**Redemption Reference Price**."

Section 14.04 *Adjustment of Conversion Rate.* If the number of Ordinary Shares represented by the ADSs is changed, after the date of this Indenture, for any reason other than one or more of the events described in this Section 14.04, the Company shall make an appropriate adjustment to the Conversion Rate such that the number of Ordinary Shares represented by the ADSs upon which conversion of the Notes is based remains the same.

Notwithstanding the adjustment provisions described in this Section 14.04, if the Company distributes to holders of the Ordinary Shares any cash, rights, options, warrants, shares of Capital Stock or similar equity interest, evidences of indebtedness or other assets or property of the Company (but excluding Expiring Rights) and a corresponding distribution is not made to holders of the ADSs, but, instead, the ADSs shall represent, in addition to Ordinary Shares, such cash, rights, options, warrants, shares of Capital Stock or similar equity interest, evidences of indebtedness or other assets or property of the Company, then an adjustment to the Conversion Rate described in this Section 14.04 shall not be made until and unless a corresponding distribution (if any) is made to holders of the ADSs, and such adjustment to the Conversion Rate shall be based on the distribution made to the holders of the ADSs and not on the distribution made to the holders of the Ordinary Shares. However, in the event that the Company issues or distributes to all holders of the Ordinary Shares any Expiring Rights, notwithstanding the immediately preceding sentence, the Company shall adjust the Conversion Rate pursuant to Section 14.04(b) (in the case of Expiring Rights entitling holders of the Ordinary Shares for a period of not more than 45 calendar days after the announcement date of such issuance to subscribe for or purchase Ordinary Shares or ADSs) or Section 14.04(c) (in the case of all other Expiring Rights).

For the avoidance of doubt, if any event described in this Section 14.04 results in a change to the number of Ordinary Shares represented by the ADSs, then such a change shall be deemed to satisfy the Company's obligation to effect the relevant adjustment to the Conversion Rate on account of such an event to the extent such change reflects what a corresponding change to the Conversion Rate would have been on account of such event.

The Conversion Rate shall be adjusted from time to time by the Company if any of the following events occurs, except that the Company shall not make any adjustments to the Conversion Rate if Holders of the Notes participate (other than in the case of (x) a share split or share combination or (y) a tender or exchange offer), at the same time and upon the same terms as holders of the ADSs and solely as a result of holding the Notes, in any of the transactions described in this Section 14.04, without having to convert their Notes, as if they held a number of ADSs equal to the Conversion Rate, *multiplied by* the principal amount (expressed in thousands) of Notes held by such Holder. Neither the Trustee nor the Conversion Agent shall have any responsibility to monitor the accuracy of any calculation of any adjustment to the Conversion Rate and the same shall be conclusive and binding on the Holders, absent manifest error. Notice of such adjustment to the Conversion Rate shall be given by the Company promptly to the Holders, the Trustee and the Paying Agent and Conversion Agent and shall be conclusive and binding on the Holders, absent manifest error.

(a) If the Company exclusively issues Ordinary Shares as a dividend or distribution on the Ordinary Shares, or if the Company effects a share split or share combination, the Conversion Rate shall be adjusted based on the following formula:

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

where,

- CR<sub>0</sub> = the Conversion Rate in effect immediately prior to the close of business on the Record Date of such dividend or distribution, or immediately prior to the open of business on the effective date of such share split or share combination, as applicable;
- CR<sub>1</sub> = the 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 applicable;
- OS<sub>0</sub> = the number of Ordinary Shares 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 applicable; and
- OS<sub>1</sub> = the number of Ordinary Shares outstanding immediately after giving effect to such dividend, distribution, share split or share combination.

Any adjustment made under this Section 14.04(a) shall become effective immediately after the close of business on the Record Date for such dividend or distribution, or immediately after the open of business on the effective date for such share split or share combination, as applicable. If any dividend or distribution of the type described in this Section 14.04(a) is declared but not so paid or made, the Conversion Rate shall be immediately readjusted, effective as of the date the Board of Directors determines not to pay such dividend or distribution, to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

(b) If the Company issues to all or substantially all holders of the Ordinary Shares (directly or in the form of ADSs) any rights, options or warrants entitling them, for a period of not more than 45 calendar days after the announcement date of such issuance, to subscribe for or purchase Ordinary Shares (directly or in the form of ADSs) at a price per Ordinary Share that is less than the average of the Last Reported Sale Prices of the Ordinary Shares or the ADSs, as the case may be (*divided by*, in the case of the ADSs, the number of Ordinary Shares then represented by one ADS), for the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of such issuance, the Conversion Rate shall be increased based on the following formula:

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

where,

- $CR_0$  = the Conversion Rate in effect immediately prior to the close of business on the Record Date for the ADSs for such issuance;
- $CR_1$  = the Conversion Rate in effect immediately after the close of business on such Record Date;
- $OS_0$  = the number of Ordinary Shares outstanding immediately prior to the close of business on such Record Date;
- $X$  = the total number of Ordinary Shares (directly or in the form of ADSs) deliverable pursuant to such rights, options or warrants; and
- $Y$  = the number of Ordinary Shares equal to (i) the aggregate price payable to exercise such rights, options or warrants, *divided by* (ii) the quotient of (a) the average of the Last Reported Sale Prices of the ADSs over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of the issuance of such rights, options or warrants *divided by* (b) the number of Ordinary Shares then represented by one ADS.

Any increase made under this Section 14.04(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 the ADSs for such issuance. To the extent that Ordinary Shares or ADSs are not delivered after the expiration of such rights, options or warrants, the Conversion Rate shall be decreased to the Conversion Rate that would then be in effect had the increase with respect to the issuance of such rights, options or warrants been made on the basis of delivery of only the number of Ordinary Shares actually delivered (directly or in the form of ADSs). If such rights, options or warrants are not so issued, the Conversion Rate shall be decreased to the Conversion Rate that would then be in effect if such the Record Date for the ADSs for such issuance had not occurred.

For purposes of this Section 14.04(b), in determining whether any rights, options or warrants entitle the holders to subscribe for or purchase Ordinary Shares (directly or in the form of ADSs) at a price per Ordinary Share that is less than such average of the Last Reported Sale Prices of the Ordinary Shares or the ADSs, as the case may be (divided by, in the case of the ADSs, the number of Ordinary Shares then represented by one ADS), for the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement for such issuance, and in determining the aggregate offering price of such Ordinary Shares or ADSs, 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, the value of such consideration, if other than cash, to be determined by the Board of Directors.

(c) If the Company distributes shares of its Capital Stock, evidences of its indebtedness, other assets or property of the Company or rights, options or warrants to acquire its Capital Stock or other securities, to all or substantially all holders of the Ordinary Shares (directly or in the form of ADSs), excluding (i) dividends, distributions or issuances as to which an adjustment was effected pursuant to Section 14.04(a) or Section 14.04(b), (ii) dividends or distributions paid exclusively in cash as to which an adjustment was effected pursuant to Section 14.04(d), and (iii) Spin-Offs as to which the provisions set forth below in this Section 14.04(c) shall apply (any of such shares of Capital Stock, evidences of indebtedness, other assets or property or rights, options or warrants to acquire Capital Stock or other securities of the Company, the “**Distributed Property**”), then the Conversion Rate shall be increased based on the following formula:

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

where,

$CR_0$  = the Conversion Rate in effect immediately prior to the close of business on the Record Date for the ADSs for such distribution;

$CR_1$  = the Conversion Rate in effect immediately after the close of business on such Record Date;

$SP_0$  = the average of the Last Reported Sale Prices of the ADSs (*divided by* the number of Ordinary Shares then represented by one ADS) over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Dividend Date for such distribution; and

$FMV$  = the fair market value (as determined by the Board of Directors) of the Distributed Property with respect to each outstanding Ordinary Share (directly or in the form of ADSs) on the Record Date for the ADSs for such distribution.

Any increase made under the foregoing portion of this Section 14.04(c) above shall become effective immediately after the close of business on the Record Date for the ADSs for such distribution. If such distribution is not so paid or made, the Conversion Rate shall be decreased to the Conversion Rate that would then be in effect if such distribution had not been declared. Notwithstanding the foregoing, if “FMV” (as defined above) is equal to or greater than “SP<sub>0</sub>” (as defined above), in lieu of the foregoing increase, each Holder of a Note shall receive, in respect of each US\$1,000 principal amount thereof, at the same time and upon the same terms as holders of the ADSs receive the Distributed Property, the amount and kind of Distributed Property such Holder would have received if such Holder owned a number of ADSs equal to the Conversion Rate in effect on the Record Date for the ADSs for the distribution.

With respect to an adjustment pursuant to this Section 14.04(c) where there has been a payment of a dividend or other distribution on the Ordinary Shares (directly or in the form of ADSs) of shares of Capital Stock of any class or series, or similar equity interest, of or relating to a Subsidiary or other business unit of the Company, that are, or, when issued, will be, listed or admitted for trading on a U.S. national securities exchange (a “**Spin-Off**”), the Conversion Rate shall be increased based on the following formula:

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

where,

CR<sub>0</sub> = the Conversion Rate in effect immediately prior to the close of business on the last Trading Day of the Valuation Period;

CR<sub>1</sub> = the Conversion Rate in effect immediately after the close of business on the last Trading Day of the Valuation Period;

FMV<sub>0</sub> = the average of the Last Reported Sale Prices of the Capital Stock or similar equity interest distributed to holders of the Ordinary Shares (directly or in the form of ADSs) applicable to one Ordinary Share (determined by reference to the definition of Last Reported Sale Price as set forth in Section 1.01 as if references therein to the ADSs were to such Capital Stock or similar equity interest) over the first 10 consecutive Trading Day period after, and including, the Ex-Dividend Date of the Spin-Off (the “**Valuation Period**”); and

MP<sub>0</sub> = the average of the Last Reported Sale Prices of the ADSs (*divided by* the number of Ordinary Shares then represented by one ADS) over the Valuation Period.



The adjustment to the Conversion Rate under the preceding paragraph shall occur immediately after the close of business on the last Trading Day of the Valuation Period; *provided* that in respect of any conversion during the Valuation Period, references in the portion of this Section 14.04(c) related to Spin-Offs to 10 Trading Days shall be deemed to be replaced with such lesser number of Trading Days as have elapsed from, and including, the Ex-Dividend Date of such Spin-Off to, and including, the Conversion Date in determining the Conversion Rate.

For purposes of this Section 14.04(c) (and subject in all respect to Section 14.11), rights, options or warrants distributed by the Company to all holders of the Ordinary Shares (directly or in the form of ADSs) entitling them to subscribe for or purchase shares of the Company's Capital Stock, including Ordinary Shares (either initially or under certain circumstances), which rights, options or warrants, until the occurrence of a specified event or events ("**Trigger Event**"): (i) are deemed to be transferred with such Ordinary Shares (directly or in the form of ADSs); (ii) are not exercisable; and (iii) are also issued in respect of future issuances of the Ordinary Shares (directly or in the form of ADSs), shall be deemed not to have been distributed for purposes of this Section 14.04(c) (and no adjustment to the Conversion Rate under this Section 14.04(c) will be required) until the occurrence of the earliest Trigger Event, whereupon such rights, options or warrants shall be deemed to have been distributed and an appropriate adjustment (if any is required) to the Conversion Rate shall be made under this Section 14.04(c). If any such right, option or warrant, including any such existing rights, options or warrants distributed prior to the date of this Indenture, are subject to events, upon the occurrence of which such rights, options or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and Record Date with respect to new rights, options or warrants with such rights (in which case the existing rights, options or warrants shall be deemed to terminate and expire on such date without exercise by any of the holders thereof). In addition, in the event of any distribution (or deemed distribution) of rights, options or warrants, or any Trigger Event or other event (of the type described in the immediately preceding sentence) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Conversion Rate under this Section 14.04(c) was made, (1) in the case of any such rights, options or warrants that shall all have been redeemed or purchased without exercise by any holders thereof, upon such final redemption or purchase (x) the Conversion Rate shall be readjusted as if such rights, options or warrants had not been issued and (y) the Conversion Rate shall then again be readjusted to give effect to such distribution, deemed distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per Ordinary Share redemption or purchase price received by a holder or holders of Ordinary Shares (directly or in the form of ADSs) with respect to such rights, options or warrants (assuming such holder had retained such rights, options or warrants), made to all holders of Ordinary Shares (directly or in the form of ADSs) as of the date of such redemption or purchase, and (2) in the case of such rights, options or warrants that shall have expired or been terminated without exercise by any holders thereof, the Conversion Rate shall be readjusted as if such rights, options and warrants had not been issued.

For purposes of Section 14.04(a), Section 14.04(b) and this Section 14.04(c), if any dividend or distribution to which this Section 14.04(c) is applicable also includes one or both of:

(A) a dividend or distribution of Ordinary Shares (directly or in the form of ADSs) to which Section 14.04(a) is applicable (the “**Clause A Distribution**”); or

(B) a dividend or distribution of rights, options or warrants to which Section 14.04(b) is applicable (the “**Clause B Distribution**”),

then (1) such dividend or distribution, other than the Clause A Distribution and the Clause B Distribution, shall be deemed to be a dividend or distribution to which this Section 14.04(c) is applicable (the “**Clause C Distribution**”) and any Conversion Rate adjustment required by this Section 14.04(c) with respect to such Clause C Distribution shall then be made, and (2) the Clause A Distribution and Clause B Distribution shall be deemed to immediately follow the Clause C Distribution and any Conversion Rate adjustment required by Section 14.04(a) and Section 14.04(b) with respect thereto shall then be made, except that, if determined by the Company (I) the “Record Date” of the Clause A Distribution and the Clause B Distribution shall be deemed to be the Record Date of the Clause C Distribution and (II) any Ordinary Shares (directly or in the form of ADSs) included in the Clause A Distribution or Clause B Distribution shall be deemed not to be “outstanding immediately prior to the close of business on such Record Date or immediately after the open of business on such effective date, as applicable” within the meaning of Section 14.04(a) or “outstanding immediately prior to the close of business on such Record Date” within the meaning of Section 14.04(b).

(d) If any cash dividend or distribution is made to all or substantially all holders of the Ordinary Shares (directly or in the form of ADSs), the Conversion Rate shall be adjusted based on the following formula:

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

where,

$CR_0$  = the Conversion Rate in effect immediately prior to the close of business on the Record Date for the ADSs for such dividend or distribution;

$CR_1$  = the Conversion Rate in effect immediately after the close of business on such Record Date;

$SP_0$  = the Last Reported Sale Price of the ADSs (divided by the number of Ordinary Shares then represented by one ADS) on the Trading Day immediately preceding the Ex-Dividend Date for such dividend or distribution; and

$C$  = the amount in cash per Ordinary Share the Company distributes to all or substantially all holders of the Ordinary Shares (directly or in the form of ADSs).

Any increase pursuant to this Section 14.04(d) shall become effective immediately after the close of business on the Record Date for the ADSs for such dividend or distribution. If such dividend or distribution is not so paid, the Conversion Rate shall be decreased, effective as of the date the Board of Directors determines not to make or pay such dividend or distribution, to be the Conversion Rate that would then be in effect if such dividend or distribution had not been declared. 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 Note shall receive, for each US\$1,000 principal amount of Notes, at the same time and upon the same terms as holders of the ADSs, the amount of cash that such Holder would have received if such Holder owned a number of ADSs equal to the Conversion Rate on the Record Date for the ADSs for such cash dividend or distribution.

(e) If the Company or any of its Subsidiaries or Consolidated Affiliated Entities makes a payment in respect of a tender or exchange offer for the Ordinary Shares (directly or in the form of ADSs), to the extent that the cash and value of any other consideration included in the payment per Ordinary Share exceeds the average of the Last Reported Sale Prices of the ADSs (*divided by* the number of Ordinary Shares then represented by one ADS) over the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date such tender or exchange offer expires, the Conversion Rate shall be increased based on the following formula:

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

where,

- CR<sub>0</sub> = the Conversion Rate in effect immediately prior to the close of business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the date such tender or exchange offer expires;
- CR<sub>1</sub> = the Conversion Rate in effect immediately after the close of business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the date such tender or exchange offer expires;
- AC = the aggregate value of all cash and any other consideration (as determined by the Board of Directors) paid or payable for Ordinary Shares or ADSs, as the case may be, purchased in such tender or exchange offer;
- OS<sub>0</sub> = the number of Ordinary Shares outstanding immediately prior to the date such tender or exchange offer expires (prior to giving effect to the purchase of all Ordinary Shares or ADSs, as the case may be, accepted for purchase or exchange in such tender or exchange offer);
- OS<sub>1</sub> = the number of Ordinary Shares outstanding immediately after the date such tender or exchange offer expires (after giving effect to the purchase of all Ordinary Shares or ADSs, as the case may be, accepted for purchase or exchange in such tender or exchange offer); and
- SP<sub>1</sub> = the average of the Last Reported Sale Prices of the ADSs (*divided by* the number of Ordinary Shares then represented by one ADS) over the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date such tender or exchange offer expires.

The adjustment to the Conversion Rate under this Section 14.04(e) shall occur at the close of business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the date such tender or exchange offer expires; *provided* that in respect of any conversion within the 10 Trading Days immediately following, and including, the Trading Day next succeeding the expiration date of any tender or exchange offer, references in this Section 14.04(e) with respect to 10 Trading Days shall be deemed replaced with such lesser number of Trading Days as have elapsed from, and including, the Trading Day next succeeding the expiration date of such tender or exchange offer to, and including, the Conversion Date in determining the Conversion Rate. For the avoidance of doubt, no adjustment to the Conversion Rate under this Section 14.04(e) shall be made if such adjustment would result in a decrease in the Conversion Rate.

(f) [RESERVED]

(g) Except as stated herein, the Company shall not adjust the Conversion Rate for the issuance of Ordinary Shares or ADSs or any securities convertible into or exchangeable for Ordinary Shares or ADSs or the right to purchase Ordinary Shares or ADSs or such convertible or exchangeable securities.

(h) In addition to those adjustments required by clauses (a), (b), (c), (d) and (e) of this Section 14.04, and to the extent permitted by applicable law and subject to the applicable rules of the New York Stock Exchange and any other securities exchange on which any of the Company's securities are then listed, the Company from time to time may increase the Conversion Rate by any amount for a period of at least 20 Business Days if the Board of Directors determines that such increase would be in the Company's best interest, and the Company may (but is not required to) increase the Conversion Rate to avoid or diminish any income tax to holders of the Ordinary Shares or the ADSs or rights to purchase Ordinary Shares or ADSs in connection with a dividend or distribution of Ordinary Shares or ADSs (or rights to acquire Ordinary Shares or ADSs) or similar event.

(i) Notwithstanding anything to the contrary in this Article 14, the Conversion Rate shall not be adjusted:

(i) upon the issuance of any Ordinary Shares or ADSs 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 Ordinary Shares or ADSs under any plan;

(ii) upon the issuance of any Ordinary Shares or ADSs or options or rights to purchase those Ordinary Shares or ADSs pursuant to any present or future employee, director or consultant benefit plan or program of or assumed by the Company or any of the Company's Subsidiaries or Consolidated Affiliated Entities;

(iii) upon the issuance of any Ordinary Shares or ADSs pursuant to any option, warrant, right or exercisable, exchangeable or convertible security not described in clause (ii) of this subsection and outstanding as of the date the Notes were first issued;

(iv) solely for a change in the par value of the Ordinary Shares; or

(v) for accrued and unpaid interest, if any.

(j) All calculations and other determinations under this Article 14 shall be made by the Company and shall be made to the nearest one-ten thousandth (1/10,000) of an ADS.

(k) Whenever the Conversion Rate is adjusted as herein provided, the Company shall promptly file with the Trustee (and the Conversion Agent if not the Trustee) an Officers' Certificate setting forth the Conversion Rate after such adjustment and setting forth a brief statement of the facts requiring such adjustment. Unless and until a Responsible Officer of the Trustee shall have received such Officers' Certificate, the Trustee shall not be deemed to have knowledge of any adjustment of the Conversion Rate and may assume without inquiry that the last Conversion Rate of which it has knowledge is still in effect. Promptly after delivery of such certificate, the Company shall prepare a notice of such adjustment of the Conversion Rate setting forth the adjusted Conversion Rate and the date on which each adjustment becomes effective and shall mail such notice of such adjustment of the Conversion Rate to each Holder at its last address appearing on the Note Register of this Indenture. Failure to deliver such notice shall not affect the legality or validity of any such adjustment.

(l) For purposes of this Section 14.04, the number of Ordinary Shares at any time outstanding shall not include Ordinary Shares held in the treasury of the Company (directly or in the form of ADSs) so long as the Company does not pay any dividend or make any distribution on Ordinary Shares held in the treasury of the Company (directly or in the form of ADSs), but shall include Ordinary Shares issuable in respect of scrip certificates issued in lieu of fractions of Ordinary Shares.

(m) For purposes of this Section 14.04, the "effective date" means the first date on which the ADSs trade on the applicable exchange or in the applicable market, regular way, reflecting the relevant share split or share combination, as applicable.

Section 14.05 *Adjustments of Prices.* Whenever any provision of this Indenture requires the Company to calculate the Last Reported Sale Prices, the ADS Price for purposes of a Make-Whole Fundamental Change or the Redemption Reference Price for purposes of a redemption of the Notes in connection with a Change in Tax Law over a span of multiple days, the Board of Directors shall make appropriate adjustments to each to account for any adjustment to the Conversion Rate that becomes effective pursuant to Section 14.04, or any event requiring an adjustment to the Conversion Rate pursuant to Section 14.04 where the Record Date, effective date or expiration date, as the case may be, of the event occurs, at any time during the period when such Last Reported Sale Prices or ADS Prices are to be calculated.

Section 14.06 *Ordinary Shares to Be Fully Paid.* The Company shall provide, free from preemptive rights, out of its authorized but unissued Ordinary Shares or Ordinary Shares held in treasury, a sufficient number of Ordinary Shares that corresponds to the number of ADSs due upon conversion of the Notes from time to time as such Notes are presented for conversion (assuming that at the time of computation of such number of Ordinary Shares, all such Notes would be converted by a single Holder).

Section 14.07 *Effect of Recapitalizations, Reclassifications and Changes of the Ordinary Shares.*

(a) In the case of:

- (i) any recapitalization, reclassification or change of the Ordinary Shares (other than changes resulting from a subdivision or combination),
- (ii) any consolidation, merger, combination or similar transaction involving the Company,
- (iii) any sale, lease or other transfer to a third party of the consolidated assets of the Company and the Company's Subsidiaries and Consolidated Affiliated Entities substantially as an entirety or
- (iv) any statutory share exchange,

in each case, as a result of which the Ordinary Shares would be converted into, or exchanged for, stock, other securities, other property or assets (including cash or any combination thereof) (any such event, a "**Merger Event**"), then, prior to or at the effective time of such Merger Event, the Company or the successor or purchasing Person, as the case may be, shall execute with the Trustee a supplemental indenture permitted under Section 10.01(f) providing that, at and after the effective time of such Merger Event, the right to convert each US\$ 1,000 principal amount of Notes shall be changed into a right to convert such principal amount of Notes into the kind and amount of shares of stock, other securities or other property or assets (including cash or any combination thereof) that a holder of a number of ADSs equal to the Conversion Rate immediately prior to such Merger Event would have owned or been entitled to receive (the "**Reference Property**," with each "**unit of Reference Property**" meaning the kind and amount of Reference Property that a holder of one ADS is entitled to receive) upon such Merger Event; *provided, however*, that at and after the effective time of the Merger Event the number of ADSs otherwise deliverable upon conversion of the Notes in accordance with Section 14.02 shall instead be deliverable in the amount and type of Reference Property that a holder of that number of ADSs would have been entitled to receive in such Merger Event.

If the Merger Event causes the Ordinary Shares to be converted into, or exchanged for, the right to receive more than a single type of consideration (determined based in part upon any form of holder election), then (i) the Reference Property into which the Notes will be convertible shall be deemed to be the weighted average of the types and amounts of consideration actually received by the holders of the ADSs and (ii) the unit of Reference Property for purposes of the immediately preceding paragraph shall refer to the consideration referred to in clause (i) attributable to one ADS. The Company shall provide written notice to Holders, the Trustee and the Conversion Agent (if other than the Trustee) of such weighted average as soon as practicable after such determination is made.

Such supplemental indenture described in the second immediately preceding paragraph shall provide for anti-dilution and other adjustments that shall be as nearly equivalent as is practicable to the adjustments provided for in this Article 14 (it being understood that no such adjustments shall be required with respect to any portion of the Reference Property that does not consist of shares of Common Equity (however evidenced) or depositary receipts in respect thereof). If, in the case of any Merger Event, the Reference Property includes shares of stock, securities or other property or assets (including cash or any combination thereof) of a Person other than the Company or the successor or purchasing Person, as the case may be, in such Merger Event, then such other Person shall also execute such supplemental indenture, and such supplemental indenture shall contain such additional provisions to protect the interests of the Holders of the Notes, including the right of Holders to require the Company to repurchase their Notes upon a Fundamental Change pursuant to Section 15.02 and the right of Holders to require the Company to repurchase their Notes on the Repurchase Date pursuant to Section 15.01, as the Board of Directors shall reasonably consider necessary by reason of the foregoing.

(b) [RESERVED]

(c) The Company shall not become a party to any Merger Event unless its terms are consistent with this Section 14.07. None of the foregoing provisions shall affect the right of a holder of Notes to convert its Notes into ADSs as set forth in Section 14.01 and Section 14.02 prior to the effective date of such Merger Event.

(d) The above provisions of this Section shall similarly apply to successive Merger Events.

Section 14.08 *Certain Covenants.* (a) The Company covenants that all ADSs delivered upon conversion of Notes, and all Ordinary Shares represented by such ADSs, will be fully paid and non-assessable by the Company and free from all taxes, liens and charges with respect to the issue thereof.

(b) The Company covenants that, if any ADSs to be provided for the purpose of conversion of Notes hereunder, or any Ordinary Shares represented by such ADSs, require registration with or approval of any governmental authority under any federal or state law before such ADSs may be validly issued upon conversion, the Company will, to the extent then permitted by the rules and interpretations of the Commission, secure such registration or approval, as the case may be.

(c) The Company further covenants that if at any time the ADSs shall be listed on any national securities exchange or automated quotation system the Company will list and keep listed, so long as the ADSs shall be so listed on such exchange or automated quotation system, any ADSs deliverable upon conversion of the Notes.

(d) The Company further covenants to take all actions and obtain all approvals and registrations required with respect to the conversion of the Notes into ADSs and the issuance, and deposit into the ADS facility, of the Ordinary Shares represented by such ADSs. The Company also undertakes to maintain, as long as any Notes are outstanding, the effectiveness of a registration statement on Form F-6 relating to the ADSs and an adequate number of ADSs available for issuance thereunder such that ADSs can be delivered in accordance with the terms of this Indenture, the Notes and the Unrestricted Deposit Agreement or the Restricted Deposit Agreement, as applicable, upon conversion of the Notes. In addition, the Company further covenants to provide Holders with a reasonably detailed description of the mechanics for the delivery of ADSs upon conversion of Notes as set forth in the Unrestricted Deposit Agreement or the Restricted Deposit Agreement (including pursuant to a certain procedures letter for the issuance of restricted ADSs contemplated by Section 11 of the Restricted Deposit Agreement) upon request.

Section 14.09 *Responsibility of Trustee.* The Trustee and any other Conversion Agent shall not at any time be under any duty or responsibility to any Holder to determine the Conversion Rate (or any adjustment thereto) or whether any facts exist that may require any adjustment (including any increase) of the Conversion Rate, or with respect to the nature or extent or calculation of any such adjustment when made, or with respect to the method employed, or herein or in any supplemental indenture provided to be employed, in making the same. The Trustee and any other Conversion Agent shall not be accountable with respect to the validity or value (or the kind or amount) of any ADSs, or of any securities, property or cash that may at any time be issued or delivered upon the conversion of any Note; and the Trustee and any other Conversion Agent make no representations with respect thereto. Neither the Trustee nor any Conversion Agent shall be responsible for any failure of the Company to issue, transfer or deliver any ADSs or stock certificates or other securities or property or cash upon the surrender of any Note for the purpose of conversion, the accuracy or inaccuracy of any mathematical calculation or formulae under this Indenture, whether by the Company or any Person so authorized by the Company for such purpose under this Indenture or the failure by the Company to comply with any of the duties, responsibilities or covenants of the Company contained in this Article. Without limiting the generality of the foregoing, neither the Trustee nor any Conversion Agent shall be under any responsibility to determine the correctness of any provisions contained in any supplemental indenture entered into pursuant to Section 14.07 relating either to the kind or amount of ADSs or securities or property (including cash) receivable by Holders upon the conversion of their Notes after any event referred to in such Section 14.07 or to any adjustment to be made with respect thereto, but, subject to the provisions of Section 7.01, may accept (without any independent investigation) as conclusive evidence of the correctness of any such provisions, and shall be protected in relying upon, the Officers' Certificate (which the Company shall be obligated to file with the Trustee prior to the execution of any such supplemental indenture) with respect thereto.

Section 14.10 *Notice to Holders Prior to Certain Actions.* In case of any:

- (a) action by the Company or one of its Subsidiaries that would require an adjustment in the Conversion Rate pursuant to Section 14.04 or Section 14.11;
- (b) Merger Event; or
- (c) voluntary or involuntary dissolution, liquidation or winding-up of the Company or any of its Subsidiaries;



then, in each case (unless notice of such event is otherwise required pursuant to another provision of this Indenture), the Company shall cause to be filed with the Trustee and the Conversion Agent (if other than the Trustee) and to be mailed to each Holder at its address appearing on the Note Register, as promptly as possible but in any event at least 20 days prior to the applicable date hereinafter specified, a notice stating (i) the date on which a record is to be taken for the purpose of such action by the Company or one of its Subsidiaries or, if a record is not to be taken, the date as of which the holders of Ordinary Shares or ADSs, as the case may be, of record are to be determined for the purposes of such action by the Company or one of its Subsidiaries, or (ii) the date on which such Merger Event, dissolution, liquidation or winding-up is expected to become effective or occur, and the date as of which it is expected that holders of Ordinary Shares or ADSs, as the case may be, of record shall be entitled to exchange their Ordinary Shares or ADSs, as the case may be, for securities or other property deliverable upon such Merger Event, dissolution, liquidation or winding-up. Failure to give such notice, or any defect therein, shall not affect the legality or validity of such action by the Company or one of its Subsidiaries, Merger Event, dissolution, liquidation or winding-up.

Section 14.11 *Stockholder Rights Plans.* To the extent that the Company has a rights plan in effect upon conversion of the Notes, each ADS delivered upon such conversion shall be entitled to receive (either directly or in respect of the Ordinary Shares underlying such ADSs) the appropriate number of rights, if any, and the certificates representing the ADSs delivered upon such conversion shall bear such legends, if any, in each case as may be provided by the terms of any such stockholder rights plan, as the same may be amended from time to time. However, if, prior to any conversion, the rights have separated from the Ordinary Shares underlying the ADSs in accordance with the provisions of the applicable stockholder rights plan, the Conversion Rate shall be adjusted at the time of separation as if the Company distributed to all or substantially all holders of the Ordinary Shares Distributed Property as provided in Section 14.04(c), subject to readjustment in the event of the expiration, termination or redemption of such rights.

Section 14.12 *Termination of Depositary Receipt Program.* If the Ordinary Shares cease to be represented by American Depositary Shares issued under a depositary receipt program sponsored by the Company, all references in this Indenture to the ADSs shall be deemed to have been replaced by a reference to the number of Ordinary Shares (and other property, if any) represented by the ADSs on the last day on which the ADSs represented the Ordinary Shares and as if the Ordinary Shares and the other property had been distributed to holders of the ADSs on that day. In addition, all references to the Last Reported Sale Price of the ADSs will be deemed to refer to the Last Reported Sale Price of the Ordinary Shares, and other appropriate adjustments, including adjustments to the Conversion Rate, will be made to reflect such change. In making such adjustments, where currency translations between U.S. dollars and any other currency are required, the exchange rate in effect on the date of determination will apply.

ARTICLE 15  
REPURCHASE OF NOTES AT OPTION OF HOLDERS

Section 15.01 *Repurchase at Option of Holders.*

(a) Each Holder shall have the right, at such Holder's option, to require the Company to repurchase for cash on February 1, 2022 (the "**Repurchase Date**"), all of such Holder's Notes, or any portion thereof that is an integral multiple of US\$1,000 principal amount, at a repurchase price (the "**Repurchase Price**") that is equal to 100% of the principal amount of the Notes to be repurchased, *plus* accrued and unpaid interest to, but excluding, the Repurchase Date; *provided* that any such accrued and unpaid interest shall be paid not to the Holders submitting the Notes for repurchase on the Repurchase Date but instead to the Holders of such Notes at the close of business on the Regular Record Date immediately preceding the Repurchase Date. Not later than 20 Business Days prior to the Repurchase Date, the Company shall mail a notice (the "**Company Notice**") by first class mail to the Trustee, to the Paying Agent and to each Holder at its address shown in the Note Register of the Note Registrar (and to beneficial owners as required by applicable law and to the Conversion Agent if other than the Trustee). The Company Notice shall include a Form of Repurchase Notice to be completed by a holder and shall state:

- (i) the last date on which a Holder may exercise its repurchase right pursuant to this Section 15.01 (the "**Repurchase Expiration Time**");
- (ii) the Repurchase Price;
- (iii) the Repurchase Date;
- (iv) the name and address of the Conversion Agent and Paying Agent;
- (v) that the Notes with respect to which a Repurchase Notice has been delivered by a Holder may be converted only if the Holder withdraws the Repurchase Notice in accordance with the terms of this Indenture;
- (vi) that the Holder shall have the right to withdraw any Notes surrendered prior to the Repurchase Expiration Time; and
- (vii) the procedures a Holder must follow to exercise its repurchase rights under this Section 15.01 and a brief description of those rights.

At the Company's request, the Trustee shall give such notice in the Company's name and at the Company's expense; *provided, however*, that, in all cases, the text of such Company Notice shall be prepared by the Company.

Simultaneously with providing the Company Notice, the Company shall publish a notice containing the information included in the Company Notice in a newspaper of general circulation in The City of New York or publish such information on the Company's website or through such other public medium as the Company may use at that time.

No failure of the Company to give the foregoing notices and no defect therein shall limit the Holders' repurchase rights or affect the validity of the proceedings for the repurchase of the Notes pursuant to this Section 15.01.

Repurchases of Notes under this Section 15.01 shall be made, at the option of the Holder thereof, upon:

(A) delivery to the Paying Agent (or other agent appointed for such purpose) by the Holder of a duly completed notice (the “**Repurchase Notice**”) in the form set forth in Attachment 3 to the Form of Note attached hereto as Exhibit A, if the Notes are Physical Notes, or in compliance with the Depository’s procedures for surrendering interests in global notes, if the Notes are Global Notes, in each case during the period beginning at any time from the open of business on the date that is 20 Business Days prior to the Repurchase Date until the close of business on the second Business Day immediately preceding the Repurchase Date; and

(B) delivery of the Notes, if the Notes are Physical Notes, to the Trustee at any time after delivery of the Repurchase Notice (together with all necessary endorsements) at the Corporate Trust Office of the Trustee, or book-entry transfer of the Notes, if the Notes are Global Notes, in compliance with the procedures of the Depository, in each case such delivery being a condition to receipt by the Holder of the Repurchase Price therefor.

Each Repurchase Notice shall state:

- (A) in the case of Physical Notes, the certificate numbers of the Notes to be delivered for repurchase;
- (B) the portion of the principal amount of the Notes to be repurchased, which must be US\$1,000 or an integral multiple thereof; and
- (C) that the Notes are to be repurchased by the Company pursuant to the applicable provisions of the Notes and this Indenture;

*provided, however,* that if the Notes are Global Notes, the Repurchase Notice must comply with appropriate Depository procedures.

Notwithstanding anything herein to the contrary, any Holder delivering to the Trustee the Repurchase Notice contemplated by this Section 15.01 shall have the right to withdraw, in whole or in part, such Repurchase Notice at any time prior to the close of business on the second Business Day immediately preceding the Repurchase Date by delivery of a duly completed written notice of withdrawal to the Trustee in accordance with Section 15.03.

The Trustee shall promptly notify the Company of the receipt by it of any Repurchase Notice or written notice of withdrawal thereof.

No Repurchase Notice with respect to any Notes may be delivered and no Note may be surrendered for repurchase pursuant to this Section 15.01 by a Holder thereof to the extent such Holder has also delivered a Fundamental Change Repurchase Notice with respect to such Note in accordance with Section 15.02 and not validly withdrawn such Fundamental Change Repurchase Notice in accordance with Section 15.03.

(b) Notwithstanding the foregoing, no Notes may be repurchased by the Company at the option of the Holders on the Repurchase Date if the principal amount of the Notes has been accelerated, and such acceleration has not been rescinded, on or prior to such Repurchase Date (except in the case of an acceleration resulting from a default by the Company in the payment of the Repurchase Price with respect to such Notes). The Trustee will promptly return to the respective Holders thereof any Physical Notes held by it during the acceleration of the Notes (except in the case of an acceleration resulting from a default by the Company in the payment of the Repurchase Price with respect to such Notes), or any instructions for book-entry transfer of the Notes in compliance with the procedures of the Depository shall be deemed to have been cancelled, and, upon such return or cancellation, as the case may be, the Repurchase Notice with respect thereto shall be deemed to have been withdrawn.

Section 15.02 *Repurchase at Option of Holders Upon a Fundamental Change.* (a) If a Fundamental Change occurs at any time, each Holder shall have the right, at such Holder's option, to require the Company to repurchase for cash all of such Holder's Notes, or any portion thereof that is equal to US\$1,000 or an integral multiple of US\$1,000, on the Business Day (the "**Fundamental Change Repurchase Date**") notified in writing by the Company as set forth in Section 15.02(c) that is not less than 20 Business Days or more than 35 Business Days following the date of the Fundamental Change Company Notice at a repurchase price equal to 100% of the principal amount thereof, *plus* accrued and unpaid interest thereon to, but excluding, the Fundamental Change Repurchase Date (the "**Fundamental Change Repurchase Price**"), unless the Fundamental Change Repurchase Date falls after a Regular Record Date but on or prior to the Interest Payment Date to which such Regular Record Date relates, in which case the Company shall instead pay the full amount of accrued and unpaid interest to Holders of record as of such Regular Record Date, and the Fundamental Change Repurchase Price shall be equal to 100% of the principal amount of Notes to be repurchased pursuant to this Article 15. The Trustee and the Conversion Agent, Paying Agent or any other agent appointed for such purpose shall have no responsibility to determine the Fundamental Change Repurchase Price.

(b) Repurchases of Notes under this Section 15.02 shall be made, at the option of the Holder thereof, upon:

(i) delivery to the Paying Agent (or other agent appointed for this purpose) by a Holder of a duly completed notice (the "**Fundamental Change Repurchase Notice**") in the form set forth in Attachment 2 to the Form of Note attached hereto as Exhibit A, if the Notes are Physical Notes, or in compliance with the Depository's procedures for surrendering interests in global notes, if the Notes are Global Notes, in each case on or before the close of business on the second Business Day immediately preceding the Fundamental Change Repurchase Date; and

(ii) delivery of the Notes, if the Notes are Physical Notes, to the Trustee at any time after delivery of the Fundamental Change Repurchase Notice (together with all necessary endorsements for transfer) at the Corporate Trust Office, or book-entry transfer of the Notes, if the Notes are Global Notes, in compliance with the procedures of the Depository, in each case such delivery being a condition to receipt by the Holder of the Fundamental Change Repurchase Price therefor.

The Fundamental Change Repurchase Notice in respect of any Notes to be repurchased shall state:

- (i) in the case of Physical Notes, the certificate numbers of the Notes to be delivered for repurchase;
- (ii) the portion of the principal amount of Notes to be repurchased, which must be US\$1,000 or an integral multiple thereof; and
- (iii) that the Notes are to be repurchased by the Company pursuant to the applicable provisions of the Notes and this Indenture;

*provided, however,* that if the Notes are Global Notes, the Fundamental Change Repurchase Notice must comply with appropriate Depositary procedures.

Notwithstanding anything herein to the contrary, any Holder delivering to the Trustee the Fundamental Change Repurchase Notice contemplated by this Section 15.02 shall have the right to withdraw, in whole or in part, such Fundamental Change Repurchase Notice at any time prior to the close of business on the second Business Day immediately preceding the Fundamental Change Repurchase Date by delivery of a duly completed written notice of withdrawal to the Trustee in accordance with Section 15.03.

The Trustee shall promptly notify the Company of the receipt by it of any Fundamental Change Repurchase Notice or written notice of withdrawal thereof.

No Fundamental Change Repurchase Notice with respect to any Notes may be delivered and no Note may be surrendered by a Holder for repurchase thereof if such Holder has also surrendered a Repurchase Notice in accordance with Section 15.01 and not validly withdrawn such Repurchase Notice in accordance with Section 15.03.

(c) On or before the 20th calendar day after the occurrence of the effective date of a Fundamental Change, the Company shall provide to all Holders, the Trustee (and the Conversion Agent, Paying Agent and any other agent appointed for this purpose, in each case, if other than the Trustee) a written notice (the “**Fundamental Change Company Notice**”) of the occurrence of the effective date of the Fundamental Change and of the repurchase right at the option of the Holders arising as a result thereof. In the case of Physical Notes, such notice shall be by first class mail or, in the case of Global Notes, such notice shall be delivered in accordance with the applicable procedures of the Depositary. Simultaneously with providing such notice, the Company shall publish a notice containing the information set forth in the Fundamental Change Company Notice in a newspaper of general circulation in The City of New York or publish such information on the Company’s website or through such other public medium as the Company may use at that time. Each Fundamental Change Company Notice shall specify:

- (i) the events causing the Fundamental Change and whether such events also constitute a Make-Whole Fundamental Change;
- (ii) the effective date of the Fundamental Change;
- (iii) the last date on which a Holder may exercise the repurchase right pursuant to this Article 15;

- (iv) the Fundamental Change Repurchase Price;
- (v) the Fundamental Change Repurchase Date;
- (vi) the name and address of the Trustee, the Paying Agent, the Conversion Agent or any other agent appointed for repurchase, if applicable;
- (vii) if applicable, the Conversion Rate and any adjustments to the Conversion Rate as a result of such Fundamental Change if it is a Make-Whole Fundamental Change;
- (viii) if applicable, that the Notes with respect to which a Fundamental Change Repurchase Notice has been delivered by a Holder may be converted only if the Holder withdraws the Fundamental Change Repurchase Notice in accordance with the terms of this Indenture; and
- (ix) the procedures that Holders must follow to require the Company to repurchase their Notes.

No failure of the Company to give the foregoing notices and no defect therein shall limit the Holders' repurchase rights or affect the validity of the proceedings for the repurchase of the Notes pursuant to this Section 15.02.

At the Company's request, the Trustee shall give such notice in the Company's name and at the Company's expense; *provided, however*, that, in all cases, the text of such Fundamental Change Company Notice shall be prepared by the Company.

(d) Notwithstanding the foregoing, no Notes may be repurchased by the Company on any date at the option of the Holders upon a Fundamental Change if the principal amount of the Notes has been accelerated, and such acceleration has not been rescinded, on or prior to such date (except in the case of an acceleration resulting from a default by the Company in the payment of the Fundamental Change Repurchase Price with respect to such Notes). The Trustee will promptly return to the respective Holders thereof any Physical Notes held by it during the acceleration of the Notes (except in the case of an acceleration resulting from a default by the Company in the payment of the Fundamental Change Repurchase Price with respect to such Notes), or any instructions for book-entry transfer of the Notes in compliance with the procedures of the Depository shall be deemed to have been cancelled, and, upon such return or cancellation, as the case may be, the Fundamental Change Repurchase Notice with respect thereto shall be deemed to have been withdrawn.

Section 15.03 *Withdrawal of Repurchase Notice or Fundamental Change Repurchase Notice.* (a) A Repurchase Notice or Fundamental Change Repurchase Notice may be withdrawn (in whole or in part) by means of a duly completed written notice of withdrawal delivered to the Paying Agent (or other agent appointed for such purpose) in accordance with this Section 15.03 at any time prior to the close of business on the second Business Day immediately preceding the Repurchase Date or prior to the close of business on the second Business Day immediately preceding the Fundamental Change Repurchase Date, as the case may be, specifying:

- (i) the principal amount of the Notes with respect to which such notice of withdrawal is being submitted,
- (ii) if Physical Notes have been issued, the certificate number of the Note in respect of which such notice of withdrawal is being submitted, and
- (iii) the principal amount, if any, of such Note that remains subject to the original Repurchase Notice or Fundamental Change Repurchase Notice, as the case may be, which portion must be in principal amounts of US\$1,000 or an integral multiple of US\$1,000;

*provided, however,* that if the Notes are Global Notes, the notice must comply with appropriate procedures of the Depository.

Section 15.04 *Deposit of Repurchase Price or Fundamental Change Repurchase Price.* (a) The Company will deposit with the Paying Agent (or any other agent appointed for this purpose by the Company), or if the Company is acting as its own Paying Agent, set aside, segregate and hold in trust as provided in Section 4.04) on or prior to 10:00 a.m., New York City time, on the Repurchase Date or Fundamental Change Repurchase Date, as the case may be, an amount of money sufficient to repurchase all of the Notes to be repurchased at the appropriate Repurchase Price or Fundamental Change Repurchase Price. Subject to receipt of funds and/or Notes by the Paying Agent (or other agent appointed for this purpose by the Company) and the Trustee, as applicable, payment for Notes surrendered for repurchase (and not withdrawn in accordance with Section 15.03) will be made on the later of (i) the Repurchase Date or Fundamental Change Repurchase Date, as the case may be, (*provided* the Holder has satisfied the conditions in Section 15.01 or Section 15.02, as the case may be) and (ii) the time of book-entry transfer or the delivery of such Note to the Trustee (or other Paying Agent appointed by the Company) by the Holder thereof in the manner required by Section 15.01 or Section 15.02, as applicable, by mailing checks for the amount payable to the Holders of such Notes entitled thereto as they shall appear in the Note Register; *provided, however,* that payments to the Depository shall be made by wire transfer of immediately available funds to the account of the Depository or its nominee. The Paying Agent (or other agent appointed for this purpose by the Company) shall, promptly after such payment and upon written demand by the Company, return to the Company any funds in excess of the Repurchase Price or Fundamental Change Repurchase Price, as the case may be.

(b) If by 10:00 a.m., New York City time, on the Repurchase Date or Fundamental Change Repurchase Date, as the case may be, the Paying Agent (or other agent appointed for this purpose by the Company) holds money sufficient to make payment on all the Notes or portions thereof that are to be repurchased on such Repurchase Date or Fundamental Change Repurchase Date, as the case may be, then, with respect to the Notes that have been properly surrendered for repurchase and not validly withdrawn, on such Repurchase Date or Fundamental Change Repurchase Date, as the case may be, (i) such Notes will cease to be outstanding, (ii) interest will cease to accrue on such Notes (whether or not book-entry transfer of the Notes has been made or the Notes have been delivered to the Trustee) and (iii) all other rights of the Holders of such Notes will terminate (other than the right to receive the Repurchase Price or Fundamental Change Repurchase Price, as the case may be, and previously accrued and unpaid interest upon delivery or transfer of the Notes to the extent not included in the Repurchase Price or Fundamental Change Repurchase Price, as the case may be).

(c) Upon surrender of a Note that is to be repurchased in part pursuant to Section 15.01 or Section 15.02, the Company shall execute and the Trustee, upon receipt of a Company Order, shall authenticate and deliver to the Holder a new Note in an authorized denomination equal in principal amount to the unreurchased portion of the Note surrendered.

Section 15.05 *Covenant to Comply with Applicable Laws Upon Repurchase of Notes.* In connection with any repurchase offer, the Company will, if required:

- (a) comply with the provisions of Rule 13e-4, Rule 14e-1 and any other tender offer rules under the Exchange Act;
- (b) file a Schedule TO or other required schedule under the Exchange Act; and
- (c) otherwise comply with all federal and state securities laws in connection with any offer by the Company to repurchase the Notes;

in each case, so as to permit the rights and obligations under this Article 15 to be exercised in the time and in the manner specified in this Article 15.

#### ARTICLE 16 OPTIONAL REDEMPTION

Section 16.01 *Optional Redemption for Changes in the Tax Law of the Relevant Jurisdiction.* Other than as described in this Article 16, the Notes may not be redeemed by the Company at its option prior to maturity. If the Company has, or on the next Interest Payment Date would, become obligated to pay to the Holder of any Note Additional Amounts that are more than a *de minimis* amount, as a result of:

- (a) any change or amendment that is publicly announced and becomes effective on or after January 30, 2019 (or, in the case of a jurisdiction that becomes a Relevant Jurisdiction after such date, after such later date) in the laws or any rules or regulations of a Relevant Jurisdiction; or
- (b) any change that is publicly announced and becomes effective on or after January 30, 2019 (or, in the case of a jurisdiction that becomes a Relevant Jurisdiction after such date, after such later date) in an interpretation, administration or application of such laws, rules or regulations by any legislative body, court, governmental agency, taxing authority or regulatory or administrative authority of such Relevant Jurisdiction (including the enactment of any legislation and the announcement or publication of any judicial decision or regulatory or administrative interpretation or determination);



(each, a “**Change in Tax Law**”), the Company may, at its option, redeem all but not part of the Notes (except in respect of certain Holders that elect otherwise as described below) at a redemption price equal to 100% of the principal amount thereof (the “**Redemption Price**”), plus accrued and unpaid interest, if any, to, but not including the date fixed by the Company for redemption (the “**Redemption Date**”), including, for the avoidance of doubt, any Additional Amounts with respect to such Redemption Price; *provided* that the Company may only redeem the Notes if: (i) the Company cannot avoid such obligations by taking commercially reasonable measures available to the Company (*provided* that changing the jurisdiction of incorporation of the Company shall be deemed not to be a commercially reasonable measure); and (ii) the Company delivers to the Trustee an opinion of outside legal counsel of recognized standing in the Relevant Jurisdiction and an Officers’ Certificate attesting to such Change in Tax Law and obligation to pay Additional Amounts. The Trustee shall and is entitled to rely upon such opinion and Officers’ Certificate (without further investigation and enquiry) and it shall be conclusive and binding on the Holders.

Notwithstanding anything to the contrary in this Article 16, neither the Company nor any successor Person may redeem any of the Notes in the case that Additional Amounts are payable in respect of PRC withholding tax and any other tax collected at source at the Applicable PRC Rate or less solely as a result of the Company or its successor Person being considered a PRC tax resident under the PRC Enterprise Income Tax law.

If the Redemption Date occurs after a Regular Record Date and on or prior to the corresponding Interest Payment Date, the Company shall pay or cause the Paying Agent to pay, on or at its election, before such Interest Payment Date, pay the full amount of accrued and unpaid interest, if any, and any Additional Amounts with respect to such interest, due on such Interest Payment Date to the record holder of the Notes on the Regular Record Date corresponding to such Interest Payment Date, and the Redemption Price payable to any Holder (other than a Holder that elects to not have its Notes redeemed pursuant to the provisions described below) shall be equal to 100% of the principal amount of such Note to be redeemed, including, for the avoidance of doubt, any Additional Amounts with respect to such Redemption Price. The Company shall notify the Trustee in writing of its election and the date on which such interest and any Additional Amounts with respect to such interest shall be paid at the time the Company provides notice of such redemption.

The Company shall give the Trustee and Holders of Notes not less than 30 days’ but no more than 60 days’ notice of redemption prior to the Redemption Date. Simultaneously with providing such notice, the Company shall publish a notice containing this information in a newspaper of general circulation in The City of New York or publish the information on the Company’s website or through such other public medium as the Company may use at that time. The Redemption Date must be a Business Day.

Upon receiving such notice of redemption, each Holder shall have the right to elect to not have its Notes redeemed, *provided* that (i) the Company shall not be obligated to pay any Additional Amounts on any payment with respect to such Notes solely as a result of such Change in Tax Law that resulted in the obligation to pay such Additional Amounts (whether upon conversion, required repurchase in connection with a Fundamental Change or on the Repurchase Date, at maturity or otherwise, and whether in ADSs, Reference Property or otherwise) after the Redemption Date (or, if the Company fails to pay the Redemption Price on the Redemption Date, such later date on which the Company pays the Redemption Price), and (ii) all future payments with respect to such Notes shall be subject to the deduction or withholding of such Relevant Taxing Jurisdiction and taxes required by law to be deducted or withheld as a result of such Change in Tax Law; *provided further* that, notwithstanding the foregoing, if a Holder electing not to have its Notes redeemed converts its Notes in connection with the Company’s election to redeem the Notes in respect of such Change in Tax Law pursuant to Section 14.03(g), the Company shall be obligated to pay Additional Amounts, if any, with respect to such conversion.

A Holder electing to not have its Notes redeemed must deliver to the Paying Agent a written notice of election so as to be received by the Paying Agent no later than the close of business on the second Business Day immediately preceding the Redemption Date; *provided* that, a Holder that complies with the requirements for conversion in Section 14.02(b) shall be deemed to have delivered a notice of its election to not have its Notes so redeemed. A Holder may withdraw any notice of election (other than such a deemed notice of election in connection with a conversion) by delivering to the Paying Agent a written notice of withdrawal prior to the close of business on the Business Day immediately preceding the Redemption Date (or, if the Company fails to pay the Redemption Price on the Redemption Date, such later date on which the Company pays the Redemption Price). If no election is made or deemed to have been made, the Holder shall have its Notes redeemed without any further action.

No Notes may be redeemed by the Company or its successor if the principal amount of the Notes has been accelerated, and such acceleration has not been rescinded, on or prior to the Redemption Date.

#### ARTICLE 17 MISCELLANEOUS PROVISIONS

Section 17.01 *Provisions Binding on Company's Successors.* All the covenants, stipulations, promises and agreements of the Company contained in this Indenture shall bind its successors and assigns whether so expressed or not.

Section 17.02 *Official Acts by Successor Corporation.* Any act or proceeding by any provision of this Indenture authorized or required to be done or performed by any board, committee or Officer of the Company shall and may be done and performed with like force and effect by the like board, committee or officer of any corporation or other entity that shall at the time be the lawful sole successor of the Company.

Section 17.03 *Addresses for Notices, Etc.* Any notice or demand that by any provision of this Indenture is required or permitted to be given or served by the Trustee or by the Holders on the Company shall be deemed to have been sufficiently given or made, for all purposes if given or served by being deposited postage prepaid by registered or certified mail in a post office letter box addressed (until another address is filed by the Company with the Trustee) to Building 20, No. 56 AnTuo Road, Jiading District, Shanghai, 201804, People's Republic of China, Facsimile No.: +86 (21) 3913 0192. Any notice, direction, request or demand hereunder to or upon the Trustee shall be given or served by being deposited postage prepaid by registered or certified mail in a post office letter box addressed to The Bank of New York Mellon, 240 Greenwich Street, New York, NY 10286, USA, Facsimile No.: +1-212-8155802/5803, Attention: Global Corporate Trust – NIO Inc., with a copy to The Bank of New York Mellon, Hong Kong Branch, Level 24, Three Pacific Place, 1 Queen's Road East, Hong Kong, Attention: Global Corporate Trust – NIO Inc., Facsimile No.: +852-2295.3283.

All notices and other communications under this Indenture shall be in writing in English.

So long as and to the extent that the Notes are represented by Global Notes and such Global Notes are held by DTC, notices to owners of beneficial interests in the Global Notes may be given by delivery of the relevant notice to DTC for communication by it to entitled account holders.

The Company hereby acknowledges that it is fully aware of the risks associated with transmitting instructions via electronic methods (including facsimile), and being aware of these risks, authorizes the Trustee to accept and act upon any instruction sent to it or any Paying Agent, Transfer Agent, Conversion Agent or Note Registrar in the Company's name or in the name of one or more appropriate authorized signers of the Company via electronic methods (including facsimile). The Trustee shall be entitled to rely on Section 7.06 of this Indenture when accepting or acting upon any instructions, communications or documents transmitted by facsimile, and shall not be liable in the event any facsimile transmission is not received, or is mutilated, illegible, interrupted, duplicated, incomplete, unauthorized or delayed for any reason, including (but not limited to) electronic or telecommunications failure.

Furthermore, notwithstanding the above, if any Trustee receives information or instructions delivered by electronic mail, other electronic method or other unsecured method of communication believed by it to be genuine and to have been sent by the proper person or persons, the Trustee or any Paying Agent, Transfer Agent, Conversion Agent or Note Registrar shall have (i) no duty or obligation to verify or confirm that the person who sent such instructions is in fact a person authorized to give instructions or directions on behalf of the Company and (ii) absent its or their gross negligence or willful misconduct, no liability for any losses, liabilities, costs or expenses incurred or sustained by any holder, the Company or any other person as a result of such reliance on or compliance with such information or instructions.

The Trustee, by notice to the Company, may designate additional or different addresses for subsequent notices or communications.

Any notice or communication mailed to a Holder shall be mailed to it by first class mail, postage prepaid, at its address as it appears on the Note Register and shall be sufficiently given to it if so mailed within the time prescribed.

Failure to mail a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders. If a notice or communication is mailed in the manner provided above, it is duly given, whether or not the addressee receives it.

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 to Holders by mail, then such notification as shall be made with the approval of the Trustee shall constitute a sufficient notification for every purpose hereunder.

Section 17.04 *Governing Law; Jurisdiction.* THIS INDENTURE AND EACH NOTE, AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS INDENTURE AND EACH NOTE, SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

The Company irrevocably consents and agrees, for the benefit of the Holders from time to time of the Notes and the Trustee, 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 Indenture or the Notes may be brought in the courts of the State of New York or the courts of the United States located in the Borough of Manhattan, New York City, New York and, until amounts due and to become due in respect of the Notes have been paid, 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.

The Company 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 Indenture brought in the courts of the State of New York or the courts of the United States 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.

Section 17.05 *Submission to Jurisdiction; Service of Process.* The Company irrevocably appoints Law Debenture Corporate Service Inc. as its authorized agent in the Borough of Manhattan in the City of New York upon which process may be served in any such suit or proceeding, and agrees that service of process upon such agent, and written notice of said service to the Company by the person serving the same to Building 20, No. 56 AnTuo Road, Jiading District, Shanghai, 201804, People's Republic of China, Facsimile No. +86 (21) 3913 0192, shall be deemed in every respect effective service of process upon the Company in any such suit or proceeding. The Company further agrees to take any and all action as may be necessary to maintain such designation and appointment of such agent in full force and effect for a period of five and a half years from the date of this Indenture. If for any reason such agent shall cease to be such agent for service of process, the Company shall forthwith appoint a new agent of recognized standing for service of process in the State of New York and deliver to the Trustee a copy of the new agent's acceptance of that appointment within ten Business Days of such acceptance. Nothing herein shall affect the right of the Trustee, any agent or any Holder to serve process in any other manner permitted by law or to commence legal proceedings or otherwise proceed against the Company in any other court of competent jurisdiction. To the extent that the Company has or hereafter may acquire any sovereign or other immunity from jurisdiction of any court or from any legal process with respect to itself or its property, the Company irrevocably waives such immunity in respect of its obligations hereunder or under any Note.

Section 17.06 *Evidence of Compliance with Conditions Precedent; Certificates and Opinions of Counsel to Trustee.* Upon any application or demand by the Company to the Trustee to take any action under any of the provisions of this Indenture, the Company shall, if requested by the Trustee, furnish to the Trustee an Officers' Certificate stating that such action is permitted by the terms of this Indenture.

Each Officers' Certificate provided for, by or on behalf of the Company in this Indenture and delivered to the Trustee with respect to compliance with this Indenture (other than the Officers' Certificates provided for in Section 4.09) shall include (a) a statement that the person making such certificate is familiar with the requested action and this Indenture; (b) a brief statement as to the nature and scope of the examination or investigation upon which the statement contained in such certificate is based; (c) a statement that, in the judgment of such person, he or she has made such examination or investigation as is necessary to enable him or her to express an informed judgment as to whether or not such action is permitted by this Indenture; and (d) a statement as to whether or not, in the judgment of such person, such action is permitted by this Indenture.

Notwithstanding anything to the contrary in this Section 17.06, if any provision in this Indenture specifically provides that the Trustee shall or may receive an Opinion of Counsel in connection with any action to be taken by the Trustee or the Company hereunder, the Trustee shall be entitled to, or entitled to request, such Opinion of Counsel.

Section 17.07 *Legal Holidays*. In any case where any Interest Payment Date, Redemption Date, Fundamental Change Repurchase Date, Conversion Date, Repurchase Date or Maturity Date is not a Business Day, then any action to be taken on such date need not be taken on such date, but may be taken on the next succeeding Business Day with the same force and effect as if taken on such date, and no interest shall accrue in respect of the delay.

Section 17.08 *No Security Interest Created*. Nothing in this Indenture or in the Notes, expressed or implied, shall be construed to constitute a security interest under the Uniform Commercial Code or similar legislation, as now or hereafter enacted and in effect, in any jurisdiction.

Section 17.09 *Benefits of Indenture*. Nothing in this Indenture or in the Notes, expressed or implied, shall give to any Person, other than the Holders, the parties hereto, any Paying Agent, any Conversion Agent, any Note Registrar and their successors hereunder, any benefit or any legal or equitable right, remedy or claim under this Indenture.

Section 17.10 *Table of Contents, Headings, Etc*. The table of contents and the titles and headings of the articles and sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part hereof, and shall in no way modify or restrict any of the terms or provisions hereof.

Section 17.11 *Execution in Counterparts*. This Indenture may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument.

Section 17.12 *Severability*. In the event any provision of this Indenture or in the Notes shall be invalid, illegal or unenforceable, then (to the extent permitted by law) the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired.

Section 17.13 *Waiver of Jury Trial.* EACH OF THE COMPANY AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE NOTES OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 17.14 *Force Majeure.* In no event shall the Trustee or the Agents be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Trustee or the Agents, as the case may be, shall use reasonable efforts that are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

Section 17.15 *Calculations.* Except as otherwise provided herein, the Company shall be responsible for making all calculations called for under the Notes. These calculations include, but are not limited to, determinations of the Last Reported Sale Prices of the ADSs, accrued interest payable on the Notes, the number of Additional ADSs to be added to the Conversion Rate upon a Make-Whole Fundamental Change, if any, the Conversion Rate of the Notes and any adjustments thereto. The Company shall make all these calculations in good faith and, absent manifest error, the Company's calculations shall be final and binding on Holders. The Company shall provide a schedule of its calculations to each of the Trustee, the Paying Agent and the Conversion Agent, and each of the Trustee, the Paying Agent and the Conversion Agent is entitled to rely conclusively and without liability upon the accuracy of the Company's calculations without independent verification. The Trustee will forward the Company's calculations to any Holder of Notes upon the prior written request of that Holder at the sole cost and expense of the Company.

*[Remainder of page intentionally left blank]*

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

NIO INC.

By: /s/ Authorized Signatory  
Name: Authorized Signatory  
Title:

*Signature Page to Indenture*

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THE BANK OF NEW YORK MELLON, as Trustee

By: /s/ Authorized Signatory  
Name: Authorized Signatory  
Title:

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*Signature Page to Indenture*

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[FORM OF FACE OF NOTE]

[INCLUDE FOLLOWING LEGEND IF A GLOBAL NOTE]

[THIS IS A GLOBAL NOTE WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AN IS REGISTERED IN THE NAME OF THE DEPOSITARY OR A NOMINEE OF THE DEPOSITARY, WHICH MAY BE TREATED BY THE COMPANY, THE TRUSTEE AND ANY AGENT THEREOF AS THE OWNER AND HOLDER OF THIS NOTE FOR ALL PURPOSES

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY 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 INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.]

[INCLUDE FOLLOWING LEGEND IF A RESTRICTED SECURITY]

[THIS SECURITY, THE AMERICAN DEPOSITARY SHARES DELIVERABLE UPON CONVERSION OF THIS SECURITY AND THE ORDINARY SHARES REPRESENTED THEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), ARE “RESTRICTED SECURITIES” WITHIN THE MEANING IF RULE 144 UNDER THE SECURITIES ACT OR CONTRACTUALLY RESTRICTED SECURITIES, AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN, THE ACQUIRER:

(1) REPRESENTS THAT IT AND ANY ACCOUNT FOR WHICH IT IS ACTING IS (A) A “QUALIFIED INSTITUTIONAL BUYER” (WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT) OR (B) NOT A U.S. PERSON AND LOCATED OUTSIDE THE UNITED STATES (WITHIN THE MEANING OF REGULATION S UNDER THE SECURITIES ACT) AND THAT IT EXERCISES SOLE INVESTMENT DISCRETION WITH RESPECT TO EACH SUCH ACCOUNT AND THAT IT AND ANY SUCH ACCOUNT IS NOT AN AFFILIATE OF NIO INC. (THE “COMPANY”) (OTHER THAN AN ENTITY AFFILIATED WITH TENCENT HOLDINGS LIMITED AND AN ENTITY AFFILIATED WITH HILLHOUSE CAPITAL MANAGEMENT LTD. THAT PURCHASED REGULATION S NOTES UPON THE ORIGINAL ISSUANCE THEREOF AND THEIR RESPECTIVE AFFILIATES), AND

(2) AGREES FOR THE BENEFIT OF THE COMPANY THAT IT WILL NOT OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER THIS SECURITY OR ANY BENEFICIAL INTEREST HEREIN PRIOR TO THE DATE THAT IS THE LATER OF (X) ONE YEAR AFTER THE LAST ORIGINAL ISSUE DATE HEREOF OR SUCH SHORTER PERIOD OF TIME AS PERMITTED BY RULE 144 UNDER THE SECURITIES ACT OR ANY SUCCESSOR PROVISION THERETO AND (Y) SUCH LATER DATE, IF ANY, AS MAY BE REQUIRED BY APPLICABLE LAW, EXCEPT:

- (A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF, OR
- (B) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BECOME EFFECTIVE UNDER THE SECURITIES ACT, OR
- (C) TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, OR
- (D) TO A NON-U.S. PERSON LOCATED OUTSIDE THE UNITED STATES IN ACCORDANCE WITH REGULATIONS UNDER THE SECURITIES ACT, OR
- (E) PURSUANT TO AN EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT (IF AVAILABLE).

PRIOR TO THE REGISTRATION OF ANY TRANSFER IN ACCORDANCE WITH (2)(E) ABOVE, THE COMPANY, THE DEPOSITARY AND THE TRUSTEE RESERVE THE RIGHT TO REQUIRE THE DELIVERY OF SUCH LEGAL OPINIONS, CERTIFICATIONS OR OTHER EVIDENCE AS MAY REASONABLY BE REQUIRED IN ORDER TO DETERMINE THAT THE PROPOSED TRANSFER IS BEING MADE IN COMPLIANCE WITH THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS. NO REPRESENTATION IS MADE AS TO THE AVAILABILITY OF ANY EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

NO AFFILIATE (AS DEFINED IN RULE 144 UNDER THE SECURITIES ACT) OF THE COMPANY OR PERSON THAT HAS BEEN AN AFFILIATE (AS DEFINED IN RULE 144 UNDER THE SECURITIES ACT) OF THE COMPANY DURING THE THREE IMMEDIATELY PRECEDING MONTHS (OTHER THAN AN ENTITY AFFILIATED WITH TENCENT HOLDINGS LIMITED AND AN ENTITY AFFILIATED WITH HILLHOUSE CAPITAL MANAGEMENT LTD. THAT PURCHASED REGULATION S NOTES UPON THE ORIGINAL ISSUANCE THEREOF AND THEIR RESPECTIVE AFFILIATES) MAY PURCHASE, OTHERWISE ACQUIRE OR OWN THIS NOTE, THE AMERICAN DEPOSITARY SHARES DELIVERABLE UPON CONVERSION HEREOF AND THE ORDINARY SHARES REPRESENTED THEREBY OR A BENEFICIAL INTEREST HEREIN.]

NIO INC.

4.50% Convertible Senior Note due 2024

No. [\_\_\_\_\_]

[Initially]<sup>1</sup> US\$\_\_\_\_\_

CUSIP No. [\_\_\_\_\_]

NIO Inc., a company duly organized and validly existing under the laws of the Cayman Islands (the “**Company**,” which term includes any successor company or corporation or other entity under the Indenture referred to on the reverse hereof), for value received hereby promises to pay to [CEDE & CO.]<sup>2</sup> [\_\_\_\_\_]<sup>3</sup>, or registered assigns, the principal sum [as set forth in the “Schedule of Exchanges of Notes” attached hereto]<sup>4</sup> [of US\$[\_\_\_\_\_]]<sup>5</sup>, which amount, taken together with the principal amounts of all other outstanding Notes, shall not, unless permitted by the Indenture, exceed US\$650,000,000 in aggregate at any time (or US\$750,000,000 if the Initial Purchasers exercise their option to purchase additional Notes in full as set forth in the Purchase Agreement), in accordance with the rules and procedures of the Depositary, on February 1, 2024, and interest thereon as set forth below.

This Note shall bear cash interest at the rate of 4.50% per year from, and including, February 4, 2019, or from, and including, the most recent date to which interest had been paid or provided for to, but excluding, the next scheduled Interest Payment Date until February 1, 2024. Interest is payable semi-annually in arrears on each February 1 and August 1, commencing on August 1, 2019, to Holders of record at the close of business on the preceding January 15 and July 15 (whether or not such day is a Business Day), respectively. Additional Interest will be payable as set forth in Section 4.06(d), Section 4.06(e) and Section 6.03 of the within-mentioned Indenture, and any reference to interest on, or in respect of, any Note therein shall be deemed to include Additional Interest if, in such context, Additional Interest is, was or would be payable pursuant to any of such Section 4.06(d), Section 4.06(e) and Section 6.03, and any express mention of the payment of Additional Interest in any provision therein shall not be construed as excluding Additional Interest in those provisions thereof where such express mention is not made.

Any Defaulted Amounts shall accrue interest per annum at the rate per annum borne by the Notes *plus* one percent, subject to the enforceability thereof under applicable law, from, and including, the relevant payment date to, but excluding, the date on which such Defaulted Amounts shall have been paid by the Company, at its election, in accordance with Section 2.03(c) of the Indenture.

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<sup>1</sup> Include if a Global Note.

<sup>2</sup> Include if a Global Note.

<sup>3</sup> Include if a Physical Note.

<sup>4</sup> Include if a Global Note.

<sup>5</sup> Include if a Physical Note.

The Company shall pay or cause the Paying Agent to pay the principal of and interest on this Note, so long as such Note is a Global Note, in immediately available funds to the Depositary or its nominee, as the case may be, as the registered Holder of such Note. As provided in and subject to the provisions of the Indenture, the Company shall pay the principal of any Notes (other than Notes that are Global Notes) at the office or agency designated by the Company for that purpose. The Company has initially designated the Bank of New York Mellon as its Paying Agent, Conversion Agent and Note Registrar in respect of the Notes and its agency in the Borough of Manhattan, The City of New York, as a place where Notes may be presented for payment or for registration of transfer.

Reference is made to the further provisions of this Note set forth on the reverse hereof, including, without limitation, provisions giving the Holder of this Note the right to convert this Note into ADSs on the terms and subject to the limitations set forth in the Indenture. Such further provisions shall for all purposes have the same effect as though fully set forth at this place.

**This Note, and any claim, controversy or dispute arising under or related to this Note, shall be construed in accordance with and governed by the laws of the State of New York (without regard to the conflicts of laws provisions thereof).**

In the case of any conflict between this Note and the Indenture, the provisions of the Indenture shall control and govern.

This Note shall not be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been signed manually or by facsimile by the Trustee under the Indenture.

*[Remainder of page intentionally left blank]*

IN WITNESS WHEREOF, the Company has caused this Note to be duly executed.

NIO INC.

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

Name:

Title:

Dated:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

THE BANK OF NEW YORK MELLON  
as Trustee, certifies that this is one of the Notes described  
in the within-named Indenture.

By:

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

Title:

[FORM OF REVERSE OF NOTE]

NIO INC.  
4.50% Convertible Senior Note due 2024

This Note is one of a duly authorized issue of Notes of the Company, designated as its 4.50% Convertible Senior Notes due 2024 (the “Notes”), limited to the aggregate principal amount of US\$650,000,000 (as increased by an amount equal to the aggregate principal amount of any additional Notes purchased by the Initial Purchasers pursuant to the exercise of their option to purchase additional Notes as set forth in the Purchase Agreement), subject to Section 2.10 of the Indenture, all issued or to be issued under and pursuant to an Indenture dated as of February 4, 2019 (the “Indenture”), between the Company and The Bank of New York Mellon, as trustee (the “Trustee”), to which Indenture and all indentures supplemental thereto reference is hereby made for a description of the rights, limitations of rights, obligations, duties, privileges, disclaimers from liability and immunities thereunder of the Trustee, the Company and the Holders of the Notes. Additional Notes may be issued in an unlimited aggregate principal amount, subject to certain conditions specified in the Indenture. The Rule 144A Notes and the Regulation S Notes initially have separate CUSIP numbers and will initially not be fungible.

In the case certain Events of Default, as defined in the Indenture, shall have occurred and be continuing, the principal of, and interest on, all Notes may be declared, by either the Trustee or Holders of at least 25% in aggregate principal amount of Notes then outstanding, and upon said declaration shall become, due and payable, in the manner, with the effect and subject to the conditions and certain exceptions set forth in the Indenture. In the case certain Events of Default relating to a bankruptcy (or similar proceeding) with respect to the Company or a Significant Subsidiary of the Company shall have occurred, the principal of, and interest on, all Notes shall automatically become immediately due and payable, as set forth in the Indenture.

Subject to the terms and conditions of the Indenture, the Company will make or cause the Paying Agent to make all payments in respect of the principal amount on the Maturity Date, the Redemption Price, the Repurchase Price and the Fundamental Change Repurchase Price, as the case may be, to the Holder who surrenders a Note to collect such payments in respect of the Note. The Company will pay or cause the Paying Agent to pay cash amounts in money of the United States that at the time of payment is legal tender for payment of public and private debts.

Subject to the terms and conditions of the Indenture, Additional Amounts will be paid in connection with any payments made and deliveries caused to be made by the Company or any successor to the Company under or with respect to the Indenture and the Notes, including, but not limited to, payments of principal (including, if applicable, the Redemption Price, the Repurchase Price and the Fundamental Change Repurchase Price), premium, if any, payments of interest and deliveries of ADSs or any other consideration due on conversion of a Note (together with payments of cash for any Fractional ADS or other consideration) upon conversion of the Notes to ensure that the net amount received by the beneficial owner of the Notes after any applicable withholding, deduction or reduction (and after deducting any taxes on the Additional Amounts) will equal the amounts that would have been received by such beneficial owner had no such withholding, deduction or reduction been required.

The Indenture contains provisions permitting the Company and the Trustee in certain circumstances, without the consent of the Holders of the Notes, and in certain other circumstances, with the consent of the Holders of not less than a majority in aggregate principal amount of the Notes at the time outstanding, evidenced as in the Indenture provided, to execute supplemental indentures modifying the terms of the Indenture and the Notes as described therein. It is also provided in the Indenture that, subject to certain exceptions, the Holders of a majority in aggregate principal amount of the Notes at the time outstanding may on behalf of the Holders of all of the Notes waive any past Default or Event of Default under the Indenture and its consequences.

No reference herein to the Indenture and no provision of this Note or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay or cause to be delivered, as the case may be, the principal (including the Redemption Price, the Repurchase Price and the Fundamental Change Repurchase Price, if applicable) of, accrued and unpaid interest on, and the consideration due upon conversion of, this Note at the place, at the respective times, at the rate and in the lawful money herein prescribed.

The Notes are issuable in registered form without interest coupons in denominations of US\$1,000 principal amount and integral multiples thereof. At the office or agency of the Company referred to on the face hereof, and in the manner and subject to the limitations provided in the Indenture, Notes may be exchanged for a like aggregate principal amount of Notes of other authorized denominations, without payment of any service charge but, if required by the Company or Trustee, with payment of a sum sufficient to cover any transfer or similar tax that may be imposed in connection therewith as a result of the name of the Holder of the new Notes issued upon such exchange of Notes being different from the name of the Holder of the old Notes surrendered for such exchange.

The Company may not redeem the Notes prior to the Maturity Date, except in the event of certain Changes in Tax Law as described in Section 16.01 of the Indenture. No sinking fund is provided for the Notes.

The Holder has the right, at such Holder's option, to require the Company to repurchase for cash all of such Holder's Notes or any portion thereof (in principal amounts of US\$1,000 or integral multiples thereof) on the Repurchase Date at a price equal to the Repurchase Price.

Upon the occurrence of a Fundamental Change, the Holder has the right, at such Holder's option, to require the Company to repurchase for cash all of such Holder's Notes or any portion thereof (in principal amounts of US\$1,000 or integral multiples thereof) on the Fundamental Change Repurchase Date at a price equal to the Fundamental Change Repurchase Price.

Subject to the provisions of the Indenture, the Holder hereof has the right, at its option, prior to the close of business on the second Business Day immediately preceding the Maturity Date, to convert any Notes or portion thereof that is US\$1,000 principal amount of Notes or an integral multiple thereof, into ADSs at the Conversion Rate specified in the Indenture, as adjusted from time to time as provided in the Indenture.

Terms used in this Note and defined in the Indenture are used herein as therein defined.



## ABBREVIATIONS

The following abbreviations, when used in the inscription of the face of this Note, 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 MIN ACT = Uniform Gifts to Minors Act

CUST = Custodian

TEN ENT = as tenants by the entireties

JT TEN = joint tenants with right of survivorship and not as tenants in common

Additional abbreviations may also be used though not in the above list.



## [FORM OF NOTICE OF CONVERSION]

To: NIO INC.

THE BANK OF NEW YORK MELLON, as Conversion Agent

DEUTSCHE BANK TRUST COMPANY AMERICAS, as ADS Depositary

The undersigned registered holder of this Note hereby exercises the option to convert that Note, or the portion thereof (that is US\$1,000 principal amount or an integral multiple thereof) below designated, into ADSs in accordance with the terms of the Indenture referred to in this Note, and directs that any ADSs deliverable upon such conversion, together with any cash payable for any Fractional ADS, and any Notes representing any unconverted principal amount hereof, be issued and delivered to the registered Holder hereof unless a different name has been indicated below. Terms defined in the Unrestricted Deposit Agreement, the Restricted Deposit Agreement or the Indenture referred to in this Notice are used herein as so defined. If any ADSs or any portion of this Note not converted are to be issued in the name of a Person other than the undersigned, the undersigned will pay all documentary, stamp, issue, transfer or similar taxes, if any, in accordance with Section 14.02(d) and Section 14.02(e) of the Indenture. Any amount required to be paid to the undersigned on account of interest accompanies this Notice.

In connection with the conversion of this Note, or the portion hereof below designated, the undersigned acknowledges, represents to and agrees with the Company that the undersigned is not an "affiliate" (as defined in Rule 144 under the Securities Act) of the Company and has not been an "affiliate" (as defined in Rule 144 under the Securities Act) during the three months immediately preceding the date hereof.

[OR

The undersigned is an entity affiliated with Tencent Holdings Limited or an entity affiliated with Hillhouse Capital Management Ltd. that purchased the Regulation S Notes upon the original issuance thereof.]<sup>7</sup>

[The undersigned further certifies:

1. The undersigned acknowledges (and if the undersigned is acting for the account of another person, that person has confirmed that it acknowledges) that the Restricted Securities received upon conversion of this Note (or securities represented thereby) have not been and are not expected to be registered under the Securities Act.

2. The undersigned further certifies that either:

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<sup>7</sup> Include if Regulation S Note.

(a) The undersigned is, and at the time ADSs are delivered in conversion of its Notes will be, the holder of the ADSs and the Ordinary Shares represented thereby, and (i) the undersigned is not a U.S. person (as defined in Regulation S under the Securities Act) and is located outside the United States (within the meaning of Regulation S) and acquired, or have agreed to acquire and will have acquired, the Notes being converted and the ADSs and the Ordinary Shares represented thereby being delivered in the conversion outside the United States and (ii) the undersigned is not in the business of buying and selling securities or, if the undersigned is in such business, the undersigned did not acquire the Notes being converted from the Company or any affiliate thereof in the initial distribution of the Notes.

OR

(b) The undersigned is a broker-dealer acting on behalf of its customer; its customer has confirmed to the undersigned that it is, and at the time ADSs are delivered in conversion of the said Notes will be, the holder of the ADSs and the Ordinary Shares represented thereby, and (i) it is not a U.S. person (as defined in Regulation S under the Securities Act) and it is located outside the United States (within the meaning of Regulation S) and acquired, or have agreed to acquire and will have acquired, the Notes being converted and the ADSs and the Ordinary Shares represented thereby being delivered in the conversion outside the United States and (ii) it is not in the business of buying and selling securities or, if it is in such business, it did not acquire the Notes being converted from the Company or any affiliate thereof in the initial distribution of the Notes.

OR

(c) The undersigned is a qualified institutional buyer (as defined in Rule 144A under the Securities Act) acting for its own account or for the account of one or more qualified institutional buyers and the undersigned is (or such account or accounts are) the sole beneficial owner(s) of the ADSs to be received upon conversion of the Notes.

3. The undersigned acknowledges that the undersigned (and any such other account) may not continue to hold or retain any interest in Restricted Securities received upon conversion of this Note if the undersigned (or such other account) becomes an Affiliate of the Company. [(except an entity affiliated with Tencent Holdings Limited or an entity affiliated with Hillhouse Capital Management Ltd. that purchased this Regulation S Note upon the original issuance thereof)<sup>8</sup>]<sup>9</sup>.

4. [The undersigned agrees (and if the undersigned is acting for the account of another person, that person has confirmed that it agrees) that, prior to the Resale Restriction Termination Date, the undersigned (and such other account) will not offer, sell, pledge or otherwise transfer the Restricted Security (or securities represented by such Restricted Security) except in accordance with the restrictions set forth in that legend and any applicable securities laws of the United States and any state thereof.]<sup>10</sup>

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<sup>8</sup> Include if the Note being converted is held by an entity affiliated with Tencent Holdings Limited or an entity affiliated with Hillhouse Capital Management Ltd.

<sup>9</sup> Include if Regulation S Note.

<sup>10</sup> Include if a Restricted Security.

The undersigned hereby instructs the ADS Depository to register the ADSs in the name of:

- 1. Name of Beneficial Owner to receive ADSs (English): \_\_\_\_\_
- 2. Address of Beneficial Owner to receive ADSs (English): \_\_\_\_\_
- 3. Name of Registered Holder of the Deposited Shares: \_\_\_\_\_
- 4. Number of Deposited Shares: \_\_\_\_\_
- 5. Number of ADSs to be issued: \_\_\_\_\_
- 6. Beneficial Owner's Tax ID Number: \_\_\_\_\_
- 7. Contact Name and Tel No/email address: \_\_\_\_\_

[The undersigned instructs the Depository to deliver the ADRs representing the ADSs to the following account:

ADS Receiving Broker (\* are mandatory fields):

- a) DTC Broker Name\*: \_\_\_\_\_
- b) DTC Broker's Participant Account with DTC \*: \_\_\_\_\_
- c) DTC Broker Contact Name: \_\_\_\_\_
- d) DTC Broker Contact Tel No/email: \_\_\_\_\_
- e) Beneficial Owner's Account # with DTC Broker\*: \_\_\_\_\_

OR

- e) Local Broker Name (have account with DTC Broker)\*: \_\_\_\_\_
- Local Broker Sub-Account # with DTC Broker\*: \_\_\_\_\_
- Local Broker Contact Name: \_\_\_\_\_
- Local Broker Contact Tel No/email: \_\_\_\_\_

ADS Delivering Party:

Name: Deutsche Bank Trust Company Americas DTC Account: #2655]<sup>11</sup>

<sup>11</sup> Include bracketed language in the conversion Notice if the Note being converted is not a Restricted Security.

**For any ADS settlement inquiries, please contact DBTCA Broker Desk:**

Tel: +1-212-250-9100 (New York) / +44-207-547-6500 (London)

Email: [adr@db.com](mailto:adr@db.com)

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature(s)

\_\_\_\_\_  
Signature Guarantee

Signature(s) must be guaranteed by an eligible Guarantor Institution (banks, stock brokers, savings and loan associations and credit unions) with membership in an approved signature guarantee medallion program pursuant to Securities and Exchange Commission Rule 17Ad-15 if ADSs are to be issued, or Notes are to be delivered, other than to and in the name of the registered holder.

Fill in for registration of ADSs if to be issued, and Notes if to be delivered, other than to and in the name of the registered holder:

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Street Address)

\_\_\_\_\_  
(City, State and Zip Code)  
Please print name and address

Principal amount to be converted (if less than all):  
US\$ \_\_\_\_\_,000

NOTICE: The above signature(s) of the Holder(s) hereof must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.

\_\_\_\_\_  
Social Security or Other Taxpayer  
Identification Number

[FORM OF FUNDAMENTAL CHANGE REPURCHASE NOTICE]

To: NIO INC.

THE BANK OF NEW YORK MELLON, as Trustee

The undersigned registered owner of this Note hereby acknowledges receipt of a notice from NIO Inc. (the "Company") as to the occurrence of a Fundamental Change with respect to the Company and specifying the Fundamental Change Repurchase Date and requests and instructs the Company to pay to the registered holder hereof in accordance with Section 15.02 of the Indenture referred to in this Note (1) the entire principal amount of this Note, or the portion thereof (that is US\$ 1,000 principal amount or an integral multiple thereof) below designated, and (2) if such Fundamental Change Repurchase Date does not fall during the period after a Regular Record Date and on or prior to the corresponding Interest Payment Date, accrued and unpaid interest thereon to, but excluding, such Fundamental Change Repurchase Date.

In the case of Physical Notes, the certificate numbers of the Notes to be repurchased are as set forth below:

Certificate Number(s): \_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature(s)

\_\_\_\_\_  
Social Security or Other Taxpayer  
Identification Number

Principal amount to be repaid (if less than all):  
US\$ \_\_\_\_\_,000

NOTICE: The above signature(s) of the Holder(s) hereof must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.



[FORM OF REPURCHASE NOTICE]

To: NIO INC.

THE BANK OF NEW YORK MELLON, as Trustee

The undersigned registered owner of this Note hereby acknowledges receipt of a notice from NIO Inc. (the "Company") regarding the right of Holders to elect to require the Company to repurchase the entire principal amount of this Note, or the portion thereof (that is US\$1,000 principal amount or an integral multiple thereof) below designated, in accordance with the applicable provisions of the Indenture referred to in this Note, at the Repurchase Price to the registered Holder hereof.

In the case of certificated Notes, the certificate numbers of the Notes to be purchased are as set forth below:

Certificate Number(s): \_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature(s)

\_\_\_\_\_  
Social Security or Other Taxpayer  
Identification Number

Principal amount to be repaid (if less than all):  
US\$ \_\_\_\_\_,000

NOTICE: The above signature(s) of the Holder(s) hereof must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.

## [FORM OF ASSIGNMENT AND TRANSFER]

For value received \_\_\_\_\_ hereby sell(s), assign(s) and transfer(s) unto \_\_\_\_\_ (Please insert social security or Taxpayer Identification Number of assignee) the within Note, and hereby irrevocably constitutes and appoints \_\_\_\_\_ attorney to transfer the said Note on the books of the Company, with full power of substitution in the premises.

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

- To NIO Inc. or a subsidiary thereof; or
- Pursuant to a registration statement that has become or been declared effective under the Securities Act of 1933, as amended; or
- Pursuant to and in compliance with Rule 144A under the Securities Act of 1933, as amended [("**Rule 144A**"), and the undersigned confirms that the undersigned reasonably believes that the transferee of such Note is a "qualified institutional buyer" (within the meaning of Rule 144A) that is purchasing for its own account or for the account of another qualified institutional buyer and the undersigned has provided such transferee notice that the transfer is being made in reliance on Rule 144A]<sup>12</sup>; or
- Outside the United States in accordance with Regulation S under the Securities Act of 1933, as amended; or
- Pursuant to and in compliance with Rule 144 under the Securities Act of 1933, as amended (if available).

[Whether occurring prior to, on or after the Resale Restriction Termination Date, the undersigned represents and warrants that the Note being transferred hereunder [is/is not] an Affiliate Note.<sup>13</sup>]

<sup>12</sup> Include if Regulation S Note.

<sup>13</sup> Include if Regulation S Note.

Dated: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Signature(s)

\_\_\_\_\_  
Signature Guarantee

Signature(s) must be guaranteed by an eligible Guarantor Institution (banks, stock brokers, savings and loan associations and credit unions) with membership in an approved signature guarantee medallion program pursuant to Securities and Exchange Commission Rule 17Ad-15 if Notes are to be delivered, other than to and in the name of the registered holder.

NOTICE: The signature on the assignment must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.

[FORM OF AUTHORIZATION CERTIFICATE]

I, [Name], [Title], acting on behalf of NIO Inc. (the “**Company**”) hereby certify that:

- (A) the persons listed below are (i) authorized Officers of the Company for purposes of the Indenture (the “**Indenture**”) dated as of February 4, 2019 between the Company and The Bank of New York Mellon, as trustee, in relation to the 4.50% Convertible Senior Notes due 2024 (the “**Notes**”), (ii) duly elected or appointed, qualified and acting as the holder of the respective office or offices set forth opposite their names and (iii) the duly authorized persons who executed or will execute the Indenture and the Notes issued pursuant to the Indenture by their manual or facsimile signatures and were at the time of such execution, duly elected or appointed, qualified and acting as the holder of the offices set forth opposite their names;
- (B) each of the individuals listed below have the authority to receive call backs at the telephone numbers noted below upon request of The Bank of New York Mellon in connection with the Notes issued pursuant to the Indenture;
- (C) each signature appearing below is the person’s genuine signature; and
- (D) attached hereto as Schedule I is a true, correct and complete specimen of the certificates representing the Notes.

IN WITNESS WHEREOF, I have hereunto executed and delivered this certificate on behalf of the Company as of the date indicated.

Dated: \_\_\_\_\_

[Name]

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

**SCHEDULE I**

<b>Name</b>	<b>Title, Fax No., Email</b>	<b>Signature</b>	<b>Tel No.</b>
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_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

**DEPOSIT AGREEMENT FOR RESTRICTED SECURITIES**

**DEPOSIT AGREEMENT FOR RESTRICTED SECURITIES** dated as of February 4, 2019 (the “Agreement”) among NIO Inc., a company organized under the laws of the Cayman Islands (the “Company”), Deutsche Bank Trust Company Americas as depositary (the “Depositary”), and all Holders and Beneficial Owners from time to time of restricted American Depositary Shares (“Restricted ADSs”) issued hereunder.

WITNESSETH:

WHEREAS, the Company and the Depositary entered into a Deposit Agreement dated as of September 11, 2018 (the “Deposit Agreement”) for the purposes set forth therein;

WHEREAS, notwithstanding Section 3.3 and Section 5.10 of the Deposit Agreement and Article (7) of the form of American Depositary Receipt attached thereto, the Company has requested that the Depositary accept one or more deposits of Class A ordinary shares of the Company (the “Shares”) which are not freely transferable under the Securities Act at the time of deposit (such securities, the “Limited Transfer Securities”) into the restricted American Depositary Receipt program (the “Restricted Program”) established under this Agreement but incorporating certain provisions of the Deposit Agreement;

WHEREAS, the Company desires that, upon a deposit of any Limited Transfer Securities, Restricted ADSs representing such Limited Transfer Securities be issued to or upon the order of the Depositor (as defined below) upon compliance with the provisions of this Agreement; and

WHEREAS, the Company and the Depositary desire to enter into this Agreement in order to permit the issuance of such Restricted ADSs from time to time under the Restricted Program and the delivery thereof to or upon the order of the depositor of the relevant Limited Transfer Securities (such person or entity being the “Depositor” and each such issuance being a “Transaction”).

NOW, THEREFORE, in consideration of the premises and mutual agreements herein set forth and for other good and valuable consideration, the Company and the Depositary hereby agree as follows:

Section 1. Definitions. Unless otherwise defined in this Agreement, terms defined in the Deposit Agreement are used herein as so defined.

Section 2. Incorporation by Reference. Except to the extent modified hereby, the provisions of Articles I through VII of the Deposit Agreement are incorporated herein by reference and deemed to be a part hereof. For the avoidance of doubt, Exhibit A and Exhibit B to the Deposit Agreement shall not be incorporated herein by reference nor deemed to be a part hereof. In such sections of the Deposit Agreement incorporated by reference herein, all references to “American Depositary Shares” shall be deemed to refer herein to “Restricted ADSs” and all references to “Receipts” shall be deemed to refer herein to restricted American Depositary Receipts (“Restricted Receipts”) evidencing Restricted ADSs. References in the Deposit Agreement to specified Articles of the form of Receipt shall be deemed to be references to the corresponding Article in the form of Restricted Receipt attached hereto. References in the Deposit Agreement to DRS/Profile, and to the issuance of American Depositary Shares or Receipts through DRS/Profile, are not incorporated herein by reference.

Section 3. Issuance and Transfer of Restricted ADSs (a) The Depositary shall issue Restricted ADSs hereunder upon (i) the deposit by the Depositor of Limited Transfer Securities with the Custodian in accordance with the provisions hereof, (ii) receipt by the Depositary of a certification and issuance instructions from the Company in form and substance as the Depositary may reasonably request, (iii) receipt by the Depositary of a certification and issuance instructions from the Depositor in form and substance as the Depositary may reasonably request, (iv) receipt by the Depositary of appropriate legal opinions of Cayman Islands and U.S. counsel, each in form and substance acceptable to the Depositary, with respect to the Company, the Shares being deposited and/or this Agreement, and (v) compliance with any other applicable provisions of this Agreement (including compliance with the provisions of the Deposit Agreement as incorporated herein and revised hereby) and the form of Restricted Receipt.



(b) As a condition to any offer, sale, pledge or other distribution, disposition or transfer of any Restricted ADSs, the transferor of such Restricted ADSs shall provide at the Depository's request a legal opinion of U.S. counsel (including the related back-up certificates), in form and substance reasonably satisfactory to the Depository, to the effect that (i) the Shares represented by the Restricted ADSs have been registered under the Securities Act or (ii) such Restricted ADSs and the Shares represented thereby may be offered and sold without registration under the Securities Act pursuant to an applicable exemption from the registration requirements thereof. In the case of a transfer under clause (ii), any transferee of the Restricted ADSs will be required to become a party to, agree to, and be bound by the provisions of this Agreement by providing a certification in form and substance as the Depository may reasonably request.

Section 4. Legends. Until such time as the Depository has received the Opinion (as defined in Section 5 hereof), the Restricted ADSs and any account on the books of the Depository reflecting the Restricted ADSs issued in connection with a Transaction or on the transfer, split-up or combination thereof shall contain a restrictive legend/notation substantially to the following effect:

THE SECURITIES REPRESENTED HEREBY ARE SUBJECT TO RESTRICTIONS ON TRANSFER UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"). THE SECURITIES MAY NOT BE OFFERED, SOLD, PLEDGED, OR OTHERWISE DISTRIBUTED OR TRANSFERRED EXCEPT (i) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE ACT OR (ii) IN COMPLIANCE WITH RULE 144 UNDER THE ACT OR PURSUANT TO ANOTHER EXEMPTION FROM OR IN A TRANSACTION NOT SUBJECT TO REGISTRATION UNDER THE ACT, AND, IN THE CASE OF (ii) ABOVE, UNLESS THE COMPANY AND DEPOSITARY HAVE RECEIVED AN OPINION OF COUNSEL REASONABLY SATISFACTORY TO EACH OF THEM THAT SUCH TRANSACTION DOES NOT REQUIRE REGISTRATION UNDER THE ACT.

In addition to the legend set forth above, Restricted ADSs may bear such additional legends as the Company and the Depositary may agree from time to time.

Section 5. Cancellation and Conversion of Restricted ADSs. The Depositary shall cancel surrendered Restricted ADSs and withdraw the underlying Deposited Securities or convert Restricted ADSs to unrestricted ADSs only in compliance with the provisions of this Agreement and the Restricted Receipt.

(a) A Holder may convert Restricted ADSs into unrestricted ADSs by surrendering the Restricted ADSs for cancellation and requesting the issuance of unrestricted American Depositary Shares representing the Shares formerly represented by such Restricted ADSs, if such cancellation is (i) in connection with a sale after a holding period of six months has elapsed with regard to the Restricted ADSs or (ii) after a holding period of one year has elapsed with regard to the Restricted ADSs held by a non-affiliate of the Company, and in the case of (i) and (ii) if the conversion is preceded or accompanied by a representation letter in such form and substance as the Depositary may reasonably request signed by the Holder of the Restricted ADSs and by delivery of a legal opinion of U.S. counsel to the Company reasonably acceptable to the Depositary (or, at the option of the Depositary, counsel to the Holder reasonably acceptable to the Depositary), which opinion (including the related back-up certificates, the "Opinion") shall be in form and substance reasonably satisfactory to the Depositary, to the effect that (w) such Restricted ADSs and the Shares represented thereby may be freely offered and sold without registration under the Securities Act pursuant to an applicable exemption from the registration requirements thereof, (x) the Holder or any purchaser of such Restricted ADSs or Shares will receive securities that are not "restricted securities" within the meaning of Rule 144(a)(3) under the Securities Act, (y) the Depositary may, under the Securities Act, issue to the Holder or any purchaser, as applicable, new American Depositary Shares representing the Shares without any restrictive legends thereon, and any stop-transfer instruction with respect to such new American Depositary Shares may be removed from the Depositary's records, and (z) such other matters as the Depositary may reasonably request. Upon receipt of the requirements set out in the preceding sentence and cancellation of the Restricted ADSs, the Depositary shall move the Shares formerly represented by the Restricted ADSs to the general pool of Shares represented by the unrestricted American Depositary Shares, and shall take all other steps reasonably required to make the applicable Restricted ADSs fungible with the unrestricted American Depositary Shares issued under the Deposit Agreement.

(b) Notwithstanding the foregoing, if a Holder surrenders Restricted ADSs for cancellation and, in lieu of receiving unrestricted American Depositary Shares, wishes to receive the underlying Deposited Securities represented by the Restricted ADSs, the Depository shall cancel the surrendered Restricted ADSs and deliver Deposited Securities to the Holder only (i) if preceded or accompanied by evidence reasonably satisfactory to the Depository that the Shares delivered on such withdrawal will be “restricted securities” within the meaning of Rule 144(a)(3) under the Securities Act and will bear restrictive legends to such effect and/or be subject to stop orders, and not be deposited in any book-entry system that would make them fungible with Shares that are not “restricted securities” or (ii) after a holding period of one year has elapsed with regard to Restricted ADSs held by a non-affiliate, upon (y) receipt of a representation letter in such form and substance as the Depository may reasonably request signed by the Holder of the Restricted ADSs and (z) at the Depository’s election, either (a) a letter of instruction from the Company authorizing and instructing the Depository to remove the restrictive legend or (b) an opinion of U.S. counsel reasonably acceptable to the Depository substantially to the effect of clauses (w), (x) and (z) in Section 5(a) above in relation to the Opinion.

Section 6. Form of Restricted ADSs. Any Restricted ADSs to be issued in accordance herewith may be issued through a book-entry registration system maintained by the Depository specifically for such Restricted ADSs pursuant to this Section 6. The Restricted ADSs shall not be eligible for inclusion in any other book-entry settlement system, including, without limitation, the facilities of the Depository Trust Company, and shall not in any way be fungible with the American Depositary Shares issued under the terms of the Deposit Agreement or any other agreement. The terms “deliver,” “execute,” “issue,” “register,” “surrender,” “transfer” or “cancel,” when used with respect to book-entry Restricted Receipts, shall refer to an entry or entries or an electronic transfer or transfers on the books of the Depository.

Section 7. Terms and Conditions Applicable to Restricted ADSs. Except to the extent modified hereby, the provisions of this Agreement shall not amend, modify, impact or impair any of the provisions of the Deposit Agreement. Restricted Receipts evidencing Restricted ADSs shall be in the form of Exhibit A and Exhibit B attached hereto.

Section 8. Inconsistent Provisions. To the extent that any term or provision of this Agreement or the Restricted Receipts (as the case may be) shall be inconsistent with a term or provision of the Deposit Agreement (as incorporated herein and revised hereby), the terms and conditions of this Agreement shall take precedence.

Section 9. Assignment and Transfer. Notwithstanding anything to the contrary in the Deposit Agreement, the Depositary may assign or otherwise transfer all or any of its rights and benefits under this Agreement and the Deposit Agreement (including any cause of action arising in connection with them) to Deutsche Bank AG or any branch thereof or any entity which is a direct or indirect subsidiary or other affiliate of Deutsche Bank AG.

Section 10. Fees and Expenses. Holders of Restricted Receipts shall be subject to the fees and expenses set forth in Article (9) of the form of Restricted Receipt set forth in Exhibit A and Exhibit B hereto. The Company agrees to reimburse the Depositary for the reasonable legal fees and out-of-pocket expenses incurred in connection with the establishment and maintenance of the Restricted Program covered by this Agreement for an aggregate amount of up to US\$40,000.

Section 11. Procedures related to Convertible Notes. In connection with an issuance of convertible notes (the “Notes”) by the Company, the Depository shall, at the request and expense of the Company, establish procedures enabling holders of such Notes to deposit Limited Transfer Securities hereunder and receive Restricted ADSs upon conversion of such Notes (the “Conversion Shares” and the “Restricted Conversion ADSs” respectively). The Company shall provide to the Depository a signed letter (the “Procedures Letter”) setting out procedures agreed with the Depository in respect of the deposit of the Conversion Shares and the issuance, delivery, transfer, withdrawal and cancellation of the Restricted Conversion ADSs. The Company shall assist the Depository in the establishment of such procedures and it shall take all steps necessary and reasonably satisfactory to the Depository to insure that the establishment of such procedures does not violate the provisions of the Securities Act or any other applicable laws. In the event that the provisions of the Procedures Letter conflict with the provisions of this Agreement, the Procedures Letter shall prevail.

IN WITNESS WHEREOF, NIO Inc. and Deutsche Bank Trust Company Americas have duly executed and delivered this Agreement as of February 4, 2019 and all Holders and Beneficial Owners shall become parties hereto upon acceptance by them of Restricted ADSs evidenced by Restricted Receipts issued in accordance with the terms hereof.

NIO INC.

By /s/ Authorized Signatory

Name: Authorized Signatory

Title:

DEUTSCHE BANK TRUST COMPANY AMERICAS

By /s/ Authorized Signatory

Name: Authorized Signatory

Title:

By /s/ Authorized Signatory

Name: Authorized Signatory

Title:

*[Signature page to the Deposit Agreement for Restricted Securities]*

**EXHIBIT A**

CUSIP 62914V 205

ISIN US62914V2051

RESTRICTED AMERICAN  
DEPOSITARY SHARES  
(Each Restricted American  
Depositary Share represents  
one Fully Paid Class A  
Ordinary Share)

[FORM OF FACE OF RESTRICTED AMERICAN DEPOSITARY RECEIPT]

THE SECURITIES REPRESENTED HEREBY ARE SUBJECT TO RESTRICTIONS ON TRANSFER UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"). THE SECURITIES MAY NOT BE OFFERED, SOLD, PLEDGED, OR OTHERWISE DISTRIBUTED OR TRANSFERRED EXCEPT (i) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE ACT OR (ii) IN COMPLIANCE WITH RULE 144 UNDER THE ACT OR PURSUANT TO ANOTHER EXEMPTION FROM OR IN A TRANSACTION NOT SUBJECT TO REGISTRATION UNDER THE ACT, AND, IN THE CASE (ii) ABOVE, UNLESS THE COMPANY AND DEPOSITARY HAVE RECEIVED AN OPINION OF COUNSEL REASONABLY SATISFACTORY TO EACH OF THEM THAT SUCH TRANSACTION DOES NOT REQUIRE REGISTRATION UNDER THE ACT.

DEUTSCHE BANK TRUST COMPANY AMERICAS

RESTRICTED AMERICAN DEPOSITARY RECEIPT  
EVIDENCING RESTRICTED AMERICAN DEPOSITARY SHARES  
REPRESENTING CLASS A ORDINARY SHARES OF  
PAR VALUE \$0.00025 EACH

Of

NIO INC.  
(INCORPORATED UNDER THE LAWS OF THE CAYMAN ISLANDS)



DEUTSCHE BANK TRUST COMPANY AMERICAS, as depositary (herein called the “**Depositary**”), hereby certifies that \_\_\_\_\_ is the owner of \_\_\_\_\_ Restricted American Depositary Shares (hereinafter “**Restricted ADSs**”), representing deposited Class A ordinary shares, each of Par Value of U.S.\$0.00025 including evidence of rights to receive such ordinary shares (the “**Shares**”) of NIO Inc., a company incorporated under the laws of the Cayman Islands (the “**Company**”). As of the date hereof, each Restricted ADS represents one Share deposited under the Deposit Agreement with the Custodian which at the date hereof is Deutsche Bank AG, Hong Kong Branch (the “**Custodian**”). The ratio of Restricted ADSs to Shares is subject to subsequent amendment as provided in Article IV of the Deposit Agreement. The Depositary’s Corporate Trust Office is located at 60 Wall Street, New York, New York 10005, U.S.A.

(1) **The Deposit Agreement.** This Restricted American Depositary Receipt is one of an issue of Restricted American Depositary Receipts (“**Receipts**”), all issued or to be issued upon the provisions set forth in the Deposit Agreement for Restricted Securities dated as of February 4, 2019 (the “**Deposit Agreement**”) among the Company, the Depositary and all Holders and Beneficial Owners from time to time of Receipts issued thereunder, each of whom by accepting a Receipt evidencing Restricted ADSs agrees to become a party thereto and becomes bound by all the terms and conditions thereof. The Deposit Agreement sets forth the rights and obligations of Holders and Beneficial Owners of Receipts and the rights and duties of the Depositary in respect of the Shares deposited thereunder and any and all other securities, property and cash from time to time, received in respect of such Shares and held thereunder (such Shares, other securities, property and cash are herein called “**Deposited Securities**”) and incorporates certain provisions of the deposit agreement dated as of September 11, 2018 among the Company, the Depositary and all Holders and Beneficial Owners from time to time of American Depositary Receipts issued thereunder (as amended from time to time, the “**Unrestricted Deposit Agreement**”). Copies of the Deposit Agreement and the Unrestricted Deposit Agreement are on file at the Corporate Trust Office of the Depositary and the Custodian.

Each Holder and each Beneficial Owner, upon acceptance of any Restricted ADSs (or any interest therein) issued in accordance with the terms and conditions of the Deposit Agreement, shall be deemed for all purposes to (a) be a party to and bound by the terms of the Deposit Agreement and applicable Receipt(s), and (b) appoint the Depositary its attorney-in-fact, with full power to delegate, to act on its behalf and to take any and all actions contemplated in the Deposit Agreement and the applicable Receipt(s), to adopt any and all procedures necessary to comply with applicable law and to take such action as the Depositary in its sole discretion may deem necessary or appropriate to carry out the purposes of the Deposit Agreement and the applicable Receipt(s) (the taking of such actions to be the conclusive determinant of the necessity and appropriateness thereof).

The statements made on the face and reverse of this Receipt are summaries of certain provisions of the Deposit Agreement and the Memorandum and Articles of Association (as in effect on the date of the Deposit Agreement) and are qualified by and subject to the detailed provisions of the Deposit Agreement, to which reference is hereby made. All capitalized terms used herein which are not otherwise defined herein shall have the meanings ascribed thereto in the Deposit Agreement. To the extent there is any inconsistency between the terms of this Receipt and the terms of the Deposit Agreement, the terms of the Deposit Agreement shall prevail. Prospective and actual Holders and Beneficial Owners are encouraged to read the terms of the Deposit Agreement. The Depositary makes no representation or warranty as to the validity or worth of the Deposited Securities.

(2) Surrender of Receipts and Withdrawal of Deposited Securities. Upon surrender, at the Corporate Trust Office of the Depository, of Restricted ADSs evidenced by this Receipt for the purpose of withdrawal of the Deposited Securities represented thereby, and upon payment of (i) the fees and charges of the Depository for the making of withdrawals and cancellations of Deposited Securities and cancellation of Receipts (as set forth in Section 5.9 of the Unrestricted Deposit Agreement and Article (9) hereof) and (ii) all fees, taxes and/or governmental charges payable in connection with such surrender and withdrawal, and, subject to the terms and conditions of the Deposit Agreement, including the conditions set forth in Section 5 of the Deposit Agreement, the Memorandum and Articles of Association, Section 7.10 of the Unrestricted Deposit Agreement, Article (22) hereof and the provisions of or governing the Deposited Securities and other applicable laws, the Holder of the American Depositary Shares evidenced hereby is entitled to Delivery, to him or upon his order, of the Deposited Securities represented by the Restricted ADSs so surrendered. Restricted ADSs may be surrendered for the purpose of withdrawing Deposited Securities by Delivery of a Receipt evidencing such Restricted ADSs (if held in registered form) or by book-entry delivery of such Restricted ADSs to the Depository.

A Receipt surrendered for such purposes shall, if so required by the Depository, be properly endorsed in blank or accompanied by proper instruments of transfer in blank, and if the Depository so requires, the Holder thereof shall execute and deliver to the Depository a written order directing the Depository to cause the Deposited Securities being withdrawn to be Delivered to or upon the written order of a person or persons designated in such order. Thereupon, the Depository shall direct the Custodian to Deliver (without unreasonable delay) at the designated office of the Custodian or through a book-entry delivery of the Shares (in either case subject to the terms and conditions of the Deposit Agreement, to the Memorandum and Articles of Association, and to the provisions of or governing the Deposited Securities and applicable laws, now or hereafter in effect), to or upon the written order of the person or persons designated in the order delivered to the Depository as provided above, the Deposited Securities represented by such Restricted ADSs, together with any certificate or other proper documents of or relating to title for the Deposited Securities or evidence of the electronic transfer thereof (if available) as the case may be to or for the account of such person. Subject to Article (4) hereof, in the case of surrender of a Receipt evidencing a number of Restricted ADSs representing other than a whole number of Shares, the Depository shall cause ownership of the appropriate whole number of Shares to be Delivered in accordance with the terms hereof, and shall, at the discretion of the Depository, either (i) issue and Deliver to the person surrendering such Receipt a new Receipt evidencing American Depositary Shares representing any remaining fractional Share, or (ii) sell or cause to be sold the fractional Shares represented by the Receipt so surrendered and remit the proceeds thereof (net of (a) applicable fees and charges of, and expenses incurred by, the Depository and/or a division or Affiliate(s) of the Depository and (b) taxes and/or governmental charges) to the person surrendering the Receipt. At the request, risk and expense of any Holder so surrendering a Receipt, and for the account of such Holder, the Depository shall direct the Custodian to forward (to the extent permitted by law) any cash or other property (other than securities) held in respect of, and any certificate or certificates and other proper documents of or relating to title to, the Deposited Securities represented by such Receipt to the Depository for Delivery at the Corporate Trust Office of the Depository, and for further Delivery to such Holder. Such direction shall be given by letter or, at the request, risk and expense of such Holder, by cable, telex or facsimile transmission. Upon receipt by the Depository, the Depository may make delivery to such person or persons entitled thereto at the Corporate Trust Office of the Depository of any dividends or cash distributions with respect to the Deposited Securities represented by such Receipt, or of any proceeds of sale of any dividends, distributions or rights, which may at the time be held by the Depository.

A Holder may convert Restricted ADSs into unrestricted ADSs by surrendering the Restricted ADSs for cancellation and requesting the issuance of unrestricted American Depositary Shares representing the Shares formerly represented by such Restricted ADSs, if such cancellation is (i) in connection with a sale after a holding period of six months has elapsed with regard to the Restricted ADSs or (ii) after a holding period of one year has elapsed with regard to the Restricted ADSs held by a non-affiliate of the Company, and in the case of (i) and (ii) if the conversion is preceded or accompanied by a representation letter in such form and substance as the Depositary may reasonably request signed by the Holder of the Restricted ADSs and by delivery of a legal opinion of U.S. counsel to the Company reasonably acceptable to the Depositary (or, at the option of the Depositary, counsel to the Holder reasonably acceptable to the Depositary), which opinion (including the related back-up certificates, the “**Opinion**”) shall be in form and substance reasonably satisfactory to the Depositary, to the effect that (w) such Restricted ADSs and the Shares represented thereby may be freely offered and sold without registration under the Securities Act pursuant to an applicable exemption from the registration requirements thereof, (x) the Holder or any purchaser of such Restricted ADSs or Shares will receive securities that are not “restricted securities” within the meaning of Rule 144(a)(3) under the Securities Act, (y) the Depositary may, under the Securities Act, issue to the Holder or any purchaser, as applicable, new American Depositary Shares representing the Shares without any restrictive legends thereon, and any stop-transfer instruction with respect to such new American Depositary Shares may be removed from the Depositary’s records, and (z) such other matters as the Depositary may reasonably request. Upon receipt of the requirements set out in the preceding sentence and cancellation of the Restricted ADSs, the Depositary shall move the Shares formerly represented by the Restricted ADSs to the general pool of Shares represented by the unrestricted American Depositary Shares, and shall take all other steps reasonably required to make the applicable Restricted ADSs fungible with the unrestricted American Depositary Shares issued under the Unrestricted Deposit Agreement.

Notwithstanding the foregoing, if a Holder surrenders Restricted ADSs for cancellation and, in lieu of receiving unrestricted American Depositary Shares, wishes to receive the Deposited Securities represented by the Restricted ADSs, the Depositary shall cancel the surrendered Restricted ADSs and deliver the underlying Deposited Securities to the Holder only in compliance with the provisions of the Deposit Agreement and this Receipt and (i) if preceded or accompanied by evidence reasonably satisfactory to the Depositary that the Shares delivered on such withdrawal will be “restricted securities” within the meaning of Rule 144(a)(3) under the Securities Act and will bear restrictive legends to such effect and/or be subject to stop orders, and not be deposited in any book-entry system that would make them fungible with Shares that are not “restricted securities” or (ii) after a holding period of one year has elapsed with regard to Restricted ADSs held by a non-affiliate, upon (y) receipt of a representation letter in such form and substance as the Depositary may reasonably request signed by the Holder of the Restricted ADSs and (z) at the Depositary’s election, either (a) a letter of instruction from the Company authorizing and instructing the Depositary to remove the restrictive legend or (b) an opinion of U.S. counsel reasonably acceptable to the Depositary substantially to the effect of clauses (w), (x) and (z) above in relation to the Opinion.

(3) Transfers, Split-Ups and Combinations of Receipts. Subject to the terms and conditions of the Deposit Agreement, the Registrar shall register transfers of Receipts on its books, upon surrender at the Corporate Trust Office of the Depository of a Receipt by the Holder thereof in person or by duly authorized attorney, properly endorsed in the case of a certificated Receipt or accompanied by, or in the case of Receipts issued through the book-entry system maintained by the Depository pursuant to Section 6 of the Deposit Agreement, receipt by the Depository of proper instruments of transfer (including signature guarantees in accordance with standard industry practice) and duly stamped as may be required by the laws of the State of New York, of the United States, of the Cayman Islands and of any other applicable jurisdiction. Subject to the terms and conditions of the Deposit Agreement, including payment of the applicable fees and expenses incurred by, and charges of, the Depository, the Depository shall execute and Deliver a new Receipt(s) (and if necessary, cause the Registrar to countersign such Receipt(s)) and deliver same to or upon the order of the person entitled to such Receipts evidencing the same aggregate number of Restricted ADSs as those evidenced by the Receipts surrendered. Upon surrender of a Receipt or Receipts for the purpose of effecting a split-up or combination of such Receipt or Receipts upon payment of the applicable fees and charges of the Depository, and subject to the terms and conditions of the Deposit Agreement, the Depository shall execute and deliver a new Receipt or Receipts for any authorized number of Restricted ADSs requested, evidencing the same aggregate number of Restricted ADSs as the Receipt or Receipts surrendered.

(4) Pre-Conditions to Registration, Transfer, Etc. As a condition precedent to the execution and Delivery, registration, registration of transfer, split-up, subdivision, combination or surrender of any Receipt, the delivery of any distribution thereon (whether in cash or shares) or withdrawal of any Deposited Securities, the Depository or the Custodian may require (i) payment from the depositor of Shares or presenter of the Receipt of a sum sufficient to reimburse it for any tax or other governmental charge and any stock transfer or registration fee with respect thereto (including any such tax or charge and fee with respect to Shares being deposited or withdrawn) and payment of any applicable fees and charges of the Depository as provided in the Deposit Agreement and in this Receipt, (ii) the production of proof satisfactory to it as to the identity and genuineness of any signature or any other matter and (iii) compliance with (A) any laws or governmental regulations relating to the execution and Delivery of Receipts and Restricted ADSs or to the withdrawal of Deposited Securities and (B) such reasonable regulations of the Depository or the Company consistent with the Deposit Agreement and applicable law.

The issuance of Restricted ADSs against deposits of Shares generally or against deposits of particular Shares may be suspended, or the issuance of Restricted ADSs against the deposit of particular Shares may be withheld, or the registration of transfer of Receipts in particular instances may be refused, or the registration of transfer of Receipts generally may be suspended, during any period when the transfer books of the Depository are closed or if any such action is deemed necessary or advisable by the Depository or the Company, in good faith, at any time or from time to time because of any requirement of law, any government or governmental body or commission, or under any provision of the Deposit Agreement or provisions of, or governing, the Deposited Securities or any meeting of shareholders of the Company or for any other reason, subject in all cases to Article (22) hereof.

The Depositary shall not issue Restricted ADSs prior to the receipt of Shares or deliver Shares prior to the receipt and cancellation of Restricted ADSs.

(5) Compliance With Information Requests Notwithstanding any other provision of the Deposit Agreement or this Receipt, each Holder and Beneficial Owner of the Restricted ADSs represented hereby agrees to comply with requests from the Company pursuant to the laws of the Cayman Islands, the Memorandum and Articles of Association, which are made to provide information as to the capacity in which such Holder or Beneficial Owner owns Restricted ADSs and regarding the identity of any other person interested in such Restricted ADSs and the nature of such interest and various other matters whether or not they are Holders and/or Beneficial Owners at the time of such request. The Depositary agrees to use reasonable efforts to forward any such requests to the Holders and to forward to the Company any such responses to such requests received by the Depositary.

(6) Liability of Holder for Taxes, Duties and Other Charges. If any tax or other governmental charge shall become payable by the Depositary or the Custodian with respect to any Receipt or any Deposited Securities or Restricted ADSs, such tax, or other governmental charge shall be payable by the Holders and Beneficial Owners to the Depositary. The Company, the Custodian and/or the Depositary may withhold or deduct from any distributions made in respect of Deposited Securities and may sell for the account of the Holder and/or Beneficial Owner any or all of the Deposited Securities and apply such distributions and sale proceeds in payment of such taxes (including applicable interest and penalties) or charges, with the Holder and the Beneficial Owner hereof remaining fully liable for any deficiency. The Custodian may refuse the deposit of Shares, and the Depositary may refuse to issue Restricted ADSs, to deliver Receipts, register the transfer, split-up or combination of Restricted ADSs and (subject to Article (22) hereof) the withdrawal of Deposited Securities, until payment in full of such tax, charge, penalty or interest is received.

The liability of Holders and Beneficial Owners under the Deposit Agreement shall survive any transfer of Receipts, any surrender of Receipts and withdrawal of Deposited Securities or the termination of the Deposit Agreement.

Holders understand that in converting Foreign Currency, amounts received on conversion are calculated at a rate which may exceed the number of decimal places used by the Depositary to report distribution rates (which in any case will not be less than two decimal places). Any excess amount may be retained by the Depositary as an additional cost of conversion, irrespective of any other fees and expenses payable or owing hereunder and shall not be subject to escheatment.

(7) Representations and Warranties of Depositors. Each person depositing Shares under the Deposit Agreement shall be deemed thereby to represent and warrant that (i) such Shares (and the certificates therefor) are duly authorized, validly issued, fully paid, non-assessable and were legally obtained by such person, (ii) all preemptive (and similar) rights, if any, with respect to such Shares, have been validly waived or exercised, (iii) the person making such deposit is duly authorized so to do, (iv) the Shares presented for deposit are free and clear of any lien, encumbrance, security interest, charge, mortgage or adverse claim, (v) the Shares presented for deposit have not been stripped of any rights or entitlements and (vi) the Shares are not subject to any lock-up agreement with the Company or other party, or the Shares are subject to a lock-up agreement but such lock-up agreement has terminated or the lock-up restrictions imposed thereunder have expired or been validly waived. Such representations and warranties shall survive the deposit and withdrawal of Shares and the issuance, cancellation and transfer of Restricted ADSs. If any such representations or warranties are false in any way, the Company and Depositary shall be authorized, at the cost and expense of the person depositing Shares, to take any and all actions necessary to correct the consequences thereof.

(8) Filing Proofs, Certificates and Other Information. Any person presenting Shares for deposit shall provide, any Holder and any Beneficial Owner may be required to provide, and every Holder and Beneficial Owner agrees, from time to time to provide to the Depositary such proof of citizenship or residence, taxpayer status, payment of all applicable taxes and/or other governmental charges, exchange control approval, legal or beneficial ownership of Restricted ADSs and Deposited Securities, compliance with applicable laws and the terms of the Deposit Agreement and the provisions of, or governing, the Deposited Securities or other information as the Depositary deems necessary or proper or as the Company may reasonably require by written request to the Depositary consistent with its obligations under the Deposit Agreement. The Depositary and the Registrar, as applicable, may withhold the execution or Delivery or registration of transfer of any Receipt or the distribution or sale of any dividend or other distribution of rights or of the proceeds thereof, or to the extent not limited by the terms of Article (22) hereof or the terms of the Deposit Agreement, the Delivery of any Deposited Securities, until such proof or other information is filed or such certifications are executed, or such representations and warranties are made, or such other documentation or information provided, in each case to the Depositary's and the Company's satisfaction. The Depositary shall from time to time on the written request of the Company advise the Company of the availability of any such proofs, certificates or other information and shall, at the Company's sole expense, provide or otherwise make available copies thereof to the Company upon written request therefor by the Company, unless such disclosure is prohibited by law. Each Holder and Beneficial Owner agrees to provide any information requested by the Company or the Depositary pursuant to this paragraph. Nothing herein shall obligate the Depositary to (i) obtain any information for the Company if not provided by the Holders or Beneficial Owners or (ii) verify or vouch for the accuracy of the information so provided by the Holders or Beneficial Owners.

Every Holder and Beneficial Owner agrees to indemnify the Depositary, the Company, the Custodian, the Agents and each of their respective directors, officers, employees, agents and Affiliates against, and to hold each of them harmless from, any Losses which any of them may incur or which may be made against any of them as a result of or in connection with any inaccuracy in or omission from any such proof, certificate, representation, warranty, information or document furnished by or on behalf of such Holder and/or Beneficial Owner or as a result of any such failure to furnish any of the foregoing.

The obligations of Holders and Beneficial Owners under Section 3.1 of the Unrestricted Deposit Agreement shall survive any transfer of Receipts, any surrender of Receipts and withdrawal of Deposited Securities or the termination of this Deposit Agreement.

( 9 ) Charges of Depositary. The Depositary reserves the right to charge the following fees for the services performed under the terms of the Deposit Agreement:

- (i) to any person to whom Restricted ADSs are issued or to any person to whom a distribution is made in respect of Restricted ADS distributions pursuant to stock dividends or other free distributions of stock, bonus distributions, stock splits or other distributions (except where converted to cash), a fee not in excess of U.S. \$5.00 per 100 Restricted ADSs (or fraction thereof) so issued under the terms of the Deposit Agreement to be determined by the Depositary;
- (ii) to any person surrendering Restricted ADSs for withdrawal of Deposited Securities or whose Restricted ADSs are cancelled or reduced for any other reason including, inter alia, cash distributions made pursuant to a cancellation or withdrawal, a fee not in excess of U.S. \$5.00 per 100 Restricted ADSs reduced, cancelled or surrendered (as the case may be);
- (iii) to any holder of Restricted ADSs (including, without limitation, Holders), a fee not in excess of U.S. \$5.00 per 100 Restricted ADSs held for the distribution of cash dividends;
- (iv) to any holder of Restricted ADSs (including, without limitation, Holders), a fee not in excess of U.S. \$5.00 per 100 Restricted ADSs held for the distribution of cash entitlements (other than cash dividends) and/or cash proceeds, including proceeds from the sale of rights, securities and other entitlements;
- (v) to any holder of Restricted ADSs (including, without limitation, Holders), a fee not in excess of U.S. \$5.00 per 100 Restricted ADSs (or portion thereof) issued upon the exercise of rights; and
- (vi) for the operation and maintenance costs in administering the Restricted ADSs an annual fee of U.S. \$5.00 per 100 Restricted ADSs, such fee to be assessed against Holders of record as of the date or dates set by the Depositary as it sees fit and collected at the sole discretion of the Depositary by billing such Holders for such fee or by deducting such fee from one or more cash dividends or other cash distributions.

In addition, Holders, Beneficial Owners, any person depositing Shares for deposit and any person surrendering Restricted ADSs for cancellation and withdrawal of Deposited Securities will be required to pay the following charges:

- (i) taxes (including applicable interest and penalties) and other governmental charges;
- (ii) such registration fees as may from time to time be in effect for the registration of Shares or other Deposited Securities with the Foreign Registrar and applicable to transfers of Shares or other Deposited Securities to or from the name of the Custodian, the Depositary or any nominees upon the making of deposits and withdrawals, respectively;

- (iii) such cable, telex, facsimile and electronic transmission and delivery expenses as are expressly provided in the Deposit Agreement to be at the expense of the depositor depositing or person withdrawing Shares or Holders and Beneficial Owners of Restricted ADSs;
- (iv) the expenses and charges incurred by the Depository and/or a division or Affiliate(s) of the Depository in the conversion of Foreign Currency;
- (v) such fees and expenses as are incurred by the Depository in connection with compliance with exchange control regulations and other regulatory requirements applicable to Shares, Deposited Securities, Restricted ADSs and Receipts;
- (vi) the fees and expenses incurred by the Depository in connection with the delivery of Deposited Securities, including any fees of a central depository for securities in the local market, where applicable;
- (vii) any additional fees, charges, costs or expenses that may be incurred by the Depository or a division or Affiliate(s) of the Depository from time to time.

Any other fees and charges of, and expenses incurred by, the Depository or the Custodian under the Deposit Agreement shall be for the account of the Company unless otherwise agreed in writing between the Company and the Depository from time to time. All fees and charges may, at any time and from time to time, be changed by agreement between the Depository and Company but, in the case of fees and charges payable by Holders or Beneficial Owners, only in the manner contemplated by Article (20) hereof.

The Depository may make payments to the Company and/or may share revenue with the Company derived from fees collected from Holders and Beneficial Owners, upon such terms and conditions as the Company and the Depository may agree from time to time.

(10) Title to Receipts. It is a condition of this Receipt, and every successive Holder of this Receipt by accepting or holding the same consents and agrees, that, subject to the requirements of the Deposit Agreement, title to this Receipt (and to each Restricted ADS evidenced hereby) is transferable by delivery of the Receipt, provided it has been properly endorsed or accompanied by proper instruments of transfer, such Receipt being a certificated security under the laws of the State of New York. Notwithstanding any notice to the contrary, the Depository may deem and treat the Holder of this Receipt (that is, the person in whose name this Receipt is registered on the books of the Depository) as the absolute owner hereof for all purposes. The Depository shall have no obligation or be subject to any liability under the Deposit Agreement or this Receipt to any holder of this Receipt or any Beneficial Owner unless such holder is the Holder of this Receipt registered on the books of the Depository or, in the case of a Beneficial Owner, such Beneficial Owner or the Beneficial Owner's representative is the Holder registered on the books of the Depository.

(11) Validity of Receipt. This Receipt shall not be entitled to any benefits under the Deposit Agreement or be valid or enforceable for any purpose, unless this Receipt has been (i) dated, (ii) signed by the manual or facsimile signature of a duly authorized signatory of the Depository, (iii) if a Registrar for the Receipts shall have been appointed, countersigned by the manual or facsimile signature of a duly authorized signatory of the Registrar and (iv) registered in the books maintained by the Depository or the Registrar, as applicable, for the issuance and transfer of Receipts. Receipts bearing the facsimile signature of a duly-authorized signatory of the Depository or the Registrar, who at the time of signature was a duly-authorized signatory of the Depository or the Registrar, as the case may be, shall bind the Depository, notwithstanding the fact that such signatory has ceased to be so authorized prior to the execution and delivery of such Receipt by the Depository or did not hold such office on the date of issuance of such Receipts.



(12) Available Information; Reports; Inspection of Transfer Books. The Company is subject to the periodic reporting requirements of the Exchange Act applicable to foreign private issuers (as defined in Rule 405 of the Securities Act) and accordingly files certain information with the Commission. These reports and documents can be inspected and copied at the public reference facilities maintained by the Commission located at 100 F Street, N.E., Washington D.C. 20549, U.S.A. The Depositary shall make available during normal business hours on any Business Day for inspection by Holders at its Corporate Trust Office any reports and communications, including any proxy soliciting materials, received from the Company which are both (a) received by the Depositary, the Custodian, or the nominee of either of them as the holder of the Deposited Securities and (b) made generally available to the holders of such Deposited Securities by the Company.

The Depositary or the Registrar, as applicable, shall keep books for the registration of Receipts and transfers of Receipts which at all reasonable times shall be open for inspection by the Company and by the Holders of such Receipts, provided that such inspection shall not be, to the Depositary's or the Registrar's knowledge, for the purpose of communicating with Holders of such Receipts in the interest of a business or object other than the business of the Company or other than a matter related to the Deposit Agreement or the Receipts.

The Depositary or the Registrar, as applicable, may close the transfer books with respect to the Receipts, at any time or from time to time, when deemed necessary or advisable by it in good faith in connection with the performance of its duties hereunder, or at the reasonable written request of the Company.

Dated:

**DEUTSCHE BANK TRUST  
COMPANY AMERICAS, as Depositary**

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

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

The address of the Corporate Trust Office of the Depositary is 60 Wall Street, New York, New York 10005, U.S.A.

SUMMARY OF CERTAIN ADDITIONAL PROVISIONS  
OF THE DEPOSIT AGREEMENT

( 1 3 ) Dividends and Distributions in Cash, Shares, etc. Whenever the Depositary receives confirmation from the Custodian of receipt of any cash dividend or other cash distribution on any Deposited Securities, or receives proceeds from the sale of any Shares, rights securities or other entitlements under the Deposit Agreement, the Depositary will, if at the time of receipt thereof any amounts received in a Foreign Currency can, in the judgment of the Depositary (upon the terms of the Deposit Agreement), be converted on a practicable basis, into Dollars transferable to the United States, promptly convert or cause to be converted such dividend, distribution or proceeds into Dollars and will distribute promptly the amount thus received (net of applicable fees and charges of, and expenses incurred by, the Depositary and/or a division or Affiliate(s) of the Depositary and taxes and/or governmental charges) to the Holders of record as of the Restricted ADS Record Date in proportion to the number of Restricted ADSs representing such Deposited Securities held by such Holders respectively as of the Restricted ADS Record Date. The Depositary shall distribute only such amount, however, as can be distributed without attributing to any Holder a fraction of one cent. Any such fractional amounts shall be rounded down to the nearest whole cent and so distributed to Holders entitled thereto. Holders and Beneficial Owners understand that in converting Foreign Currency, amounts received on conversion are calculated at a rate which exceeds three or four decimal places (the number of decimal places used by the Depositary to report distribution rates). The excess amount may be retained by the Depositary as an additional cost of conversion, irrespective of any other fees and expenses payable or owing hereunder and shall not be subject to escheatment. If the Company, the Custodian or the Depositary is required to withhold and does withhold from any cash dividend or other cash distribution in respect of any Deposited Securities an amount on account of taxes, duties or other governmental charges, the amount distributed to Holders on the Restricted ADSs representing such Deposited Securities shall be reduced accordingly. Such withheld amounts shall be forwarded by the Company, the Custodian or the Depositary to the relevant governmental authority. Evidence of payment thereof by the Company shall be forwarded by the Company to the Depositary upon request. The Depositary shall forward to the Company or its agent such information from its records as the Company may reasonably request to enable the Company or its agent to file with governmental agencies such reports as are necessary to obtain benefits under the applicable tax treaties for the Holders and Beneficial Owners of Receipts.

If any distribution upon any Deposited Securities consists of a dividend in, or free distribution of, Shares, the Company shall cause such Shares to be deposited with the Custodian and registered, as the case may be, in the name of the Depositary, the Custodian or their nominees. Upon receipt of confirmation of such deposit, the Depositary shall, subject to and in accordance with the Deposit Agreement, establish the Restricted ADS Record Date and either (i) distribute to the Holders as of the Restricted ADS Record Date in proportion to the number of Restricted ADSs held by such Holders of the Restricted ADS Record Date, additional Restricted ADSs, which represent in aggregate the number of Shares received as such dividend, or free distribution, subject to the terms of the Deposit Agreement (including, without limitation, the applicable fees and charges of, and expenses incurred by, the Depositary, and taxes and/or governmental charges), or (ii) if additional Restricted ADSs are not so distributed, each Restricted ADS issued and outstanding after the Restricted ADS Record Date shall, to the extent permissible by law, thenceforth also represent rights and interests in the additional Shares distributed upon the Deposited Securities represented thereby (net of the applicable fees and charges of, and the expenses incurred by, the Depositary, and taxes and/or governmental charges). In lieu of delivering fractional Restricted ADSs, the Depositary shall sell the number of Shares represented by the aggregate of such fractions and distribute the proceeds upon the terms set forth in the Deposit Agreement.

In the event that (x) the Depositary determines that any distribution in property (including Shares) is subject to any tax or other governmental charges which the Depositary is obligated to withhold, or, (y) if the Company, in the fulfillment of its obligations under the Deposit Agreement, has either (a) furnished an opinion of U.S. counsel determining that Shares must be registered under the Securities Act or other laws in order to be distributed to Holders (and no such registration statement has been declared effective), or (b) fails to timely deliver the documentation contemplated in the Deposit Agreement, the Depositary may dispose of all or a portion of such property (including Shares and rights to subscribe therefor) in such amounts and in such manner, including by public or private sale, as the Depositary deems necessary and practicable, and the Depositary shall distribute the net proceeds of any such sale (after deduction of taxes and/or governmental charges, and fees and charges of, and expenses incurred by, the Depositary and/or a division or Affiliate(s) of the Depositary) to Holders entitled thereto upon the terms of the Deposit Agreement. The Depositary shall hold and/or distribute any unsold balance of such property in accordance with the provisions of the Deposit Agreement.

Upon timely receipt of a notice indicating that the Company wishes an elective distribution to be made available to Holders upon the terms described in the Deposit Agreement, the Depositary shall, upon provision of all documentation required under the Deposit Agreement, (including, without limitation, any legal opinions the Depositary may request under the Deposit Agreement) determine whether such distribution is lawful and reasonably practicable. If so, the Depositary shall, subject to the terms and conditions of the Deposit Agreement, establish a Restricted ADS Record Date according to Article (14) hereof and establish procedures to enable the Holder hereof to elect to receive the proposed distribution in cash or in additional Restricted ADSs. If a Holder elects to receive the distribution in cash, the dividend shall be distributed as in the case of a distribution in cash. If the Holder hereof elects to receive the distribution in additional Restricted ADSs, the distribution shall be distributed as in the case of a distribution in Shares upon the terms described in the Deposit Agreement. If such elective distribution is not lawful or reasonably practicable or if the Depositary did not receive satisfactory documentation set forth in the Deposit Agreement, the Depositary shall, to the extent permitted by law, distribute to Holders, on the basis of the same determination as is made in the Cayman Islands, in respect of the Shares for which no election is made, either (x) cash or (y) additional Restricted ADSs representing such additional Shares, in each case, upon the terms described in the Deposit Agreement. Nothing herein shall obligate the Depositary to make available to the Holder hereof a method to receive the elective dividend in Shares (rather than Restricted ADSs). There can be no assurance that the Holder hereof will be given the opportunity to receive elective distributions on the same terms and conditions as the holders of Shares.

Whenever the Company intends to distribute to the holders of the Deposited Securities rights to subscribe for additional Shares, the Company shall give notice thereof to the Depository at least 60 days prior to the proposed distribution stating whether or not it wishes such rights to be made available to Holders of Restricted ADSs. Upon timely receipt by the Depository of a notice indicating that the Company wishes such rights to be made available to Holders of Restricted ADSs, the Company shall determine whether it is lawful and reasonably practicable to make such rights available to the Holders. The Depository shall make such rights available to any Holders only if the Company shall have timely requested that such rights be made available to Holders, the Depository shall have received the documentation required by the Deposit Agreement, and the Depository shall have determined that such distribution of rights is lawful and reasonably practicable. If such conditions are not satisfied, the Depository shall sell the rights as described below. In the event all conditions set forth above are satisfied, the Depository shall establish a Restricted ADS Record Date and establish procedures (x) to distribute such rights (by means of warrants or otherwise) and (y) to enable the Holders to exercise the rights (upon payment of the applicable fees and charges of, and expenses incurred by, the Depository and/or a division or Affiliate(s) of the Depository and taxes and/or governmental charges). Nothing herein or in the Deposit Agreement shall obligate the Depository to make available to the Holders a method to exercise such rights to subscribe for Shares (rather than Restricted ADSs). If (i) the Company does not timely request the Depository to make the rights available to Holders or if the Company requests that the rights not be made available to Holders, (ii) the Depository fails to receive the documentation required by the Deposit Agreement or determines it is not lawful or reasonably practicable to make the rights available to Holders, or (iii) any rights made available are not exercised and appear to be about to lapse, the Depository shall determine whether it is lawful and reasonably practicable to sell such rights, and if it so determines that it is lawful and reasonably practicable, endeavour to sell such rights in a riskless principal capacity or otherwise, at such place and upon such terms (including public and/or private sale) as it may deem proper. The Depository shall, upon such sale, convert and distribute proceeds of such sale (net of applicable fees and charges of, and expenses incurred by, the Depository and/or a division or Affiliate(s) of the Depository and taxes and/or governmental charges) upon the terms hereof and in the Deposit Agreement. If the Depository is unable to make any rights available to Holders or to arrange for the sale of the rights upon the terms described above, the Depository shall allow such rights to lapse. The Depository shall not be responsible for (i) any failure to determine that it may be lawful or practicable to make such rights available to Holders in general or any Holders in particular, (ii) any foreign exchange exposure or loss incurred in connection with such sale, or exercise, or (iii) the content of any materials forwarded to the Holders on behalf of the Company in connection with the rights distribution.

Notwithstanding anything herein to the contrary, if registration (under the Securities Act and/or any other applicable law) of the rights or the securities to which any rights relate may be required in order for the Company to offer such rights or such securities to Holders and to sell the securities represented by such rights, the Depository will not distribute such rights to the Holders (i) unless and until a registration statement under the Securities Act covering such offering is in effect or (ii) unless the Company furnishes to the Depository opinion(s) of counsel for the Company in the United States and counsel to the Company in any other applicable country in which rights would be distributed, in each case satisfactorily to the Depository, to the effect that the offering and sale of such securities to Holders and Beneficial Owners are exempt from, or do not require registration under, the provisions of the Securities Act or any other applicable laws. In the event that the Company, the Depository or the Custodian shall be required to withhold and does withhold from any distribution of property (including rights) an amount on account of taxes and/or other governmental charges, the amount distributed to the Holders shall be reduced accordingly. In the event that the Depository determines that any distribution in property (including Shares and rights to subscribe therefor) is subject to any tax or other governmental charges which the Depository is obligated to withhold, the Depository may dispose of all or a portion of such property (including Shares and rights to subscribe therefor) in such amounts and in such manner, including by public or private sale, as the Depository deems necessary and practicable to pay any such taxes and/or charges.

There can be no assurance that Holders generally, or any Holder in particular, will be given the opportunity to exercise rights on the same terms and conditions as the holders of Shares or to exercise such rights. Nothing herein shall obligate the Company to file any registration statement in respect of any rights or Shares or other securities to be acquired upon the exercise of such rights or otherwise to register or qualify the offer or sale of such rights or securities under the applicable law of any other jurisdiction for any purpose.

Upon receipt of a notice regarding property other than cash, Shares or rights to purchase additional Shares, to be made to Holders of Restricted ADSs, the Depositary shall determine, after consultation with the Company, whether such distribution to Holders is lawful and reasonably practicable. The Depositary shall not make such distribution unless (i) the Company shall have timely requested the Depositary to make such distribution to Holders, (ii) the Depositary shall have received the documentation required by the Deposit Agreement, and (iii) the Depositary shall have determined that such distribution is lawful and reasonably practicable. Upon satisfaction of such conditions, the Depositary shall distribute the property so received to the Holders of record as of the Restricted ADS Record Date, in proportion to the number of Restricted ADSs held by such Holders respectively and in such manner as the Depositary may deem practicable for accomplishing such distribution (i) upon receipt of payment or net of the applicable fees and charges of, and expenses incurred by, the Depositary, and (ii) net of any taxes and/or governmental charges. The Depositary may dispose of all or a portion of the property so distributed and deposited, in such amounts and in such manner (including public or private sale) as the Depositary may deem practicable or necessary to satisfy any taxes (including applicable interest and penalties) or other governmental charges applicable to the distribution.

If the conditions above are not satisfied, the Depositary shall sell or cause such property to be sold in a public or private sale, at such place or places and upon such terms as it may deem proper and shall distribute the proceeds of such sale received by the Depositary (net of (a) applicable fees and charges of, and expenses incurred by, the Depositary and/or a division or Affiliate(s) of the Depositary and (b) taxes and/or governmental charges) to the Holders upon the terms hereof and of the Deposit Agreement. If the Depositary is unable to sell such property, the Depositary may dispose of such property in any way it deems reasonably practicable under the circumstances.

(14) Fixing of Record Date. Whenever necessary in connection with any distribution (whether in cash, Shares, rights or other distribution), or whenever for any reason the Depositary causes a change in the number of Shares that are represented by each Restricted ADS, or whenever the Depositary shall receive notice of any meeting of or solicitation of holders of Shares or other Deposited Securities, or whenever the Depositary shall find it necessary or convenient in connection with the giving of any notice, or any other matter, the Depositary shall fix a record date (the "Restricted ADS Record Date"), as close as practicable to the record date fixed by the Company with respect to the Shares (if applicable), for the determination of the Holders who shall be entitled to receive such distribution, to give instructions for the exercise of voting rights at any such meeting, or to give or withhold such consent, or to receive such notice or solicitation or to otherwise take action, or to exercise the rights of Holders with respect to such changed number of Shares represented by each Restricted ADS or for any other reason. Subject to applicable law and the terms and conditions of this Receipt and the Deposit Agreement, only the Holders of record at the close of business in New York on such Restricted ADS Record Date shall be entitled to receive such distributions, to give such voting instructions, to receive such notice or solicitation, or otherwise take action.

(15) Voting of Deposited Securities. Subject to the next sentence, as soon as practicable after receipt of notice of any meeting at which the holders of Deposited Securities are entitled to vote, or of solicitation of consents or proxies from holders of Deposited Securities, the Depositary shall fix the Restricted ADS Record Date in respect of such meeting or such solicitation of consents or proxies. The Depositary shall, if requested by the Company in writing in a timely manner (the Depositary having no obligation to take any further action if the request shall not have been received by the Depositary at least 30 Business Days prior to the date of such vote or meeting) and at the Company's expense, and provided no U.S. legal prohibitions exist, mail by regular, ordinary mail delivery (or by electronic mail or as otherwise may be agreed between the Company and the Depositary in writing from time to time) or otherwise distribute as soon as practicable after receipt thereof to Holders as of the Restricted ADS Record Date: (a) such notice of meeting or solicitation of consent or proxy; (b) a statement that the Holders at the close of business on the Restricted ADS Record Date will be entitled, subject to any applicable law, the provisions of this Deposit Agreement, the Company's Memorandum and Articles of Association and the provisions of or governing the Deposited Securities (which provisions, if any, shall be summarized in pertinent part by the Company), to instruct the Depositary as to the exercise of the voting rights, if any, pertaining to the Deposited Securities represented by such Holder's American Depositary Shares; and (c) a brief statement as to the manner in which such voting instructions may be given to the Depositary, or in which instructions may be deemed to have been given in accordance with this Article (15), including an express indication that instructions may be given (or be deemed to have been given in accordance with the immediately following paragraph of this section if no instruction is received) to the Depositary to give a discretionary proxy to a person or persons designated by the Company. Voting instructions may be given only in respect of a number of American Depositary Shares representing an integral number of Deposited Securities. Upon the timely receipt of voting instructions of a Holder on the Restricted ADS Record Date in the manner specified by the Depositary, the Depositary shall endeavor, insofar as practicable and permitted under applicable law, the provisions of this Deposit Agreement, the Company's Memorandum and Articles of Association and the provisions of or governing the Deposited Securities, to vote or cause the Custodian to vote the Deposited Securities (in person or by proxy) represented by American Depositary Shares evidenced by such Receipt in accordance with such voting instructions.

In the event that (i) the Depositary timely receives voting instructions from a Holder which fail to specify the manner in which the Depositary is to vote the Deposited Securities represented by such Holder's Restricted ADSs or (ii) no timely instructions are received by the Depositary from a Holder with respect to any of the Deposited Securities represented by the Restricted ADSs held by such Holder on the Restricted ADS Record Date, the Depositary shall (unless otherwise specified in the notice distributed to Holders) deem such Holder to have instructed the Depositary to give a discretionary proxy to a person designated by the Company with respect to such Deposited Securities and the Depositary shall give a discretionary proxy to a person designated by the Company to vote such Deposited Securities, provided, however, that no such instruction shall be deemed to have been given and no such discretionary proxy shall be given with respect to any matter as to which the Company informs the Depositary (and the Company agrees to provide such information as promptly as practicable in writing, if applicable) that (x) the Company does not wish to give such proxy, (y) the Company is aware or should reasonably be aware that substantial opposition exists from Holders against the outcome for which the person designated by the Company would otherwise vote or (z) the outcome for which the person designated by the Company would otherwise vote would materially and adversely affect the rights of holders of Deposited Securities, provided, further, that the Company will have no liability to any Holder or Beneficial Owner resulting from such notification.

In the event that voting on any resolution or matter is conducted on a show of hands basis in accordance with the Memorandum and Articles of Association, the Depositary will refrain from voting and the voting instructions (or the deemed voting instructions, as set out above) received by the Depositary from Holders shall lapse. The Depositary will have no obligation to demand voting on a poll basis with respect to any resolution and shall have no liability to any Holder or Beneficial Owner for not having demanded voting on a poll basis.

Neither the Depositary nor the Custodian shall, under any circumstances exercise any discretion as to voting, and neither the Depositary nor the Custodian shall vote, attempt to exercise the right to vote, or in any way make use of for purposes of establishing a quorum or otherwise, Deposited Securities represented by Restricted ADSs except pursuant to and in accordance with such written instructions from Holders, including the deemed instruction to the Depositary to give a discretionary proxy to a person designated by the Company. Deposited Securities represented by Restricted ADSs for which (i) no timely voting instructions are received by the Depositary from the Holder, or (ii) timely voting instructions are received by the Depositary from the Holder but such voting instructions fail to specify the manner in which the Depositary is to vote the Deposited Securities represented by such Holder's Restricted ADSs, shall be voted in the manner provided in this Article (15). Notwithstanding anything else contained herein, and subject to applicable law, regulation and the Memorandum and Articles of Association, the Depositary shall, if so requested in writing by the Company, represent all Deposited Securities (whether or not voting instructions have been received in respect of such Deposited Securities from Holders as of the Restricted ADS Record Date) for the purpose of establishing quorum at a meeting of shareholders.

There can be no assurance that Holders or Beneficial Owners generally or any Holder or Beneficial Owner in particular will receive the notice described above with sufficient time to enable the Holder to return voting instructions to the Depositary in a timely manner.

Notwithstanding the above, save for applicable provisions of the law of the Cayman Islands, and in accordance with the terms of Section 5.3 of the Unrestricted Deposit Agreement, the Depositary shall not be liable for any failure to carry out any instructions to vote any of the Deposited Securities or the manner in which such vote is cast or the effect of such vote.

( 1 6 ) Changes Affecting Deposited Securities. Upon any change in par value, split-up, subdivision, cancellation, consolidation or any other reclassification of Deposited Securities, or upon any recapitalization, reorganization, merger, amalgamation or consolidation or sale of assets affecting the Company or to which it otherwise is a party, any securities which shall be received by the Depositary or a Custodian in exchange for, or in conversion of or replacement or otherwise in respect of, such Deposited Securities shall, to the extent permitted by law, be treated as new Deposited Securities under the Deposit Agreement, and the Receipts shall, subject to the provisions of the Deposit Agreement and applicable law, evidence Restricted ADSs representing the right to receive such additional securities. Alternatively, the Depositary may, with the Company's approval, and shall, if the Company shall so requests, subject to the terms of the Deposit Agreement and receipt of satisfactory documentation contemplated by the Deposit Agreement, execute and deliver additional Receipts as in the case of a stock dividend on the Shares, or call for the surrender of outstanding Receipts to be exchanged for new Receipts, in either case, as well as in the event of newly deposited Shares, with necessary modifications to this form of Receipt specifically describing such new Deposited Securities and/or corporate change. Notwithstanding the foregoing, in the event that any security so received may not be lawfully distributed to some or all Holders, the Depositary may, with the Company's approval, and shall if the Company requests, subject to receipt of satisfactory legal documentation contemplated in the Deposit Agreement, sell such securities at public or private sale, at such place or places and upon such terms as it may deem proper and may allocate the net proceeds of such sales (net of fees and charges of, and expenses incurred by, the Depositary and/or a division or Affiliate(s) of the Depositary and taxes and/or governmental charges) for the account of the Holders otherwise entitled to such securities and distribute the net proceeds so allocated to the extent practicable as in the case of a distribution received in cash pursuant to the Deposit Agreement. The Depositary shall not be responsible for (i) any failure to determine that it may be lawful or feasible to make such securities available to Holders in general or any Holder in particular, (ii) any foreign exchange exposure or loss incurred in connection with such sale, or (iii) any liability to the purchaser of such securities.

( 1 7 ) Exoneration. None of the Depositary, the Custodian or the Company shall be obligated to do or perform any act which is inconsistent with the provisions of the Deposit Agreement or shall incur any liability to Holders, Beneficial Owners or any third parties (i) if the Depositary, the Custodian or the Company or their respective controlling persons or agents shall be prevented or forbidden from, or subjected to any civil or criminal penalty or restraint on account of, or delayed in, doing or performing any act or thing required by the terms of the Deposit Agreement and this Receipt, by reason of any provision of any present or future law or regulation of the United States, the Cayman Islands or any other country, or of any other governmental authority or regulatory authority or stock exchange, or by reason of any provision, present or future of the Memorandum and Articles of Association or any provision of or governing any Deposited Securities, or by reason of any act of God or war or other circumstances beyond its control, (including, without limitation, nationalization, expropriation, currency restrictions, work stoppage, strikes, civil unrest, revolutions, rebellions, explosions and computer failure), (ii) by reason of any exercise of, or failure to exercise, any discretion provided for in the Deposit Agreement or in the Memorandum and Articles of Association or provisions of or governing Deposited Securities, (iii) for any action or inaction of the Depositary, the Custodian or the Company or their respective controlling persons or agents in reliance upon the advice of or information from legal counsel, accountants, any person presenting Shares for deposit, any Holder, any Beneficial Owner or authorized representative thereof, or any other person believed by it in good faith to be competent to give such advice or information, (iv) for any inability by a Holder or Beneficial Owner to benefit from any distribution, offering, right or other benefit which is made available to holders of Deposited Securities but is not, under the terms of the Deposit Agreement, made available to Holders of Restricted ADS or (v) for any special, consequential, indirect or punitive damages for any breach of the terms of the Deposit Agreement or otherwise. The Depositary, its controlling persons, its agents (including without limitation, the Agents), any Custodian and the Company, its controlling persons and its agents may rely and shall be protected in acting upon any written notice, request, opinion or other document believed by it to be genuine and to have been signed or presented by the proper party or parties. No disclaimer of liability under the Securities Act or the Exchange Act is intended by any provision of the Deposit Agreement.



( 1 8 ) Standard of Care. The Company and the Depositary and their respective directors, officers, Affiliates, employees and agents (including without limitation, the Agents) assume no obligation and shall not be subject to any liability under the Deposit Agreement or the Receipts to Holders or Beneficial Owners or other persons, except in accordance with Section 5.8 of the Unrestricted Deposit Agreement, provided, that the Company and the Depositary and their respective directors, officers, Affiliates, employees and agents (including without limitation, the Agents) agree to perform their respective obligations specifically set forth in the Deposit Agreement without gross negligence or wilful misconduct. The Depositary and its directors, officers, Affiliates, employees and agents (including without limitation, the Agents) shall not be liable for any failure to carry out any instructions to vote any of the Deposited Securities, or for the manner in which any vote is cast or the effect of any vote. The Depositary shall not incur any liability for any failure to determine that any distribution or action may be lawful or reasonably practicable, for the content of any information submitted to it by the Company for distribution to the Holders or for any inaccuracy of any translation thereof, for any investment risk associated with acquiring an interest in the Deposited Securities, for the validity or worth of the Deposited Securities or for any tax consequences that may result from the ownership of Restricted ADSs, Shares or Deposited Securities, for the credit-worthiness of any third party, for allowing any rights to lapse upon the terms of the Deposit Agreement or for the failure or timeliness of any notice from the Company or for any action or non action by it in reliance upon the opinion, advice of or information from legal counsel, accountants, any person presenting Shares for deposit, any Holder or any other person believed by it in good faith to be competent to give such advice or information. The Depositary and its agents (including without limitation, the Agents) shall not be liable for any acts or omissions made by a successor depositary whether in connection with a previous act or omission of the Depositary or in connection with any matter arising wholly after the removal or resignation of the Depositary, provided that in connection with the issue out of which such potential liability arises the Depositary performed its obligations without gross negligence or willful misconduct while it acted as Depositary.

(19) Resignation and Removal of the Depositary; Appointment of Successor Depositary. The Depositary may at any time resign as Depositary under the Deposit Agreement by written notice of resignation delivered to the Company, such resignation to be effective on the earlier of (i) the 90th day after delivery thereof to the Company (whereupon the Depositary shall, in the event no successor depositary has been appointed by the Company, be entitled to take the actions contemplated in the Deposit Agreement), or (ii) the appointment of a successor depositary and its acceptance of such appointment as provided in the Deposit Agreement, save that, any amounts, fees, costs or expenses owed to the Depositary under the Deposit Agreement or in accordance with any other agreements otherwise agreed in writing between the Company and the Depositary from time to time shall be paid to the Depositary prior to such resignation. The Company shall use reasonable efforts to appoint such successor depositary, and give notice to the Depositary of such appointment, not more than 90 days after delivery by the Depositary of written notice of resignation as provided in the Deposit Agreement. The Depositary may at any time be removed by the Company by written notice of such removal which notice shall be effective on the later of (i) the 90th day after delivery thereof to the Depositary (whereupon the Depositary shall be entitled to take the actions contemplated in the Deposit Agreement if a successor depositary has not been appointed), or (ii) the appointment of a successor depositary and its acceptance of such appointment as provided in the Deposit Agreement save that, any amounts, fees, costs or expenses owed to the Depositary under the Deposit Agreement or in accordance with any other agreements otherwise agreed in writing between the Company and the Depositary from time to time shall be paid to the Depositary prior to such removal. In case at any time the Depositary acting hereunder shall resign or be removed, the Company shall use its best efforts to appoint a successor depositary which shall be a bank or trust company having an office in the Borough of Manhattan, the City of New York and if it shall have not appointed a successor depositary the provisions referred to in Article (21) hereof and correspondingly in the Deposit Agreement shall apply. Every successor depositary shall be required by the Company to execute and deliver to its predecessor and to the Company an instrument in writing accepting its appointment hereunder, and thereupon such successor depositary, without any further act or deed, shall become fully vested with all the rights, powers, duties and obligations of its predecessor. The predecessor depositary, upon payment of all sums due to it and on the written request of the Company, shall (i) execute and deliver an instrument transferring to such successor all rights and powers of such predecessor hereunder (other than as contemplated in the Deposit Agreement), (ii) duly assign, transfer and deliver all right, title and interest to the Deposited Securities to such successor, and (iii) deliver to such successor a list of the Holders of all outstanding Receipts and such other information relating to Receipts and Holders thereof as the successor may reasonably request. Any such successor depositary shall promptly mail notice of its appointment to such Holders. Any corporation into or with which the Depositary may be merged or consolidated shall be the successor of the Depositary without the execution or filing of any document or any further act and, notwithstanding anything to the contrary in the Deposit Agreement, the Depositary may assign or otherwise transfer all or any of its rights and benefits under the Deposit Agreement (including any cause of action arising in connection with it) to Deutsche Bank AG or any branch thereof or any entity which is a direct or indirect subsidiary or other affiliate of Deutsche Bank AG.

(20) Amendment/Supplement. Subject to the terms and conditions of this Article (20), and applicable law, this Receipt and any provisions of the Deposit Agreement may at any time and from time to time be amended or supplemented by written agreement between the Company and the Depository in any respect which they may deem necessary or desirable without the consent of the Holders or Beneficial Owners. Any amendment or supplement which shall impose or increase any fees or charges (other than the charges of the Depository in connection with foreign exchange control regulations, and taxes and/or other governmental charges, delivery and other such expenses), or which shall otherwise materially prejudice any substantial existing right of Holders or Beneficial Owners, shall not, however, become effective as to outstanding Receipts until 30 days after notice of such amendment or supplement shall have been given to the Holders of outstanding Receipts. Notice of any amendment to the Deposit Agreement or form of Receipts shall not need to describe in detail the specific amendments effectuated thereby, and failure to describe the specific amendments in any such notice shall not render such notice invalid, provided, however, that, in each such case, the notice given to the Holders identifies a means for Holders and Beneficial Owners to retrieve or receive the text of such amendment (i.e., upon retrieval from the Commission's, the Depository's or the Company's website or upon request from the Depository). The parties hereto agree that any amendments or supplements which (i) are reasonably necessary (as agreed by the Company and the Depository) in order for the Restricted ADSs or Shares to be traded solely in electronic book-entry form and (ii) do not in either such case impose or increase any fees or charges to be borne by Holders, shall be deemed not to materially prejudice any substantial rights of Holders or Beneficial Owners. Every Holder and Beneficial Owner at the time any amendment or supplement so becomes effective shall be deemed, by continuing to hold such Restricted ADS, to consent and agree to such amendment or supplement and to be bound by the Deposit Agreement as amended or supplemented thereby. In no event shall any amendment or supplement impair the right of the Holder to surrender such Receipt and receive therefor the Deposited Securities represented thereby, except in order to comply with mandatory provisions of applicable law. Notwithstanding the foregoing, if any governmental body should adopt new laws, rules or regulations which would require amendment or supplement of the Deposit Agreement to ensure compliance therewith, the Company and the Depository may amend or supplement the Deposit Agreement and the Receipt at any time in accordance with such changed laws, rules or regulations. Such amendment or supplement to the Deposit Agreement in such circumstances may become effective before a notice of such amendment or supplement is given to Holders or within any other period of time as required for compliance with such laws, or rules or regulations.

(21) Termination. The Depository shall, at any time at the written direction of the Company, terminate the Deposit Agreement by mailing notice of such termination to the Holders of all Receipts then outstanding at least 90 days prior to the date fixed in such notice for such termination provided that, the Depository shall be reimbursed for any amounts, fees, costs or expenses owed to it in accordance with the terms of the Deposit Agreement and in accordance with any other agreements as otherwise agreed in writing between the Company and the Depository from time to time, prior to such termination shall take effect. If 90 days shall have expired after (i) the Depository shall have delivered to the Company a written notice of its election to resign, or (ii) the Company shall have delivered to the Depository a written notice of the removal of the Depository, and in either case a successor depository shall not have been appointed and accepted its appointment as provided herein and in the Deposit Agreement, the Depository may terminate the Deposit Agreement by mailing notice of such termination to the Holders of all Receipts then outstanding at least 30 days prior to the date fixed for such termination. On and after the date of termination of the Deposit Agreement, each Holder will, upon surrender of such Holder's Receipt at the Corporate Trust Office of the Depository, upon the payment of the charges of the Depository for the surrender of Receipts referred to in Article (2) hereof and in the Deposit Agreement and subject to the conditions and restrictions therein set forth, and upon payment of any applicable taxes and/or governmental charges, be entitled to delivery, to him or upon his order, of the amount of Deposited Securities represented by such Receipt. If any Receipts shall remain outstanding after the date of termination of the Deposit Agreement, the Registrar thereafter shall discontinue the registration of transfers of Receipts, and the Depository shall suspend the distribution of dividends to the Holders thereof, and shall not give any further notices or perform any further acts under the Deposit Agreement, except that the Depository shall continue to collect dividends and other distributions pertaining to Deposited Securities, shall sell rights or other property as provided in the Deposit Agreement, and shall continue to deliver Deposited Securities, subject to the conditions and restrictions set forth in the Deposit Agreement, together with any dividends or other distributions received with respect thereto and the net proceeds of the sale of any rights or other property, in exchange for Receipts surrendered to the Depository (after deducting, or charging, as the case may be, in each case the charges of the Depository for the surrender of a Receipt, any expenses for the account of the Holder in accordance with the terms and conditions of the Deposit Agreement and any applicable taxes and/or governmental charges or assessments). At any time after the expiration of six months from the date of termination of the Deposit Agreement, the Depository may sell the Deposited Securities then held hereunder and may thereafter hold uninvested the net proceeds of any such sale, together with any other cash then held by it hereunder, in an unsegregated account, without liability for interest for the pro rata benefit of the Holders of Receipts whose Receipts have not theretofore been surrendered. After making such sale, the Depository shall be discharged from all obligations under the Deposit Agreement with respect to the Receipts and the Shares, Deposited Securities and Restricted ADSs, except to account for such net proceeds and other cash (after deducting, or charging, as the case may be, in each case the charges of the Depository for the surrender of a Receipt, any expenses for the account of the Holder in accordance with the terms and conditions of the Deposit Agreement and any applicable taxes and/or governmental charges or assessments) and except as set forth in the Deposit Agreement. Upon the termination of the Deposit Agreement, the Company shall be discharged from all obligations under the Deposit Agreement except as set forth in the Deposit Agreement. The obligations under the terms of the Deposit Agreement and Receipts of Holders and Beneficial Owners of Restricted ADSs outstanding as of the effective date of any termination shall survive such effective date of termination and shall be discharged only when the applicable Restricted ADSs are presented by their Holders to the Depository for cancellation under the terms of the Deposit Agreement and the Holders have each satisfied any and all of their obligations hereunder (including, but not limited to, any payment and/or reimbursement obligations which relate to prior to the effective date of termination but which payment and/or reimbursement is claimed after such effective date of termination).

Notwithstanding anything contained in the Deposit Agreement or any Receipt, in connection with the termination of the Deposit Agreement, the Depositary may, independently and without the need for any action by the Company, make available to Holders of Restricted ADSs a means to withdraw the Deposited Securities represented by their Restricted ADSs and to direct the deposit of such Deposited Securities into an unsponsored American depositary shares program established by the Depositary, upon such terms and conditions as the Depositary may deem reasonably appropriate, subject however, in each case, to satisfaction of the applicable registration requirements by the unsponsored American depositary shares program under the Securities Act, and to receipt by the Depositary of payment of the applicable fees and charges of, and reimbursement of the applicable expenses incurred by, the Depositary.

(22) Certain Rights of the Depositary. The Depositary, its Affiliates and their agents, on their own behalf, may own and deal in any class of securities of the Company and its Affiliates and in Restricted ADSs. The Depositary may issue Restricted ADSs against evidence of rights to receive Shares from the Company, any agent of the Company or any custodian, registrar, transfer agent, clearing agency or other entity involved in ownership or transaction records in respect of the Shares. Persons are advised that in converting foreign currency into U.S. dollars the Depositary may utilize Deutsche Bank AG or its affiliates (collectively, “**DBAG**”) to effect such conversion by seeking to enter into a foreign exchange (“**FX**”) transaction with DBAG. When converting currency, the Depositary is not acting as a fiduciary for the holders or beneficial owners of depositary receipts or any other person. Moreover, in executing FX transactions, DBAG will be acting in a principal capacity, and not as agent, fiduciary or broker, and may hold positions for its own account that are the same, similar, different or opposite to the positions of its customers, including the Depositary. When the Depositary seeks to execute an FX transaction to accomplish such conversion, customers should be aware that DBAG is a global dealer in FX for a full range of FX products and, as a result, the rate obtained in connection with any requested foreign currency conversion may be impacted by DBAG executing FX transactions for its own account or with another customer. In addition, in order to source liquidity for any FX transaction relating to any foreign currency conversion, DBAG may internally share economic terms relating to the relevant FX transaction with persons acting in a sales or trading capacity for DBAG or one of its agents. DBAG may charge fees and/or commissions to the Depositary or add a mark-up in connection with such conversions, which are reflected in the rate at which the foreign currency will be converted into U.S. dollars. The Depositary, its Affiliates and their agents, on their own behalf, may own and deal in any class of securities of the Company and its Affiliates and in ADSs.

(23) Ownership Restrictions. Owners and Beneficial Owners shall comply with any limitations on ownership of Shares under the Memorandum and Articles of Association or applicable Cayman Islands law as if they held the number of Shares their American Depositary Shares represent. The Company shall inform the Owners, Beneficial Owners and the Depositary of any such ownership restrictions in place from time to time.

(25) Waiver. EACH PARTY TO THE DEPOSIT AGREEMENT (INCLUDING, FOR AVOIDANCE OF DOUBT, EACH HOLDER AND BENEFICIAL OWNER AND/OR HOLDER OF INTERESTS IN ANY RESTRICTED ADSs) HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY SUIT, ACTION OR PROCEEDING AGAINST THE DEPOSITARY AND/OR THE COMPANY DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THE SHARES OR OTHER DEPOSITED SECURITIES, THE RESTRICTED ADSs OR THE RECEIPTS, THE DEPOSIT AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREIN OR THEREIN, OR THE BREACH HEREOF OR THEREOF (WHETHER BASED ON CONTRACT, TORT, COMMON LAW OR ANY OTHER THEORY)

**Goldman Sachs International | Peterborough Court | 133 Fleet Street | London EC4A 2BB | Tel: 020-7774-1000 | Telex: 887902 | Cable: GOLDSACHS LONDON | Registered in England No. 2263951 | Registered Office as Above | Authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority**

January 30, 2019

To: **NIO Inc.**

Building 20, No. 56 AnTuo Road, Jiading District  
Shanghai, 201804

People's Republic of China

Attention: Louis T. Hsieh, Chief Financial Officer

Telephone No.: +86 (21) 6908 3306

Facsimile No.: +86 (21) 3913 0192

**From:** Goldman Sachs International

**A/C:** [ ]

Re: Base Call Option Transaction

The purpose of this letter agreement (this "**Confirmation**") is to confirm the terms and conditions of the call option transaction entered into between Goldman Sachs International ("**Dealer**") and NIO Inc. ("**Counterparty**") as of the Trade Date specified below (the "**Transaction**"). This letter agreement constitutes a "Confirmation" as referred to in the ISDA Master Agreement specified below. Each party further agrees that this Confirmation together with the Agreement evidence a complete binding agreement between Counterparty and Dealer as to the subject matter and terms of the Transaction to which this Confirmation relates, and shall supersede all prior or contemporaneous written or oral communications with respect thereto.

The definitions and provisions contained in the 2002 ISDA Equity Derivatives Definitions (the "**Equity Definitions**"), as published by the International Swaps and Derivatives Association, Inc. ("**ISDA**") are incorporated into this Confirmation. In the event of any inconsistency between the Equity Definitions and this Confirmation, this Confirmation shall govern. Certain defined terms used herein are based on terms that are defined in the Offering Memorandum dated January 30, 2019 (the "**Offering Memorandum**") relating to the 4.50% Convertible Senior Notes due 2024 (as originally issued by Counterparty, the "**Convertible Notes**" and each USD 1,000 principal amount of Convertible Notes, a "**Convertible Note**") issued by Counterparty in an aggregate initial principal amount of USD 650,000,000 (as increased by up to an aggregate principal amount of USD 100,000,000 if and to the extent that the Initial Purchasers (as defined herein) exercise their option to purchase additional Convertible Notes pursuant to the Purchase Agreement (as defined herein)) pursuant to an Indenture to be dated February 4, 2019 between Counterparty and The Bank of New York Mellon, as trustee (the "**Indenture**"). In the event of any inconsistency between the terms defined in the Offering Memorandum, the Indenture and this Confirmation, this Confirmation shall govern. The parties acknowledge that this Confirmation is entered into on the date hereof with the understanding that (i) definitions set forth in the Indenture which are also defined herein by reference to the Indenture and (ii) sections of the Indenture that are referred to herein will conform to the descriptions thereof in the Offering Memorandum. If any such definitions in the Indenture or any such sections of the Indenture differ from the descriptions thereof in the Offering Memorandum, the descriptions thereof in the Offering Memorandum will govern for purposes of this Confirmation. The parties further acknowledge that the Indenture section numbers used herein are based on the draft of the Indenture last reviewed by Dealer as of the date of this Confirmation, and if any such section numbers are changed in the Indenture as executed, the parties will amend this Confirmation in good faith to preserve the intent of the parties. Subject to the foregoing, references to the Indenture herein are references to the Indenture as in effect on the date of its execution, and if the Indenture is amended or supplemented following such date (other than any amendment or supplement (x) pursuant to Section 10.01(i) of the Indenture that, as determined by the Calculation Agent, conforms the Indenture to the description of Convertible Notes in the Offering Memorandum, and (y) pursuant to Section 14.07(a) of the Indenture, subject, in the case of this clause (y), to the second paragraph under "Method of Adjustment" in Section 3), any such amendment or supplement will be disregarded for purposes of this Confirmation (other than as provided in Section 9(i)(iii) below) unless the parties agree otherwise in writing. For the avoidance of doubt, adjustments pursuant to any Dilution Adjustment Provision shall not constitute amendment, modification, supplement, or waiver in respect of any term of the Indenture or the Convertible Notes for any purpose under this paragraph and under Section 9(i)(iii).

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

1. This Confirmation evidences a complete and binding agreement between Dealer and Counterparty as to the terms of the Transaction to which this Confirmation relates. This Confirmation shall supplement, form a part of, and be subject to an agreement in the form of the 2002 ISDA Master Agreement (the "Agreement") as if Dealer and Counterparty had executed an agreement in such form (but without any Schedule except for (i) the election of the laws of the State of New York as the governing law (without reference to choice of law doctrine) and (ii) the agreement of the parties hereto that, following the payment of the Premium and the delivery to Dealer of the opinions of counsel as required pursuant to Section 9(a), the condition precedent in Section 2(a)(iii) of the Agreement shall not apply to a payment or delivery owing by Dealer to Counterparty (it being understood that such condition precedent will continue to apply and this clause (ii) will have no effect with respect to a Potential Event of Default, Event of Default and/or Early Termination Date arising under, or with respect to, Section 5(a)(ii) or 5(a)(iv) of the Agreement)) on the Trade Date.

In the event of any inconsistency between provisions of the Agreement and this Confirmation, this Confirmation will prevail for the purpose of the Transaction to which this Confirmation relates. The parties hereby agree that no transaction other than the Transaction to which this Confirmation relates shall be governed by the Agreement. If there exists any ISDA Master Agreement between Dealer and Counterparty or any confirmation or other agreement between Dealer and Counterparty pursuant to which an ISDA Master Agreement is deemed to exist between Dealer and Counterparty, then notwithstanding anything to the contrary in such ISDA Master Agreement, such confirmation or agreement or any other agreement to which Dealer and Counterparty are parties, the Transaction shall not be considered a Transaction under, or otherwise governed by, such existing or deemed ISDA Master Agreement.

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

General Terms.

Trade Date:	January 30, 2019
Effective Date:	The Trade Date.
Option Style:	"Modified American", as described under "Procedures for Exercise" below
Option Type:	Call
Buyer:	Counterparty
Seller:	Dealer
Shares:	The American Depositary Shares of Counterparty issued or deemed issued under the Deposit Agreement (as defined below) (Symbol: "NIO"), each representing as of the date hereof one Underlying Share.
Underlying Shares:	The Class A ordinary shares of Counterparty, nominal value USD \$0.00025 per Underlying Share.
Number of Options:	650,000. For the avoidance of doubt, the Number of Options shall be reduced by any Options exercised by Counterparty. In no event will the Number of Options be less than zero.

Underlying Shares Issuer: Counterparty  
Applicable Percentage: 50%  
Option Entitlement: A number equal to the product of the Applicable Percentage and 105.1359.  
Strike Price: USD 9.5115  
Cap Price: USD 14.9200  
Premium: USD 37,960,000  
Premium Payment Date: February 4, 2019  
Exchange: The New York Stock Exchange  
Related Exchange(s): All Exchanges  
Excluded Provisions: Section 14.04(h) and Section 14.03 of the Indenture.

Procedures for Exercise.

Expiration Time: The Valuation Time  
Expiration Date: February 1, 2024, subject to earlier exercise.  
Multiple Exercise: Applicable, as described under “Automatic Exercise” below.  
Automatic Exercise: Notwithstanding Section 3.4 of the Equity Definitions, all Options then outstanding as of 5:00 p.m. New York City time on the Expiration Date will be deemed to be automatically exercised; *provided* that, for the avoidance of doubt, no such automatic exercise pursuant to this paragraph will occur if the Relevant Price for each Valid Day during the applicable Settlement Averaging Period is less than or equal to the Strike Price.  
Notwithstanding the foregoing, in no event shall the number of Options that are exercised or deemed exercised hereunder exceed the Number of Options.  
Valuation Time: At the close of trading of the regular trading session on the Exchange; *provided* that if the principal trading session is extended, the Calculation Agent shall determine the Valuation Time in its reasonable discretion.  
Market Disruption Event: Section 6.3(a) of the Equity Definitions is hereby replaced in its entirety by the following:

“‘Market Disruption Event’ means, in respect of a Share, (i) a failure by the primary United States national or regional securities exchange or market on which the Shares are 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 Valid Day for the Shares 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 Shares or in any options contracts or futures contracts relating to the Shares.”

Settlement Terms.

Settlement Method Election:

Applicable; *provided that* (i) Section 7.1 of the Equity Definitions is hereby amended by deleting the word “Physical” in the sixth line thereof and replacing it with the words “Net Share”; and (ii) as of such notice delivery date, Counterparty shall be deemed to have made the following representations:

(A) Counterparty is not aware of any material non-public information with respect to Counterparty, the Underlying Shares Issuer (if other than Counterparty), the Underlying Shares or the Shares;

(B) Counterparty is electing Cash Settlement in good faith and not as part of a plan or scheme to evade compliance with the U.S. federal securities laws; Counterparty is not electing Cash Settlement to create actual or apparent trading activity in the Shares and/or Underlying Shares (or any security convertible into or exchangeable for the Shares and/or Underlying Shares) or to raise or depress or otherwise manipulate the price of the Shares and/or Underlying Shares (or any security convertible into or exchangeable for the Shares and/or Underlying Shares) or otherwise in violation of the Exchange Act; and Counterparty has not entered into or altered any hedging transaction relating to the Shares or the Underlying Shares corresponding to or offsetting the Transaction;

(C) such election and performance of its obligations under this Confirmation do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets; and

(D) any transaction that Dealer makes with respect to the Shares and/or the Underlying Shares during the period beginning at the time that Counterparty delivers such notice and ending at the close of business on the final day of the Settlement Averaging Period shall be made by Dealer at Dealer’s sole discretion for Dealer’s own account and Counterparty shall not have, and shall not attempt to exercise, any influence over how, when, whether or at what price Dealer effects such transactions, including, without limitation, the prices paid or received by Dealer per Share or Underlying Share pursuant to such transactions, or whether such transactions are made on any securities exchange or privately.



Default Settlement Method:	Net Share Settlement
Settlement Method Election Date:	The third Scheduled Trading Day immediately preceding the first Scheduled Valid Day of the Settlement Averaging Period.
Net Share Settlement:	Dealer will deliver to Counterparty, on the relevant Settlement Date, a number of Shares equal to the Net Shares in respect of any Option exercised or deemed exercised hereunder. In no event will the Net Shares be less than zero.
Net Shares:	<p>In respect of any Option exercised or deemed exercised, a number of Shares equal to the sum of the quotients, for each Valid Day during the Settlement Averaging Period for such Option, of (i) (A) the Daily Option Value for such Valid Day, <i>divided by</i> (B) the Relevant Price on such Valid Day, <i>divided by</i> (ii) the number of Valid Days in the Settlement Averaging Period.</p> <p>Dealer will pay cash in lieu of delivering any fractional Shares to be delivered with respect to any Net Shares valued at the Relevant Price for the last Valid Day of the Settlement Averaging Period.</p>
Cash Settlement:	If Cash Settlement is applicable to any Option exercised or deemed exercised hereunder, in lieu of Section 8.1 of the Equity Definitions, Dealer will pay to Counterparty, on the relevant Settlement Date for each such Option, an amount of cash (the “ <b>Cash Settlement Amount</b> ”) equal to the sum, for each Valid Day during the Settlement Averaging Period for such Option, of (i) the Daily Option Value for such Valid Day, <i>divided by</i> (ii) the number of Valid Days in the Settlement Averaging Period.
Daily Option Value:	For any Valid Day, an amount equal to (i) the Option Entitlement on such Valid Day, <i>multiplied by</i> (ii) (A) the lesser of the Relevant Price on such Valid Day and the Cap Price, <i>less</i> (B) the Strike Price on such Valid Day; <i>provided</i> that if the calculation contained in clause (ii) above results in a negative number, the Daily Option Value for such Valid Day shall be deemed to be zero. In no event will the Daily Option Value be less than zero.
Valid Day:	A day on which (i) there is no Market Disruption Event and (ii) trading in the Shares generally occurs on the Exchange or, if the Shares are not then listed on the Exchange, on the principal other United States national or regional securities exchange on which the Shares are then listed or, if the Shares are not then listed on a United States national or regional securities exchange, on the principal other market on which the Shares are then listed or admitted for trading. If the Shares are not so listed or admitted for trading, “Valid Day” means a Business Day.

Scheduled Valid Day:	A day that is scheduled to be a Valid Day on the principal United States national or regional securities exchange or market on which the Shares are listed or admitted for trading. If the Shares are not so listed or admitted for trading, “Scheduled Valid Day” means a Business Day.
Business Day:	Any day other than a Saturday, a Sunday or a day on which the Federal Reserve Bank of New York is authorized or required by law or executive order to close or be closed.
Relevant Price:	On any Valid Day, the per Share volume-weighted average price as displayed under the heading “Bloomberg VWAP” on Bloomberg page “NIO <equity> AQR” (or its equivalent successor if such page is not available) in respect of the period from the scheduled opening time of the Exchange to the Scheduled Closing Time of the Exchange on such Valid Day (or if such volume-weighted average price is unavailable at such time, the market value of one Share on such Valid Day, as determined by the Calculation Agent using, if practicable, a volume-weighted average method). The Relevant Price will be determined without regard to after-hours trading or any other trading outside of the regular trading session trading hours.
Settlement Averaging Period:	For any Option being exercised hereunder, the 40 consecutive Valid Days commencing on, and including, the 41st Scheduled Valid Day immediately prior to the Expiration Date.
Settlement Date:	For any Option, the second Business Day immediately following the final Valid Day of the Settlement Averaging Period for such Option.
Settlement Currency:	USD
Other Applicable Provisions:	The provisions of Sections 9.1(c), 9.8, 9.9 and 9.11 of the Equity Definitions will be applicable, except that all references in such provisions to “Physically-settled” shall be read as references to “Net Share Settled”. “Net Share Settled” in relation to any Option means that Net Share Settlement is applicable to that Option.
Representation and Agreement:	Notwithstanding anything to the contrary in the Equity Definitions (including, but not limited to, Section 9.11 thereof), the parties acknowledge that (i) any Shares delivered to Counterparty shall be, upon delivery, subject to restrictions and limitations arising from Counterparty’s status as issuer of the Underlying Shares under applicable securities laws, (ii) Dealer may deliver any Shares required to be delivered hereunder in certificated form or restricted book-entry form, in each case, in lieu of delivery through the Clearance System and (iii) any Shares delivered to Counterparty may be “restricted securities” (as defined in Rule 144 under the Securities Act of 1933, as amended (the “ <b>Securities Act</b> ”)).

3. **Additional Terms applicable to the Transaction.**

Adjustments applicable to the Transaction:

Potential Adjustment Events: Notwithstanding Section 11.2(e) of the Equity Definitions (which Section shall not apply for the purposes of the Transaction, except as provided in Section 9(y) below), a “Potential Adjustment Event” means an occurrence of any event or condition, as set forth in any Dilution Adjustment Provision, that requires an adjustment to be made under the Indenture to the “Conversion Rate” or the composition of a “unit of Reference Property” or to any “Last Reported Sale Price” (each as defined in the Indenture). For the avoidance of doubt, Dealer shall not have any delivery or payment obligation hereunder, and no adjustment shall be made to the terms of the Transaction, on account of (x) any distribution of cash, property or securities by Counterparty to holders of the Convertible Notes (upon conversion or otherwise) or (y) any other transaction in which holders of the Convertible Notes participate, in each case, in lieu of an adjustment under the Indenture of the type referred to in the immediately preceding sentence (including, without limitation, pursuant to the fourth sentence of the first paragraph of Section 14.04(c) of the Indenture or the fourth sentence of Section 14.04(d) of the Indenture).

Method of Adjustment: Calculation Agent Adjustment, which means that, notwithstanding Section 11.2(c) of the Equity Definitions, (which Section shall not apply for the purposes of the Transaction, except as provided in Section 9(y) below) upon any Potential Adjustment Event, the Calculation Agent shall make an adjustment to any one or more of the Strike Price, Number of Options, Option Entitlement and any other variable relevant to the exercise, settlement or payment for the Transaction corresponding to the adjustment required to be made pursuant to the Indenture.

Notwithstanding the foregoing and “Consequences of Merger Events / Tender Offers” below:

- (i) if the Calculation Agent in good faith disagrees with any adjustment to the Convertible Notes that involves an exercise of discretion by Counterparty or its board of directors (including, without limitation, pursuant to Section 14.05 of the Indenture, Section 14.07 of the Indenture or any supplemental indenture entered into thereunder or in connection with any proportional adjustment or the determination of the fair value of any securities, property, rights or other assets), then in each such case, the Calculation Agent will determine in good faith and in a commercially reasonable manner, the adjustment to be made to any one or more of the Strike Price, Number of Options, Option Entitlement and any other variable relevant to the exercise, settlement or payment for the Transaction in a commercially reasonable manner; *provided* that, notwithstanding the foregoing, if any Potential Adjustment Event occurs during the Settlement Averaging Period but no adjustment was made to any Convertible Note under the Indenture because the relevant Holder (as such term is defined in the Indenture) was deemed to be a record owner of the underlying Shares on the related Conversion Date (as such term is defined in the Indenture), then the Calculation Agent shall make a commercially reasonable adjustment, as determined by it, to the terms hereof in order to account for such Potential Adjustment Event;

- (ii) in connection with any Potential Adjustment Event as a result of an event or condition set forth in Section 14.04(b) of the Indenture or Section 14.04(c) of the Indenture where, in either case, the period for determining “Y” (as such term is used in Section 14.04(b) of the Indenture) or “SP<sub>0</sub>” (as such term is used in Section 14.04(c) of the Indenture), as the case may be, begins before Counterparty has publicly announced the event or condition giving rise to such Potential Adjustment Event, then the Calculation Agent shall have the right to adjust any variable relevant to the exercise, settlement or payment for the Transaction as appropriate to reflect the costs (to account solely for hedging mismatches and market losses) and expenses incurred by Dealer in connection with its hedging activities, with such adjustments made assuming that Dealer maintains commercially reasonable hedge positions, as a result of such event or condition not having been publicly announced prior to the beginning of such period; and
- (iii) if any Potential Adjustment Event is declared and (a) the event or condition giving rise to such Potential Adjustment Event is subsequently amended, modified, cancelled or abandoned, (b) the “Conversion Rate” (as defined in the Indenture) is otherwise not adjusted at the time or in the manner contemplated by the relevant Dilution Adjustment Provision based on such declaration or (c) the “Conversion Rate” (as defined in the Indenture) is adjusted as a result of such Potential Adjustment Event and subsequently re-adjusted (each of clauses (a), (b) and (c), a “**Potential Adjustment Event Change**”) then, in each case, the Calculation Agent shall have the right to adjust any variable relevant to the exercise, settlement or payment for the Transaction as appropriate to reflect the costs (to account solely for hedging mismatches and market losses) and expenses incurred by Dealer in connection with its hedging activities, with such adjustments made assuming that Dealer maintains commercially reasonable hedge positions, as a result of such Potential Adjustment Event Change.

Dilution Adjustment Provisions: Sections 14.04(a), (b), (c), (d) and (e) and Section 14.05 of the Indenture.

Extraordinary Events applicable to the Transaction:

Merger Events: Applicable; *provided* that notwithstanding Section 12.1(b) of the Equity Definitions, a “Merger Event” means the occurrence of any event or condition set forth in the definition of “Merger Event” in Section 14.07 of the Indenture.

Tender Offers: Applicable; *provided* that notwithstanding Section 12.1(d) of the Equity Definitions, a “Tender Offer” means the occurrence of any event or condition set forth in Section 14.04(e) of the Indenture.

Consequences of Merger Events/  
Tender Offers:

Notwithstanding Section 12.2 and Section 12.3 of the Equity Definitions, upon the occurrence of a Merger Event or a Tender Offer, the Calculation Agent shall make a corresponding adjustment in respect of any adjustment under the Indenture to any one or more of the nature of the Shares (in the case of a Merger Event), Strike Price, Number of Options, Option Entitlement and any other variable relevant to the exercise, settlement or payment for the Transaction to the extent that an analogous adjustment is required to be made pursuant to the Indenture in respect of such Merger Event or Tender Offer, subject to the second paragraph under “Method of Adjustment”; *provided, however*, that such adjustment shall be made without regard to any adjustment to the Conversion Rate pursuant to any Excluded Provision; *provided further* that if, with respect to a Merger Event or a Tender Offer, (i) the consideration for the Shares or Underlying Shares, as applicable, includes (or, at the option of a holder of Shares, or Underlying Shares, as applicable, may include) shares of an entity or person that is not (1) a corporation or an entity that is treated as a corporation for U.S. federal income tax purposes or (2) organized under the laws of the Cayman Islands or (ii) the Counterparty to the Transaction following such Merger Event or Tender Offer will not be a corporation or an entity that is treated as a corporation for U.S. federal income tax purposes organized under the laws of the Cayman Islands, and/or will not be the Underlying Shares Issuer then, in any case, Cancellation and Payment (Calculation Agent Determination) may apply at Dealer’s commercially reasonable election; *provided further* that, for the avoidance of doubt, adjustments shall be made pursuant to the provisions set forth above regardless of whether any Merger Event or Tender Offer gives rise to an Early Conversion (as defined below).

Consequences of Announcement Events: If an Announcement Event occurs, the Calculation Agent shall determine the cumulative economic effect of such Announcement Event (it being understood that the Calculation Agent may take into account any changes to volatility in connection with such Announcement Event within a commercially reasonable (as determined by the Calculation Agent) period of time prior to or after such Announcement Event) on the Transaction on the earliest to occur of (i) the date on which the transaction described in such Announcement Event (as amended) is consummated or otherwise results in a Merger Date or Tender Offer Date, as applicable, (ii) the Valuation Date, or (iii) any earlier date of termination or cancellation with respect to any Option, and if the Calculation Agent determines that such economic effect is material and that making the relevant adjustment would be commercially reasonable, the Calculation Agent shall adjust the Cap Price to reflect such economic effect (but, for the avoidance of doubt, taking into account, and without duplication of, any other adjustment made pursuant to this “Consequences of Announcement Events” provision or pursuant to the provisions opposite the captions “Method of Adjustment”, “Consequences of Merger Events” or “Consequences of Tender Offers” above in respect of the transaction or intention giving rise to such Announcement Event).

Announcement Event: (i) The public announcement by (x) any entity of any transaction or event that the Calculation Agent determines is reasonably likely to be completed and that, if completed, would constitute a Merger Event or Tender Offer (it being understood that Calculation Agent may make such determination by reference to the impact of such announcement on the market for the Shares and/or Underlying Shares or options relating to the Shares and/or Underlying Shares), (y) Underlying Shares Issuer or any subsidiary thereof of any potential acquisition or disposal by the Underlying Shares Issuer and/or its subsidiaries where the aggregate consideration payable or receivable exceeds 25% of the market capitalization of the Underlying Shares Issuer as of the date of such announcement (a “**Transformative Transaction**”) or (z) Underlying Shares Issuer, any subsidiary of the Underlying Shares Issuer or any Valid Third Party Entity of the intention to enter into a Merger Event or Tender Offer or a Transformative Transaction (in the case of a Valid Third-Party Entity, that the Calculation Agent determines is a bona fide intention, it being understood that the Calculation Agent may make such determination by reference to the impact of such announcement on the market for the Shares and/or Underlying Shares or options relating to the Shares and/or Underlying Shares), (ii) the public announcement by the Underlying Shares Issuer of an intention to solicit or enter into, or to explore strategic alternatives or other similar undertaking that may include, a Merger Event or Tender Offer or a Transformative Transaction or (iii) any subsequent public announcement by any entity of a change to a transaction or intention that is the subject of an announcement of the type described in clause (i) or (ii) of this sentence (including, without limitation, a new announcement, whether or not by the same party, relating to such a transaction or intention or the announcement of a withdrawal from, or the abandonment or discontinuation of, such a transaction or intention), as determined by the Calculation Agent. For the avoidance of doubt, the occurrence of an Announcement Event with respect to any transaction or intention shall not preclude the occurrence of a later Announcement Event with respect to such transaction or intention. For purposes of this definition of “Announcement Event,” (A) “Merger Event” shall mean such term as defined under Section 12.1(b) of the Equity Definitions (but, for the avoidance of doubt, the remainder of the definition of “Merger Event” in Section 12.1(b) of the Equity Definitions following the definition of “Reverse Merger” therein shall be disregarded) and (B) “Tender Offer” shall mean such term as defined under Section 12.1(d) of the Equity Definitions; *provided* that Section 12.1(d) of the Equity Definitions is hereby amended by replacing “10%” with “20%” in the third line thereof.

Valid Third Party Entity:

In respect of any transaction or intention, any third party (i) whose announcement is reasonably determined by the Calculation Agent to have had a material economic effect on the Shares and/or Underlying Shares and/or options on the Shares and/or Underlying Shares and (ii) that is the entity, or an affiliate of the entity, that is, or would be, a party to the relevant transaction or event.

Nationalization, Insolvency or Delisting:

Cancellation and Payment (Calculation Agent Determination); *provided* that, in addition to the provisions of Section 12.6(a)(iii) of the Equity Definitions, it will also constitute a Delisting if the 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 of the New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or their respective successors), such exchange or quotation system shall thereafter be deemed to be the Exchange.

Section 12.1 of the Equity Definitions is hereby amended by deleting subsection (v) thereof in its entirety and replacing it with “(v) in the case of an Insolvency, the date of (A) the institution of a proceeding or presentation of a petition or the passing of a resolution (or the convening of a meeting to pass a resolution or the proposing of a written resolution) (in each case the occurrence of which shall be deemed its announcement) that leads to an Insolvency within the meaning of subsection (A) of the definition thereof, (B) the first public announcement of the institution of a proceeding or presentation of a petition or passing of a resolution (or other analogous procedure in any jurisdiction) that leads to the Insolvency or (C) the occurrence of any of the events specified in Section 5(a)(vii)(1) through (9) of the ISDA Master Agreement with respect to that Issuer”.

Section 12.6(a)(ii) of the Equity Definitions is hereby amended by (1) inserting “(A)” after “means” in the first line thereof and replacing “(A)” and “(B)” in the third and fourth lines thereof with “(1)” and “(2)” respectively, (2) deleting from the fourth line thereof the word “or” after the word “official” and inserting a comma therefor, (3) inserting at the end of renumbered subsection (2) thereof the following wording, “or, under the laws of the Cayman Islands, any other jurisdiction or otherwise, any other impediment to or restriction on the transfer of any Share arises or becomes applicable including, without limitation, where (x) any transfer of a Share or alteration of the status of the members of the Issuer would be void unless a court of the Cayman Islands or any other jurisdiction orders otherwise or (y) any transfer of a Share not being a transfer with the sanction of a liquidator, and any alteration in the status of the Issuer’s members, would be void” and (4) deleting the semi-colon at the end of renumbered subsection (2) thereof and inserting the following words therefor “or (B) at Dealer’s option, the occurrence of any of the events specified in Section 5(a)(vii) (1) through (9) of the ISDA Master Agreement with respect to that Issuer.”

Additional Disruption Events:

Change in Law:

Applicable; *provided* that Section 12.9(a)(ii) of the Equity Definitions is hereby amended by (i) replacing the phrase “the interpretation” in the third line thereof with the phrase “, or public announcement of, the formal or informal interpretation”, (ii) replacing the word “Shares” where it appears in clause (X) thereof with the words “Hedge Position,” (iii) replacing the parenthetical beginning after the word “regulation” in the second line thereof with the words “(including, for the avoidance of doubt and without limitation, (x) any tax law or (y) adoption, effectiveness or promulgation of new regulations authorized or mandated by existing statute)” and (iv) adding the words “*provided* that, in the case of clause (Y) hereof where such determination is based on Dealer’s policies and procedures, such policies and procedures have been adopted by Dealer in good faith and are generally applicable in similar situations and applied in a non-discriminatory manner;” after the semi-colon in the last line thereof.



Failure to Deliver:	Applicable
Hedging Disruption:	Applicable; <i>provided</i> that:  Section 12.9(b)(iii) of the Equity Definitions is hereby amended by inserting in the third line thereof, after the words “to terminate the Transaction”, the words “or a portion of the Transaction affected by such Hedging Disruption”.
Increased Cost of Hedging:	Not Applicable
Hedging Party:	For all applicable Additional Disruption Events, Dealer.
Determining Party:	For all applicable Extraordinary Events, Dealer; <i>provided</i> that when making any determination or calculation as “Determining Party,” Dealer shall make such determinations or calculations in good faith and in a commercially reasonable manner.  Following any determination or calculation by Determining Party hereunder, the Determining Party will, upon written request from Counterparty, promptly (but in any event within five Scheduled Trading Days) provide to Counterparty a report (in a commonly used file format for the storage and manipulation of financial data) displaying in reasonable detail the basis for such determination or calculation (including any assumptions used in making such determination or calculation), it being understood that in no event will the Determining Party be obligated to share with Counterparty any proprietary or confidential data or information or any proprietary or confidential models used by it in making such determination or calculation or any information that is subject to an obligation not to disclose such information.
Non-Reliance:	Applicable
Agreements and Acknowledgments Regarding Hedging Activities:	Applicable
Additional Acknowledgments:	Applicable

4. **Calculation Agent.**

Dealer; *provided* that, following the occurrence and during the continuance of an Event of Default under Section 5(a)(vii) of the Agreement with respect to which Dealer is the Defaulting Party, Counterparty shall have the right to designate a nationally recognized independent equity derivatives 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 adjustment, determination or calculation by the Calculation Agent hereunder, the Calculation Agent will, upon written request from Counterparty, promptly (but in any event within five Scheduled Trading Days) provide to Counterparty by email a report (in a commonly used file format for the storage and manipulation of financial data) displaying in reasonable detail the basis for such adjustment, determination or calculation (including any assumptions used in making such adjustment, determination or calculation), it being understood that in no event will the Calculation Agent be obligated to share with Counterparty any proprietary or confidential data or information or any proprietary or confidential models used by it in making such adjustment, determination or calculation or any information that is subject to an obligation not to disclose such information.

All calculations and determinations by the Calculation Agent shall be made in good faith and in a commercially reasonable manner.

5. **Account Details.**

- (a) Account for payments to Counterparty:

To be provided.

Account for delivery of Shares to Counterparty:

To be provided.

- (b) Account for payments to Dealer:

To be provided.

Account for delivery of Shares from Dealer:

To be provided.

6. **Offices.**

- (a) The Office of Counterparty for the Transaction is: Inapplicable, Counterparty is not a Multibranch Party.

- (b) The Office of Dealer for the Transaction is: London

7. **Notices.**

(a) Address for notices or communications to Counterparty:

NIO Inc.  
Building 20, No. 56 AnTuo Road, Jiading District  
Shanghai, 201804  
People's Republic of China  
Attention: Louis T. Hsieh, Chief Financial Officer  
Telephone No.: +86 (21) 6908 3306  
Facsimile No.: +86 (21) 3913 0192

with a copy to:

Nick Wang  
VP of Finance  
Telephone No.: +86 (21) 6908-2002  
Email: Nick.Wang@nio.com

with a copy to:

Fang Liu  
General Counsel  
Telephone No.: +86 (21) 6908-2277  
Email: Fang.Liu@nio.com

with a copy to:

Sabrina Shi  
Senior Corporate Counsel  
Telephone No.: +86 (21) 6908-3391  
Email: Danting.Shi@nio.com

(b) Address for notices or communications to Dealer:

Goldman Sachs International  
Peterborough Court  
133 Fleet Street  
London, UK, EC4A 2BB  
Attention: Derivatives Legal

With a copy to:

Goldman, Sachs & Co.  
200 West Street  
New York, NY 10282-2198  
Attention: Beesham Seecharan  
Phone: +1-212-357-6337  
Email: beesham.seecharan@ny.email.gs.com

Attention: Peter Petraro  
Phone: +1-212-855-9818  
Email: peter.petraro@ny.email.gs.com

And email notification to the following address:

ps-eq-structuring@gs.com

**8. Representations and Warranties of Counterparty.**

Each of the representations and warranties of Counterparty set forth in Section 2 of the Purchase Agreement (the “**Purchase Agreement**”) dated as of January 30, 2019, between Counterparty and Credit Suisse Securities (USA) LLC, J.P. Morgan Securities LLC, Morgan Stanley & Co. LLC, and Goldman Sachs (Asia) LLC, as representatives of the Initial Purchasers party thereto (the “**Initial Purchasers**”), are true and correct and are hereby deemed to be repeated to Dealer as if set forth herein. Counterparty hereby further represents and warrants to Dealer on the date hereof and on and as of the Premium Payment Date, that:

- (a) Counterparty (i) is duly incorporated and validly existing as an exempted company with limited liability under the laws of the Cayman Islands and is in good standing under such laws, and (ii) has all necessary corporate power and authority to execute, deliver and perform its obligations and exercise its rights in respect of the Transaction; such execution, delivery, performance and exercise have been duly authorized by all necessary corporate action on Counterparty’s part; and this Confirmation has been duly and validly executed and delivered by Counterparty and constitutes its valid and binding obligation, enforceable against Counterparty in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar laws affecting creditors’ rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity) and except that rights to indemnification and contribution hereunder may be limited by federal or state securities laws or public policy relating thereto.
- (b) Neither the execution and delivery of this Confirmation nor the incurrence or performance of obligations nor the exercise of rights of Counterparty hereunder will conflict with or result in a breach of the memorandum and articles of association or by-laws (or any equivalent documents) of Counterparty, or any applicable law or regulation, or any order, writ, injunction or decree of any court or governmental authority or agency, or any agreement or instrument to which Counterparty or any of its subsidiaries is a party or by which Counterparty or any of its subsidiaries is bound or to which Counterparty or any of its subsidiaries is subject, or constitute a default under, or result in the creation of any lien under, any such agreement or instrument.
- (c) No consent, approval, authorization, or order of, or filing with, any governmental agency or body or any court is required in connection with the execution, delivery or performance by Counterparty of this Confirmation, except such as have been obtained or made and such as may be required under the Securities Act or state securities laws.
- (d) Counterparty is not and, after consummation of the transactions contemplated hereby, will not be required to register as an “investment company” as such term is defined in the Investment Company Act of 1940, as amended.
- (e) Counterparty is an “eligible contract participant” (as such term is defined in Section 1a(18) of the Commodity Exchange Act, as amended, other than a person that is an eligible contract participant under Section 1a(18)(C) of the Commodity Exchange Act).
- (f) Counterparty is not, on the date hereof, aware of any material non-public information with respect to Counterparty, the Underlying Shares Issuer (if other than Counterparty), the Underlying Shares or the Shares.
- (g) To the knowledge of Counterparty, no state or local (including any non-U.S. jurisdiction’s) law, rule, regulation or regulatory order applicable to the Shares and/or Underlying 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 and/or Underlying Shares (except for filings of Form 13F, Schedule 13D or Schedule 13G under the Exchange Act); *provided* that Counterparty makes no representation or warranty regarding any such requirement that is applicable generally to the ownership of equity securities by Dealer or any of its affiliates solely as a result of it or any of such affiliates being a financial institution or broker-dealer.

- (h) Counterparty (A) is capable of evaluating investment risks independently, both in general and with regard to all transactions and investment strategies involving a security or securities; (B) will exercise independent judgment in evaluating the recommendations of any broker-dealer or its associated persons, unless it has otherwise notified the broker-dealer in writing; (C) has total assets of at least USD 50 million; and (D) is acting for its own account, and it has made its own independent decisions to enter into the Transaction and as to whether the Transaction is appropriate or proper for it (including as to any legal, regulatory, tax, accounting or economic consequences arising from the Transaction) based upon its own judgment and upon advice from such advisers as it has deemed necessary (including legal, financial and accounting advisors).
- (i) Counterparty as of and immediately after the Trade Date and the Premium Payment Date (x) is not, and shall not be after giving effect to the transactions contemplated hereby, “insolvent” (as such term is defined in Section 101(32) of the Bankruptcy Code, (y) would be able to purchase 100,536,150 Shares and the Underlying Shares represented by such number of Shares in compliance with the laws of the jurisdiction of Counterparty’s incorporation or organization, and (z), for the purposes of Cayman Islands law, is able to pay its debts.
- (j) Counterparty’s board of directors (the “**Board**”) has concluded that (A) the Transaction is suitable for Counterparty, for its commercial benefit and in its best interests, in light of its own investment objectives, financial condition and expertise and (B) the Transaction has been duly approved and authorized by the Board after due consideration by the Board of the foregoing matters and those referred to in subparagraph (h)(D) above.

**9. Other Provisions.**

- (a) *Deliverables.* Counterparty shall deliver to Dealer (A) an opinion of U.S. counsel and (B) an opinion of Cayman counsel, each dated as of the Premium Payment Date, with respect to, among other things, the matters set forth in Sections 8(a) through (c) of this Confirmation, it being understood that such opinions of counsel shall be limited to the federal laws of the United States and the laws of the State of New York (in the case of clause (A) above) and the laws Cayman Islands (in the case of clause (B) above) and may contain customary limitations, exceptions and qualifications for transactions of the same type as the Transaction. Delivery of such opinions to Dealer shall be a condition precedent for the purpose of Section 2(a)(iii) of the Agreement with respect to each obligation of Dealer under Section 2(a)(i) of the Agreement; (C) a resolution of the Board authorizing the Transaction; and (D) on or before the Premium Payment Date, a solvency certificate with respect to Counterparty signed by a member of the Board, the chief executive officer or the chief financial officer of the Counterparty certifying the solvency of Counterparty as of and immediately after the Premium Payment Date (after giving effect to Counterparty’s payment of amounts required to be paid by Counterparty on such date under the Transaction and the other transactions described under “Use of Proceeds” in the Offering Memorandum related to the offering of the Convertible Notes), which solvency certificate is reasonably satisfactory to Dealer.

- (b) Repurchase Notices. Counterparty shall, on or prior to the date that is one Scheduled Trading Day following any date on which Counterparty effects any repurchase of Shares and/or Underlying Shares, promptly give Dealer a written notice of such repurchase (a “**Repurchase Notice**”) on such day if following such repurchase, the number of outstanding Underlying Shares as determined on such day is (i) less than 727.2 million (in the case of the first such notice) or (ii) thereafter more than 37.8 million less than the number of Underlying Shares included in the immediately preceding Repurchase Notice; *provided* that Counterparty may provide Dealer advance notice on or prior to any such day including the maximum number of Shares and/or Underlying Shares that may be repurchased under a repurchase program entered into in reliance on Rule 10b5-1(c) and the approximate periods during which such repurchases may occur, to the extent it expects that repurchases effected on such day may result in an obligation to deliver a Repurchase Notice (and in such case, any such advance notice shall be deemed a Repurchase Notice to the maximum extent of repurchases set forth in such advance notice as if Counterparty had executed such repurchases). Counterparty agrees that, if Counterparty ceases to qualify as a “foreign private issuer” as defined in Rule 3b-4 under the Exchange Act or the Shares or Underlying Shares, as applicable, otherwise become subject to the requirements of Section 16 of the Exchange Act, Counterparty will indemnify and hold harmless Dealer and its affiliates and their respective officers, directors, employees, affiliates, advisors, agents and controlling persons (each, an “**Indemnified Person**”) from and against any and all losses (including losses relating to Dealer’s hedging activities as a consequence of becoming, or of the risk of becoming, a Section 16 “insider”, including without limitation, any forbearance from hedging activities or cessation of hedging activities and any losses in connection therewith with respect to the Transaction), claims, damages, judgments, liabilities and reasonable and documented out-of-pocket expenses (including reasonable attorney’s fees of one outside counsel in each relevant jurisdiction), joint or several, which an Indemnified Person may become subject to, in each case, as a result of Counterparty’s failure to provide Dealer with a Repurchase Notice on the day and in the manner specified in this paragraph, and to reimburse, within 30 days, upon written request, each of such Indemnified Persons for any reasonable legal or other out-of-pocket expenses (to the extent supported by invoices or other documentation setting forth in reasonable detail such expenses) incurred in connection with investigating, preparing for, providing testimony or other evidence in connection with or defending any of the foregoing. If any suit, action, proceeding (including any governmental or regulatory investigation), claim or demand shall be brought or asserted against the Indemnified Person as a result of Counterparty’s failure to provide Dealer with a Repurchase Notice in accordance with this paragraph, such Indemnified Person shall promptly notify Counterparty in writing, and Counterparty, upon request of the Indemnified Person, shall retain counsel reasonably satisfactory to the Indemnified Person to represent the Indemnified Person and any others Counterparty may designate in such proceeding and shall pay the reasonable fees and expenses of such counsel related to such proceeding. Counterparty shall not be liable to the extent that the Indemnified Person fails to notify Counterparty within a commercially reasonable period of time after any action is commenced against it in respect of which indemnity may be sought hereunder. In addition, Counterparty shall not have liability for any settlement of any such proceeding contemplated by this paragraph that is effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, Counterparty agrees to indemnify any Indemnified Person from and against any loss or liability by reason of such settlement or judgment. Counterparty shall not, without the prior written consent of the Indemnified Person, effect any settlement of any pending or threatened proceeding contemplated by this paragraph in respect of which any Indemnified Person is or could have been a party and indemnity could have been sought hereunder by such Indemnified Person, unless such settlement includes an unconditional release of such Indemnified Person from all liability on claims that are the subject matter of such proceeding on terms reasonably satisfactory to such Indemnified Person. If the indemnification provided for in this paragraph is unavailable to an Indemnified Person or insufficient in respect of any losses, claims, damages or liabilities referred to therein, then Counterparty hereunder, in lieu of indemnifying such Indemnified Person thereunder, shall contribute to the amount paid or payable by such Indemnified Person as a result of such losses, claims, damages or liabilities. The remedies provided for in this paragraph (b) are not exclusive and shall not limit any rights or remedies which may otherwise be available to any Indemnified Person at law or in equity. The indemnity and contribution agreements contained in this paragraph shall remain operative and in full force and effect regardless of the termination of the Transaction.

- (c) Regulation M. Counterparty is not on the Trade Date engaged in a distribution, as such term is used in Regulation M under the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), of any securities of Counterparty, other than a distribution meeting the requirements of the exception set forth in Rules 101(b)(10) and 102(b)(7) of Regulation M. Counterparty shall not, until the second Scheduled Trading Day immediately following the Effective Date, engage in any such distribution.
- (d) No Manipulation. Counterparty is not entering into the Transaction to create actual or apparent trading activity in the Shares and/or Underlying Shares (or any security convertible into or exchangeable for the Shares and/or Underlying Shares) or to raise or depress or otherwise manipulate the price of the Shares and/or Underlying Shares (or any security convertible into or exchangeable for the Shares and/or Underlying Shares) or otherwise in violation of the Exchange Act.
- (e) Transfer or Assignment.
- (i) Counterparty shall have the right to transfer or assign all or any of its rights and obligations hereunder with respect to all, or any, of the Options hereunder (such Options, the “**Transfer Options**”) with the prior written consent of Dealer, such consent not to be unreasonably withheld; *provided* that withholding of such consent by Dealer shall not be considered unreasonable if such transfer or assignment does not meet any of the following conditions:
- (A) With respect to any Transfer Options, Counterparty shall not be released from its notice and indemnification obligations pursuant to Section 9(b) of this Confirmation;
- (B) Such transfer or assignment shall be effected on terms, including any reasonable undertakings by such third party (including, but not limited to, an undertaking with respect to compliance with applicable securities laws in a manner that, in the reasonable judgment of Dealer, will not expose Dealer to material risks under applicable securities laws) and execution of any documentation and delivery of legal opinions with respect to securities laws and other matters by such third party and Counterparty, as are reasonably requested and reasonably satisfactory to Dealer;
- (C) Under the applicable law effective on the date of such transfer or assignment, (1) Dealer will not, as a result of such transfer or assignment, be required to pay the transferee or assignee on any payment date or delivery date an amount or a number of Shares, as applicable, under Section 2(d)(i)(4) of the Agreement greater than the amount or the number of Shares, as applicable, that Dealer would have been required to pay to Counterparty in the absence of such transfer or assignment and (2) Dealer will not, as a result of such transfer or assignment, receive from the transferee or assignee on any payment date an amount under Section 2(d)(i)(4) of the Agreement that is less than the amount that Dealer would have received from Counterparty in the absence of such transfer or assignment;
- (D) No Event of Default, Potential Event of Default or Termination Event will occur as a result of such transfer and assignment;
- (E) Counterparty shall cause the transferee to make such tax representations and to provide such tax documentation as may be reasonably requested by Dealer to permit Dealer to determine that results described in clauses (C) and (D) will not occur upon or after such transfer and assignment, including but not limited to providing tax documentation specified in Section 9(bb) of this Confirmation and making the tax representations specified in Section 9(aa) of this Confirmation on or prior to such transfer and at the other times specified in such Sections; and

- (F) Counterparty shall be responsible for all reasonable and documented costs and expenses, including reasonable counsel fees, incurred by Dealer in connection with such transfer or assignment.
- (ii) Dealer may, without Counterparty's consent, transfer or assign all or any part of its rights or obligations under the Transaction to any affiliate of Dealer (1) that has a long-term issuer rating that is equal to or better than Dealer's credit rating at the time of such transfer or assignment, or (2) whose obligations hereunder will be guaranteed, pursuant to the terms of a customary guarantee in a form used by Dealer generally for similar transactions, by Dealer or The Goldman Sachs Group, Inc.; *provided* that, in the case of any such transfer or assignment, under the applicable law effective on the date of such transfer or assignment, (I) Counterparty will not, as a result of such transfer or assignment, be required to pay the transferee or assignee on any payment date an amount under Section 2(d)(i)(4) of the Agreement greater than the amount that Counterparty would have been required to pay to Dealer in the absence of such transfer or assignment; (II) Counterparty will not, as a result of such transfer or assignment, receive from the transferee or assignee on any payment or delivery date an amount or a number of Shares, as applicable, under Section 2(d)(i)(4) of the Agreement that is less than the amount or the number of Shares that Counterparty would have received from Dealer in the absence of such transfer or assignment; (III) Dealer shall cause the transferee or assignee to make such tax representations and to provide such tax documentation as may be reasonably requested by Counterparty to permit Counterparty to determine that events described in clauses (I) and (II) of this proviso will not occur upon or after such transfer or assignment; and (IV) no Event of Default, Potential Event of Default or Termination Event will occur as a result of such transfer and assignment. If at any time at which (A) the Section 13 Percentage exceeds 8.5%, (B) the Option Equity Percentage exceeds 14.5%, or (C) the Share Amount exceeds the Applicable Share Limit (if any applies) (any such condition described in clauses (A), (B) or (C), an "**Excess Ownership Position**"), Dealer is unable after using its commercially reasonable efforts to effect a transfer or assignment of Options to a third party on pricing terms reasonably acceptable to Dealer and within a time period reasonably acceptable to Dealer such that no Excess Ownership Position exists, then Dealer may designate any Exchange Business Day as an Early Termination Date with respect to a portion of the Transaction (the "**Terminated Portion**"), to the extent necessary so that following such partial termination no Excess Ownership Position exists. In the event that Dealer so designates an Early Termination Date with respect to a portion of the Transaction, a payment shall be made pursuant to Section 6 of the Agreement as if (1) an Early Termination Date had been designated in respect of a Transaction having terms identical to the Transaction and a Number of Options equal to the number of Options underlying the Terminated Portion, (2) Counterparty were the sole Affected Party with respect to such partial termination and (3) the Terminated Portion were the sole Affected Transaction (and, for the avoidance of doubt, the provisions of Section 9(m) shall apply to any amount that is payable by Dealer to Counterparty pursuant to this sentence as if Counterparty was not the Affected Party). The "**Section 13 Percentage**" as of any day is the fraction, expressed as a percentage, (A) the numerator of which is the number of Underlying Shares that Dealer and any of its affiliates or any other person subject to aggregation with Dealer for purposes of the "beneficial ownership" test under Section 13 of the Exchange Act, or any "group" (within the meaning of Section 13 of the Exchange Act) of which Dealer is or may be deemed to be a part beneficially owns (within the meaning of Section 13 of the Exchange Act), without duplication, on such day (or, to the extent that for any reason the equivalent calculation under Section 16 of the Exchange Act applies with respect to the Shares or Underlying Shares, as applicable, and the rules and regulations thereunder results in a higher number, such higher number) and (B) the denominator of which is the number of Underlying Shares outstanding on such day. The "**Option Equity Percentage**" as of any day is the fraction, expressed as a percentage, (A) the numerator of which is the sum of (1) the product of (x) the Number of Options (y) the Option Entitlement and (z) the number of Underlying Shares represented by one Share and (2) the aggregate number of Underlying Shares underlying any other call option transaction sold by Dealer to Counterparty, and (B) the denominator of which is the number of Underlying Shares outstanding. The "**Share Amount**" as of any day is the number of Underlying Shares that Dealer and any person whose ownership position would be aggregated with that of Dealer (Dealer or any such person, a "**Dealer Person**") under any law, rule, regulation, regulatory order or organizational documents or contracts of Counterparty that are, in each case, applicable to ownership of Underlying Shares ("**Applicable Restrictions**"), owns, beneficially owns, constructively owns, controls, holds the power to vote or otherwise meets a relevant definition of ownership under any Applicable Restriction, as determined by Dealer in its reasonable discretion. The "**Applicable Share Limit**" means a number of Underlying Shares equal to (A) the minimum number of Underlying Shares that could give rise to reporting or registration obligations (except for any filing requirements on Form 13F, Schedule 13D or Schedule 13G under the Exchange Act, in each case, as in effect on the Trade Date) or other requirements (including obtaining prior approval from any person or entity) of a Dealer Person, or could result in an adverse effect on a Dealer Person, under any Applicable Restriction, as determined by Dealer in good faith and in its commercially reasonable discretion, *minus* (B) 1% of the number of Underlying Shares outstanding.



- (iii) Notwithstanding any other provision in this Confirmation to the contrary requiring or allowing Dealer to purchase, sell, receive or deliver any Shares, Underlying Shares or other securities, or make or receive any payment in cash, to or from Counterparty, Dealer may designate any of its affiliates to purchase, sell, receive or deliver such Shares, Underlying Shares or other securities, or to make or receive such payment in cash, and otherwise to perform Dealer's obligations in respect of the Transaction and any such designee may assume such obligations. Dealer shall be discharged of its obligations to Counterparty to the extent of any such performance.
- (f) Staggered Settlement. If upon advice of counsel with respect to applicable legal and regulatory requirements, including any requirements relating to Dealer's hedging activities hereunder, Dealer reasonably determines that it would not be practicable or advisable to deliver, or to acquire Shares to deliver, any or all of the Shares to be delivered by Dealer on any Settlement Date for the Transaction, Dealer may, by notice to Counterparty on or prior to any Settlement Date (a "**Nominal Settlement Date**"), elect to deliver the Shares on two or more dates (each, a "**Staggered Settlement Date**") as follows:
  - (i) in such notice, Dealer will specify to Counterparty the related Staggered Settlement Dates (the first of which will be such Nominal Settlement Date and the last of which will be no later than the twentieth (20<sup>th</sup>) Exchange Business Day following such Nominal Settlement Date) and the number of Shares that it will deliver on each Staggered Settlement Date;
  - (ii) the aggregate number of Shares that Dealer will deliver to Counterparty hereunder on all such Staggered Settlement Dates will equal the number of Shares that Dealer would otherwise be required to deliver on such Nominal Settlement Date; and
  - (iii) if the Net Share Settlement terms set forth above were to apply on the Nominal Settlement Date, then the Net Share Settlement terms will apply on each Staggered Settlement Date, except that the Shares otherwise deliverable on such Nominal Settlement Date will be allocated among such Staggered Settlement Dates as specified by Dealer in the notice referred to in clause (i) above.
- (g) Reserved.

(h) QFC Stay Provisions. (i) (A) In the event that Dealer becomes subject to a proceeding under (i) the Federal Deposit Insurance Act and the regulations promulgated thereunder or (ii) Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the regulations promulgated thereunder (a “U.S. Special Resolution Regime”) the transfer from Dealer of this Confirmation, and any interest and obligation in or under, and any property securing, this Confirmation, will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if this Confirmation, and any interest and obligation in or under, and any property securing, this Confirmation were governed by the laws of the United States or a state of the United States. (B) In the event that Dealer or an Affiliate becomes subject to a proceeding under a U.S. Special Resolution Regime, any Default Rights (as defined in 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable (“Default Right”)) under this Confirmation that may be exercised against Dealer 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 Confirmation were governed by the laws of the United States or a state of the United States.

(ii) Notwithstanding anything to the contrary in this Confirmation, the Parties expressly acknowledge and agree that: (A) Counterparty shall not be permitted to exercise any Default Right with respect to this Confirmation or any Affiliate Credit Enhancement that is related, directly or indirectly, to an Affiliate of Dealer becoming subject to receivership, insolvency, liquidation, resolution, or similar proceeding (an “**Insolvency Proceeding**”), except to the extent that the exercise of such Default Right would be permitted under the provisions of 12 C.F.R. 252.84, 12 C.F.R. 47.5 or 12 C.F.R. 382.4, as applicable; and (B) Nothing in this Confirmation shall prohibit the transfer of any Affiliate Credit Enhancement, any interest or obligation in or under such Affiliate Credit Enhancement, or any property securing such Affiliate Credit Enhancement, to a transferee upon or following an Affiliate of Dealer becoming subject to an Insolvency Proceeding, unless the transfer would result in the Counterparty being the beneficiary of such Affiliate Credit Enhancement in violation of any law applicable to the Counterparty.

(iii) If Counterparty has previously adhered to, or subsequently adheres to, the ISDA 2018 U.S. Resolution Stay Protocol as published by the International Swaps and Derivatives Association, Inc. as of July 31, 2018 (the “**ISDA U.S. Protocol**”), the terms of such protocol shall be incorporated into and form a part of this Confirmation and the terms of the ISDA U.S. Protocol shall supersede and replace the terms of this Section 9(h). For purposes of incorporating the ISDA U.S. Protocol, Dealer shall be deemed to be a Regulated Entity, Counterparty shall be deemed to be an Adhering Party, and this Confirmation shall be deemed to be a Protocol Covered Agreement. Capitalized terms used but not defined in this paragraph shall have the meanings given to them in the ISDA U.S. Protocol.

(iv) Dealer and Counterparty agree that to the extent there are any outstanding “in-scope QFCs,” as defined in 12 C.F.R. § 252.82(d), that are not excluded under 12 C.F.R. § 252.88, between Dealer and Counterparty that do not otherwise comply with the requirements of 12 C.F.R. § 252.2, 252.81–8 (each such agreement, a “Preexisting In-Scope Agreement”), then each such Preexisting In-Scope Agreement is hereby amended to include the foregoing provisions in this Section 9(h), with references to “this Confirmation” being understood to be references to the applicable Preexisting In-Scope Agreement.

For purposes of this Section 9(h):

“**Affiliate**” is defined in, and shall be interpreted in accordance with, 12 U.S.C. § 1841(k).

“**Credit Enhancement**” means any credit enhancement or credit support arrangement in support of the obligations of Dealer under or with respect to this Confirmation, including any guarantee, collateral arrangement (including any pledge, charge, mortgage or other security interest in collateral or title transfer arrangement), trust or similar arrangement, letter of credit, transfer of margin or any similar arrangement.

(i) Additional Termination Events.

- (i) Notwithstanding anything to the contrary in this Confirmation, upon any conversion of a Convertible Note occurring prior to the 45th Scheduled Valid Day immediately prior to the Expiration Date (any such conversion, an “**Early Conversion**”) in respect of which a Conversion Notice that is effective as to Counterparty has been delivered by the relevant converting Holder:
- (A) Counterparty may, within two Scheduled Trading Days of the date on which the Holder (as such term is defined in the Indenture) of such Convertible Note satisfies all of the requirements for conversion thereof as set forth in Section 14.02 of the Indenture (the “**Conversion Date**”) for such Early Conversion, provide written notice (an “**Early Conversion Notice**”) to Dealer specifying the number of Convertible Notes surrendered for conversion on such Conversion Date (such Convertible Notes, the “**Affected Convertible Notes**”), and the giving of such Early Conversion Notice shall constitute an Additional Termination Event as provided in this clause (i) (*provided* that Counterparty acknowledges its responsibilities under applicable securities laws, and in particular Section 9 and Section 10(b) of the Exchange Act and the rules and regulations thereunder, in respect of any Early Conversion Notice);
  - (B) upon receipt of any such Early Conversion Notice, Dealer shall designate an Exchange Business Day as an Early Termination Date (which Exchange Business Day shall be no earlier than one Scheduled Trading Day following the Conversion Date for such Early Conversion) with respect to the portion of the Transaction corresponding to a number of Options (the “**Affected Number of Options**”) equal to the lesser of (x) the number of Affected Convertible Notes and (y) the Number of Options as of the Conversion Date for such Early Conversion;
  - (C) any payment hereunder with respect to such termination shall be calculated pursuant to Section 6 of the Agreement as if (x) an Early Termination Date had been designated in respect of a Transaction having terms identical to the Transaction and a Number of Options equal to the Affected Number of Options, (y) Counterparty were the sole Affected Party with respect to such Additional Termination Event and (z) the terminated portion of the Transaction were the sole Affected Transaction;
  - (D) for the avoidance of doubt, in determining the amount payable in respect of such Affected Transaction pursuant to Section 6 of the Agreement, the Calculation Agent shall assume that (x) the relevant Early Conversion and any conversions, adjustments, agreements, payments, deliveries or acquisitions by or on behalf of Counterparty leading thereto had not occurred, (y) no adjustments to the Conversion Rate have occurred pursuant to any Excluded Provision and (z) the corresponding Convertible Notes remain outstanding; and
  - (E) the Transaction shall remain in full force and effect, except that, as of the Conversion Date for such Early Conversion, the Number of Options shall be reduced by the Affected Number of Options.
- (ii) Notwithstanding anything to the contrary in this Confirmation if an event of default with respect to Counterparty occurs under the terms of the Convertible Notes as set forth in Section 6.01 of the Indenture and such event of default results in the Convertible Notes being accelerated and declared due and payable, then such event of default shall constitute an Additional Termination Event applicable to the Transaction and, with respect to such Additional Termination Event, (A) Counterparty shall be deemed to be the sole Affected Party, (B) the Transaction shall be the sole Affected Transaction and (C) Dealer shall be the party entitled to designate an Early Termination Date pursuant to Section 6(b) of the Agreement (which Early Termination Date shall be on or as promptly as reasonably practicable after Dealer becomes aware of the occurrence of such acceleration).

- (iii) Notwithstanding anything to the contrary in this Confirmation, the occurrence of an Amendment Event shall constitute an Additional Termination Event applicable to the Transaction and, with respect to such Additional Termination Event, (A) Counterparty shall be deemed to be the sole Affected Party, (B) the Transaction shall be the sole Affected Transaction and (C) Dealer shall be the party entitled to designate an Early Termination Date pursuant to Section 6(b) of the Agreement. “**Amendment Event**” means that Counterparty amends, modifies, supplements, waives or obtains a waiver in respect of any term of the Indenture or the Convertible Notes governing the principal amount, coupon, maturity, repurchase obligation of Counterparty, tax redemption right of Counterparty, any term relating to conversion of the Convertible Notes (including changes to the conversion rate, conversion rate adjustment provisions, conversion settlement dates or conversion conditions), or any term that would require consent of the holders of not less than 100% of the principal amount of the Convertible Notes to amend (other than, in each case, any amendment or supplement (x) pursuant to Section 10.01(i) of the Indenture that, as determined by the Calculation Agent, conforms the Indenture to the description of Convertible Notes in the Offering Memorandum or (y) pursuant to Section 14.07 of the Indenture), in each case, without the consent of Dealer.
- (iv) Promptly (but in any event within five Scheduled Trading Days) following any Repurchase Event (as defined below), Counterparty shall notify Dealer of such Repurchase Event and the aggregate principal amount of Convertible Notes subject to such Repurchase Event (any such notice, a “**Convertible Notes Repurchase Notice**”); *provided* that any such Convertible Notes Repurchase Notice shall contain a repetition by Counterparty of the representation set forth in Section 8(f) as of the date of such Convertible Notes Repurchase Notice and an acknowledgment by Counterparty of its responsibilities under applicable securities laws, and in particular Section 9 and Section 10(b) of the Exchange Act and the rules and regulations thereunder, in respect of such Repurchase Event and the delivery of such Convertible Notes Repurchase Notice. The receipt by Dealer from Counterparty of any Convertible Notes Repurchase Notice shall constitute an Additional Termination Event as provided in this Section 9(i)(iv). Upon receipt of any such Convertible Notes Repurchase Notice, Dealer shall designate an Exchange Business Day following receipt of such Convertible Notes Repurchase Notice (which Exchange Business Day shall be on or as promptly as reasonably practicable following the settlement date for such Repurchase Event) as an Early Termination Date with respect to the portion of the Transaction corresponding to a number of Options (the “**Repurchase Options**”) equal to the lesser of (A) the aggregate principal amount of such Convertible Notes specified in such Convertible Notes Repurchase Notice, *divided by* USD 1,000 and (B) the Number of Options as of the date Dealer designates such Early Termination Date and, as of such date, the Number of Options shall be reduced by the number of Repurchase Options. Any payment hereunder with respect to such termination (the “**Repurchase Unwind Payment**”) shall be calculated pursuant to Section 6 of the Agreement as if (1) an Early Termination Date had been designated in respect of a Transaction having terms identical to the Transaction and a Number of Options equal to the number of Repurchase Options, (2) Counterparty were the sole Affected Party with respect to such Additional Termination Event and (3) the terminated portion of the Transaction were the sole Affected Transaction (and, for the avoidance of doubt, in determining the amount payable in respect of such Affected Transaction pursuant to Section 6 of the Agreement, Dealer shall assume that (x) the relevant Repurchase Event and any conversions, adjustments, agreements, payments, deliveries or acquisitions by or on behalf of Counterparty leading thereto had not occurred, (y) no adjustments to the Conversion Rate have occurred pursuant to any Excluded Provisions and (z) the corresponding Convertible Notes remain outstanding). “**Repurchase Event**” means that (i) any Convertible Notes are repurchased or redeemed (whether pursuant to Section 15.01 of the Indenture, Section 15.02 of the Indenture, Section 16.01 of the Indenture or otherwise) by Counterparty or any of its subsidiaries, (ii) any Convertible Notes are delivered to Counterparty in exchange for delivery of any property or assets of Counterparty or any of its subsidiaries (howsoever described), including for the avoidance of doubt shares or American depository shares of Issuer and/or cash, (iii) any principal of any of the Convertible Notes is repaid prior to the final maturity date of the Convertible Notes (other than upon acceleration of the Convertible Notes described in Section 9(i)(ii)), or (iv) any Convertible Notes are exchanged by or for the benefit of the holders thereof for any other securities of Counterparty or any of its affiliates (or any other property, or any combination thereof) pursuant to any exchange offer or similar transaction; *provided* that any conversion of Convertible Notes pursuant to the terms of the Indenture shall not constitute a Repurchase Event. Counterparty acknowledges and agrees that if an Additional Termination Event has occurred under this Section 9(i)(iv) that any related Convertible Notes subject to a Repurchase Event will be promptly cancelled under the applicable provisions of the Indenture and, in any event, will be deemed to be cancelled and disregarded and no longer outstanding for all purposes hereunder.

- (j) Amendments to Equity Definitions.
- (i) Solely in respect of adjustments to the Cap Price pursuant to Section 9(y), Section 11.2(e)(vii) of the Equity Definitions is hereby amended by deleting the words “that may have a diluting or concentrative effect on the theoretical value of the relevant Shares” and replacing them with the words “that is the result of a corporate event involving the Underlying Shares Issuer or its securities that has a material economic effect on the Shares and/or the Underlying Shares or options on the Shares and/or the Underlying Shares; *provided* that such event is not based on (a) an observable market, other than the market for the Underlying Shares Issuer’s own stock or (b) an observable index, other than an index calculated and measured solely by reference to the Underlying Shares Issuer’s own operations.”
  - (ii) Section 12.6(a)(ii) of the Equity Definitions is hereby amended by (1) inserting “(1)” immediately following the word “means” in the first line thereof and (2) inserting immediately prior to the semi-colon at the end of subsection (B) thereof the following words: “or (2) the occurrence of any of the events specified in Section 5(a)(vii)(1) through (9) of the ISDA Master Agreement with respect to that Issuer” *provided* that the period for dismissal, discharge, stay or restraint therein shall be increased from “within 15 days” to “within 30 days.”
  - (iii) Section 12.9(b)(i) of the Equity Definitions is hereby amended by (1) replacing “either party may elect” with “Dealer may elect” and (2) replacing “notice to the other party” with “notice to Counterparty” in the first sentence of such section.
- (k) Setoff. Neither party shall have the right to set off any obligation that it may have to the other party under the Transaction against any obligation such other party may have to it, whether arising under the Agreement, this Confirmation or any other agreement between the parties hereto, by operation of law or otherwise and each party hereby waives any such right to setoff.
- (l) Adjustments. For the avoidance of doubt, whenever the Calculation Agent is called upon to make an adjustment pursuant to the terms of this Confirmation or the Equity Definitions to take into account the effect of an event (other than on adjustments made by reference to the Indenture), the Calculation Agent shall make such adjustment in a commercially reasonable manner by reference to the effect of such event on Dealer, assuming that Dealer maintains a commercially reasonable hedge position

(m) Alternative Calculations and Payment on Early Termination and on Certain Extraordinary Events. If (a) an Early Termination Date (whether as a result of an Event of Default or a Termination Event) occurs or is designated with respect to the Transaction or (b) the Transaction is cancelled or terminated upon the occurrence of an Extraordinary Event, and if Dealer would owe any amount to Counterparty pursuant to Section 6(d)(ii) of the Agreement or any Cancellation Amount pursuant to Article 12 of the Equity Definitions (any such amount, a “**Payment Obligation**”), Counterparty may request Dealer to satisfy the Payment Obligation by the Share Termination Alternative (as defined below) (except as a result of (i) a Nationalization, Insolvency or Merger Event in which the consideration to be paid to holders of Shares and/or Underlying Shares, as applicable, consists solely of cash, (ii) an Announcement Event, Merger Event or Tender Offer that is within Counterparty’s control, or (iii) an Event of Default in which Counterparty is the Defaulting Party or a Termination Event in which Counterparty is the Affected Party other than an Event of Default of the type described in Section 5(a)(iii), (v), (vi), (vii) or (viii) of the Agreement or a Termination Event of the type described in Section 5(b) of the Agreement, in each case that resulted from an event or events outside Counterparty’s control), as long as Counterparty remakes the representation set forth in Section 8(f) as of the date of such election, and Counterparty shall give irrevocable telephonic notice to Dealer, confirmed in writing within one Scheduled Trading Day, no later than 12:00 p.m. (New York City time) on the date of the Announcement Event, Merger Date, Tender Offer Date, Announcement Date (in the case of a Nationalization, Insolvency or Delisting), Early Termination Date or date of cancellation, as applicable; *provided* that if Counterparty does not validly request Dealer to satisfy the Payment Obligation by the Share Termination Alternative, Dealer shall have the right, in its sole discretion, to satisfy its Payment Obligation by the Share Termination Alternative, notwithstanding Counterparty’s failure to elect or election to the contrary. If such election is not made, then the provisions of Section 12.7 or Section 12.9 of the Equity Definitions, or the provisions of Section 6(d)(ii) and Section 6(e) of the Agreement, as the case may be, shall apply.

Share Termination Alternative: If applicable, Dealer shall deliver to Counterparty the Share Termination Delivery Property on, or as promptly as commercially reasonably practicable thereafter, the date when the relevant Payment Obligation would otherwise be due pursuant to Section 12.7 or 12.9 of the Equity Definitions or Section 6(d)(ii) and 6(e) of the Agreement, as applicable, in satisfaction of such Payment Obligation in the manner reasonably requested by Counterparty free of payment.

Share Termination Delivery Property: A number of Share Termination Delivery Units, as calculated by the Calculation Agent, equal to the Payment Obligation divided by the Share Termination Unit Price. The Calculation Agent shall adjust the Share Termination Delivery Property by replacing any fractional portion of a security therein with an amount of cash equal to the value of such fractional security based on the values used to calculate the Share Termination Unit Price.

Share Termination Unit Price: The value of property contained in one Share Termination Delivery Unit, as determined by the Calculation Agent in its discretion by commercially reasonable means and notified by the Calculation Agent to Dealer at the time of notification of the Payment Obligation.

Share Termination Delivery Unit: One Share or, if the Shares or Underlying Shares, as applicable, have changed into cash or any other property or the right to receive cash or any other property as the result of a Nationalization, Insolvency or Merger Event (any such cash or other property, the “**Exchange Property**”), a unit consisting of the type and amount of such Exchange Property received by a holder of one Share or Underlying Share, as applicable (without consideration of any requirement to pay cash or other consideration in lieu of fractional amounts of any securities) in such Nationalization, Insolvency or Merger Event, as determined by the Calculation Agent. If such Nationalization, Insolvency, or Merger Event involves a choice of Exchange Property to be received by holders, such holders shall be deemed to have elected to receive the maximum possible amount of cash.

Failure to Deliver: Applicable

Other applicable provisions: If Share Termination Alternative is applicable, the provisions of Sections 9.8, 9.9 and 9.11 (as modified above) of the Equity Definitions and the provisions set forth opposite the caption “Representation and Agreement” in Section 2 will be applicable, except that all references in such provisions to “Physically-settled” shall be read as references to “Share Termination Settled” and all references to “Shares” shall be read as references to “Share Termination Delivery Units”. “Share Termination Settled” in relation to the Transaction means that Share Termination Alternative is applicable to the Transaction.

- (n) Waiver of Jury Trial. Each party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any suit, action or proceeding relating to the Transaction. Each party (i) certifies that no representative, agent or attorney of either party has represented, expressly or otherwise, that such other party would not, in the event of such a suit, action or proceeding, seek to enforce the foregoing waiver and (ii) acknowledges that it and the other party have been induced to enter into the Transaction, as applicable, by, among other things, the mutual waivers and certifications provided herein.
- (o) Registration. Counterparty hereby agrees that if, in the good faith reasonable judgment of Dealer, based on the advice of counsel, the Shares and/or Underlying Shares (“**Hedge Shares**”) acquired by Dealer for the purpose of commercially reasonably hedging its obligations pursuant to the Transaction cannot be sold in the public market by Dealer without registration under the Securities Act, Counterparty shall, at its election, either (i) in order to allow Dealer to sell the Hedge Shares in a registered offering, make available to Dealer an effective registration statement under the Securities Act and enter into an agreement, in form and substance reasonably satisfactory to Dealer, substantially in the form of an underwriting agreement customary for a registered secondary offering of a similar size in respect of a similar issuer; *provided, however*, that if Dealer, in its sole reasonable discretion, is not satisfied with access to due diligence materials, the results of its due diligence investigation, or the procedures and documentation for the registered offering referred to above, then clause (ii) or clause (iii) of this paragraph shall apply at the election of Counterparty, (ii) in order to allow Dealer to sell the Hedge Shares in a private placement, use commercially reasonable efforts to enter into a private placement agreement substantially similar to private placement purchase agreements customary for private placements of equity securities of a similar size in respect of a similar issuer, in form and substance satisfactory to Dealer (in which case, the Calculation Agent shall make any adjustments to the terms of the Transaction that are necessary, in its commercially reasonable judgment, to compensate Dealer for any commercially reasonable discount from the public market price of the Shares and/or Underlying Shares incurred on the sale of Hedge Shares in a private placement), or (iii) purchase the Hedge Shares from Dealer at the then-current market price on such Exchange Business Days, and in the amounts and at such time(s), reasonably requested by Dealer.

- (p) Tax Disclosure. Effective from the date of commencement of discussions concerning the Transaction, Counterparty and each of its employees, representatives, or other agents may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the Transaction and all materials of any kind (including opinions or other tax analyses) that are provided to Counterparty relating to such tax treatment and tax structure.
- (q) Right to Extend. Dealer may postpone or add, in whole or in part, any Valid Day or Valid Days during the Settlement Averaging Period or any other date of valuation, payment or delivery by Dealer, with respect to some or all of the Options hereunder, if Dealer reasonably determines, in the case of clause (i) below, in its commercially reasonable judgment or, in the case of clause (ii) below, based on advice of counsel, that such action is reasonably necessary or appropriate (i) to preserve Dealer's commercially reasonable hedging or hedge unwind activity hereunder in light of existing liquidity conditions in the relevant market or (ii) to enable Dealer to effect transactions with respect to Shares and/or Underlying Shares in connection with its commercially reasonable hedging, hedge unwind or settlement activity hereunder in a manner that would, if Dealer were Counterparty or an affiliated purchaser of Counterparty, be in compliance with applicable legal, regulatory or self-regulatory requirements, or with related policies and procedures adopted by Dealer in good faith so long as such policies and procedures are generally applicable in similar situations and applied in a non-discriminatory manner); *provided* that no such Valid Day or other date of valuation, payment or delivery may be postponed or added more than 40 Valid Days after the original Valid Day or other date of valuation, payment or delivery, as the case may be.
- (r) Status of Claims in Bankruptcy. Dealer acknowledges and agrees that this Confirmation is not intended to convey to Dealer rights against Counterparty with respect to the Transaction that are senior to the claims of common or ordinary shareholders of Counterparty in any United States or Cayman Islands 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 the Transaction; *provided, further* that nothing herein shall limit or shall be deemed to limit Dealer's rights in respect of any transactions other than the Transaction.
- (s) Securities Contract; Swap Agreement. The parties hereto intend for (i) the Transaction to be a "securities contract" and a "swap agreement" as defined in the Bankruptcy Code (Title 11 of the United States Code) (the "**Bankruptcy Code**"), and the parties hereto to be entitled to the protections afforded by, among other Sections, Sections 362(b)(6), 362(b)(17), 546(e), 546(g), 555 and 560 of the Bankruptcy Code, (ii) a party's right to liquidate the Transaction and to exercise any other remedies upon the occurrence of any Event of Default under the Agreement with respect to the other party to constitute a "contractual right" as described in the Bankruptcy Code, and (iii) each payment and delivery of cash, securities or other property hereunder to constitute a "margin payment" or "settlement payment" and a "transfer" as defined in the Bankruptcy Code.
- (t) Notice of Certain Other Events. Counterparty covenants and agrees that:
- (i) promptly following the public announcement of the results of any election by the holders of Shares and/or Underlying Shares, as applicable, with respect to the consideration due upon consummation of any Merger Event, Counterparty shall give Dealer written notice of (x) the weighted average of the types and amounts of consideration that holders of Shares and/or Underlying Shares, as applicable, have elected to receive upon consummation of such Merger Event or (y) if no holders of Shares and/or Underlying Shares, as applicable, affirmatively make such election, the types and amounts of consideration actually received by holders of Shares and/or Underlying Shares, as applicable, (the date of such notification, the "**Consideration Notification Date**"); *provided* that in no event shall the Consideration Notification Date be later than the date on which such Merger Event is consummated;



- (ii) (A) Counterparty shall give Dealer commercially reasonable advance (but in no event less than one Exchange Business Day) written notice of the section or sections of the Indenture and, if applicable, the formula therein, pursuant to which any adjustment will be made to the Convertible Notes in connection with any Potential Adjustment Event, Merger Event or Tender Offer and (B) promptly following any such adjustment, Counterparty shall give Dealer written notice of the details of such adjustment; and
  - (iii) Counterparty will provide a written notice to Dealer immediately upon becoming aware that Counterparty is not or will no longer be a “foreign private issuer,” as such term is defined in Rule 3b-4 under the Exchange Act.
- (u) 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 Confirmation or the Agreement, as applicable, arising from a termination event, force majeure, illegality, increased costs, regulatory change or similar event under this Confirmation, the Equity Definitions incorporated herein, or the Agreement (including, but not limited to, rights arising from Change in Law, Hedging Disruption, an Excess Ownership Position, or Illegality (as defined in the Agreement)).
- (v) Agreements and Acknowledgements Regarding Hedging. Counterparty understands, acknowledges and agrees that: (A) at any time on and prior to the Expiration Date, Dealer and its affiliates may buy or sell Shares, Underlying Shares or other securities or buy or sell options or futures contracts or enter into swaps or other derivative securities in order to adjust its hedge position with respect to the Transaction; (B) Dealer and its affiliates also may be active in the market for Shares and/or Underlying Shares other than in connection with hedging activities in relation to the Transaction; (C) Dealer shall make its own determination as to whether, when or in what manner any hedging or market activities in securities of Issuer and/or Underlying Shares Issuer shall be conducted and shall do so in a manner that it deems appropriate to hedge its price and market risk with respect to the Relevant Prices; and (D) any market activities of Dealer and its affiliates with respect to Shares and/or Underlying Shares may affect the market price and volatility of Shares and/or Underlying Shares, as well as the Relevant Prices, each in a manner that may be adverse to Counterparty.
- (w) Early Unwind. In the event the sale of the “Underwritten Securities” (as defined in the Purchase Agreement) is not consummated with the Initial Purchasers for any reason, or Counterparty fails to deliver to Dealer opinions of counsel as required pursuant to Section 9(a), in each case by 5:00 p.m. (New York City time) on the Premium Payment Date, or such later date as agreed upon by the parties (the Premium Payment Date or such later date the “**Early Unwind Date**”), the Transaction shall automatically terminate (the “**Early Unwind**”), on the Early Unwind Date and (i) the Transaction and all of the respective rights and obligations of Dealer and Counterparty under the Transaction shall be cancelled and terminated and (ii) each party shall be released and discharged by the other party from and agrees not to make any claim against the other party with respect to any obligations or liabilities of the other party arising out of and to be performed in connection with the Transaction either prior to or after the Early Unwind Date. Each of Dealer and Counterparty represents and acknowledges to the other that, upon an Early Unwind, all obligations with respect to the Transaction shall be deemed fully and finally discharged.

- (x) Payment by Counterparty. In the event that, following payment of the Premium, (i) an Early Termination Date occurs or is designated with respect to the Transaction as a result of a Termination Event or an Event of Default (other than an Event of Default arising under Section 5(a)(ii) or 5(a)(iv) of the Agreement) and, as a result, Counterparty owes to Dealer an amount calculated under Section 6(e) of the Agreement, or (ii) Counterparty owes to Dealer, pursuant to Section 12.7 or Section 12.9 of the Equity Definitions, an amount calculated under Section 12.8 of the Equity Definitions, such amount shall be deemed to be zero.
- (y) Other Adjustments Pursuant to the Equity Definitions. Notwithstanding anything to the contrary in this Confirmation, solely for the purpose of adjusting the Cap Price, the terms “Potential Adjustment Event,” “Merger Event,” and “Tender Offer” shall each have the meanings assigned to such term in the Equity Definitions (as amended by Section 9(j)(i) or, if applicable, by the definition of “Announcement Event”), and upon the occurrence of a Merger Date, the occurrence of a Tender Offer Date, or declaration by Counterparty of the terms of any Potential Adjustment Event, respectively, as such terms are defined in the Equity Definitions, the Calculation Agent may, in its sole discretion, adjust the Cap Price to preserve the fair value of the Options; *provided* that in no event shall the Cap Price be less than the Strike Price; *provided further* that any adjustment to the Cap Price made pursuant to this Section 9(y) shall be made without duplication of any other adjustment hereunder (including, for the avoidance of doubt, adjustment made pursuant to the provisions opposite the captions “Method of Adjustment,” “Consequences of Merger Events/Tender Offers” and “Consequence of Announcement Events” in Section 3 above). For the avoidance of doubt, for purposes of this Section 9(y), Section 12.1(d) of the Equity Definitions is hereby amended by replacing “10%” with “20%” in the third line thereof.
- (z) Service of Process. Counterparty irrevocably appoints Law Debenture Corporate Services Inc. as its authorized agent upon which process may be served in any suit, action or proceeding relating to the Transaction, and agrees that service of process in any manner permitted by applicable law upon such agent shall be deemed in every respect effective service of process in any manner permitted by applicable law upon Counterparty in any such suit, action or proceeding. Counterparty further agrees to take any and all action as may be necessary to maintain such designation and appointment of such agent in full force and effect for a period of five and a half years from the date of this Confirmation. If for any reason such agent shall cease to be such agent for service of process, Counterparty shall forthwith appoint a new agent of recognized standing for service of process in the State of New York and deliver to Dealer a copy of the new agent’s acceptance of that appointment within 10 days. Nothing herein shall affect the right of Dealer to serve process in any other manner permitted by law or to commence legal proceedings or otherwise proceed against Counterparty in any other court of competent jurisdiction.
- (aa) Taxes, Foreign Account Tax Compliance Act and HIRE Act. Counterparty is classified as a corporation for the U.S. federal income tax purposes. No income received or to be received under the Agreement will be effectively connected with the conduct of a trade or business by Counterparty in the United States. Counterparty is a “non-U.S. branch of a foreign person” as that term is used in Section 1.1441-4(a)(3)(ii) of the United States Treasury Regulations (the “**Regulations**”), and it is a “foreign person” as that term is used in Section 1.6041-4(a)(4) of the Regulations. The term “Indemnifiable Tax” as defined in Section 14 of the Agreement shall not include any U.S. federal withholding tax imposed or collected pursuant to Sections 1471 through 1474 of the U.S. Internal Revenue Code of 1986, as amended (the “**Code**”), any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b) of the Code, or any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code (a “**FATCA Withholding Tax**”). For the avoidance of doubt, a FATCA Withholding Tax is a Tax the deduction or withholding of which is required by applicable law for the purposes of Section 2(d) of the Agreement. The parties agree that the definitions and provisions contained in the ISDA 2015 Section 871(m) Protocol, as published by the International Swaps and Derivatives Association, Inc. and as may be amended, supplemented, replaced or superseded from time to time (the “**871(m) Protocol**”) shall apply to the Agreement as if the parties had adhered to the 871(m) Protocol as of the Effective Date. If there is any inconsistency between this provision and a provision in any other agreement executed between the parties, this provision shall prevail unless such other agreement expressly overrides the provisions of the 871(m) Protocol. Each of Dealer and Counterparty shall provide to the other party tax forms and documents required to be delivered pursuant to Sections 1471(b) or Section 1472(b)(1) of the Code promptly upon request by the other party and any other tax forms and documents they are legally able to provide that are reasonably requested by the other party.

(bb) U.S. Tax Forms. Without limiting the generality of the foregoing, Counterparty will provide a US Tax Form W-8BEN-E upon the execution of this Confirmation, promptly upon learning that any such tax form previously provided by it has become obsolete or incorrect and promptly upon reasonable demand by Dealer.

(cc) Additional Definitions and Amendments to Equity Definitions.

(i) For the purposes of this Confirmation the following definitions will apply:

“**Depository**” means, in relation to the Shares, Deutsche Bank Trust Company Americas, or any successor thereto from time to time.

“**Deposit Agreement**” means, (i) that certain Deposit Agreement, dated as of September 11, 2018, by and among Underlying Shares Issuer, Depository and the holders and beneficial owners of the Shares and (ii) the other agreements or other instruments constituting the Shares, as from time to time amended or supplemented in accordance with their terms.

“**DS Amendment**” means, where specified as applicable to a definition or provision, that the following changes shall be made to such definition or provision: (a) all references to “Shares” shall be deleted and replaced with the words “Shares and/or the Underlying Shares, as appropriate”; and (b) all references to “Issuer” shall be deleted and replaced with the words “Issuer or Underlying Shares Issuer, as appropriate”.

“**Replacement DSs**” means depositary shares or receipts, other than the Shares, over the same Underlying Shares.

(ii) The following amendments shall be made to the Equity Definitions:

(A) The definition of Potential Adjustment Event in Section 11.2(e) of the Equity Definitions shall be amended as follows:

(i) the DS Amendment shall be applicable, provided that an event under Section 11.2(e)(i) to (vii) of the Equity Definitions in respect of the Underlying Shares shall not constitute a Potential Adjustment Event unless, in the commercially reasonable opinion of the Calculation Agent, such event has a material effect on the theoretical value of the Shares; and

(ii) (A) ‘or’ shall be deleted where it appears at the end of subsection (vi);

(B) ‘.’ shall be deleted where it appears at the end of subsection (vii) and replaced with ‘;’;

(C) the following shall be inserted as subsection (viii): “(viii) the making of any amendment or supplement to the terms of the Deposit Agreement and/or the Shares; or”; and

- (D) the following shall be inserted as provision (ix): “(ix) any other event as a result of which the Shares represent fewer or more Underlying Shares than, and/or any property or assets in addition to, or as a whole or partial replacement of, in each case, the number of Underlying Shares represented by the Shares prior to such event.”
- (B) In making any adjustment following any Potential Adjustment Event, the Calculation Agent shall have reference to (to the extent necessary or appropriate among other factors) any adjustment made by the Depositary under the Deposit Agreement, any fees and/or expenses of the Depositary and any withholding or deduction of taxes. If the Calculation Agent determines that no adjustment that it could make will produce a commercially reasonable result, it shall notify the parties that the relevant consequence shall be the termination of the relevant Transaction, in which case “Cancellation and Payment (Calculation Agent Determination)” will be deemed to apply and any payment to be made by one party to the other shall be calculated in accordance with Section 12.7 of the Equity Definitions (as amended by this Confirmation).
- (C) If a Potential Adjustment Event occurs under Section 11.2(e)(viii) of the Equity Definitions (as amended by this Confirmation), then the following further amendments shall be deemed to be made to Section 11.2(c) of the Equity Definitions in respect of such Potential Adjustment Event:
- (i) the words “the Calculation Agent will determine whether such Potential Adjustment Event has a material effect on the theoretical value of the relevant Shares, options on the Shares or the Transaction” shall be deleted and replaced with the words “the Calculation Agent will determine whether such Potential Adjustment Event has a material economic effect on such Transaction”; and
- (ii) the words “as the Calculation Agent determines appropriate to account for that material effect” shall be deleted and replaced with the words “as the Calculation Agent determines appropriate to account for such economic effect on such Transaction”.
- (D) The definitions of “Merger Event”, “Tender Offer”, “Announcement Date”, “Share-for-Share”, “Share-for-Other” and “Share-for-Combined” in Section 12.1 of the Equity Definitions shall be amended in accordance with the DS Amendment.
- (E) In making any adjustment in respect of a Merger Event, Tender Offer or Announcement Event in relation to the Underlying Shares, the Calculation Agent shall in determining any adjustment pursuant to Modified Calculation Adjustment, have reference to (amongst other factors) any adjustment made by the Depositary under the Deposit Agreement, any fees and/or expenses of the Depositary and any withholding or deduction of taxes, as determined by the Calculation Agent in its commercially reasonable discretion.
- (F) The definitions of Nationalization and Insolvency in Section 12.6 of the Equity Definitions shall be amended in accordance with the DS Amendment.
- (G) The consequence of a Nationalization or Insolvency in respect of the Depositary shall be Cancellation and Payment.
- (H) If a Delisting of the Shares occurs or the Depositary announces that the Deposit Agreement is (or will be) terminated, then:
- (i) Cancellation and Payment will apply as provided in this Confirmation; and
- (ii) where Cancellation and Payment applies under (H)(i) above in respect of a termination of the Deposit Agreement, the Equity Definitions shall be interpreted as follows: (i) such termination shall be deemed to be an “Extraordinary Event”; (ii) Cancellation and Payment shall apply as defined in Section 12.6(c)(ii) of the Equity Definitions; and (iii) the definition of “Announcement Date” in Section 12.1(l) of the Equity Definitions shall include the following additional clause (vii) at the end of the first sentence thereof: “(vii) in the case of a termination of the Deposit Agreement, the date of the first public announcement by the Depositary that the Deposit Agreement is (or will be) terminated”.

- (I) If Cancellation and Payment applies under Section 9(cc)(ii)(G) or Section 9(cc)(ii)(H) of this Confirmation in respect of a Transaction, then the Determining Party shall be Dealer.
- (J) The definition of “Insolvency Filing” in Section 12.9(a)(iv) of the Equity Definitions shall be amended in accordance with the DS Amendment.
- (K) For the avoidance of doubt, where a provision is amended by this Section 9(cc) in accordance with the DS Amendment, if the event described in such provision occurs in respect of the Underlying Shares or Underlying Shares Issuer, then the consequence of such event shall be interpreted consistently with the DS Amendment and such event.
- (dd) 2013 EMIR Portfolio Reconciliation, Dispute Resolution and Disclosure Protocol. The parties agree that the Attachment to the 2013 EMIR Portfolio Reconciliation, Dispute Resolution and Disclosure Protocol published by ISDA on July 19, 2013 (“**PDD Protocol**”) apply to the Confirmation as if set out in full herein. 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 Section 9(dd) (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 this Confirmation”, (iii) references to “Protocol Covered Agreement” shall be deemed to be references to this Confirmation (and each “Protocol Covered Agreement” shall be read accordingly), (iv) references to “Implementation Date” shall be deemed to be references to the date of this Confirmation, (v) the words “or the Investment Manager on its behalf,” shall be inserted after the words “Portfolio Data Receiving Entity” in Part I(1)(a)(ii), (vi) (a) the words “, or the Investment Manager on its behalf;” shall be inserted after the words “Portfolio Data Receiving Entity”, and (b) the words “such party” shall be deleted and replaced with the words “Portfolio Data Receiving Party” in Part I(1)(a)(iii), and (vii) the words “, or, in the case of Counterparty, its board of directors,” shall be inserted after the words “senior members of staff of such party or of its Affiliate, adviser or agent” in Part I(4)(c). For the purposes of this Section 9(dd):
1. Dealer is a Portfolio Data Sending Entity and Counterparty is a Portfolio Data Receiving Entity;
  2. 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.
  3. The Local Business Days for such purposes in relation to Dealer are London, United Kingdom and in relation to Counterparty are Shanghai, Hong Kong and New York;
  4. The provisions in this paragraph shall survive the termination of this Transaction.
  5. The following are the applicable email addresses.

Portfolio Data:	Dealer: portfolio.reconciliation@gs.com
	Counterparty: chao.wang10@nio.com
Notice of discrepancy:	Dealer: portfolio.reconciliation@gs.com

Counterparty: chao.wang10@nio.com

Dispute Notice:

Dealer: portfolio.reconciliation@gs.com

Counterparty: chao.wang10@nio.com

- (ee) NFC Representation Protocol. (i) 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 Confirmation as if each party were an Adhering Party under the terms of the NFC Representation Protocol. In respect of the Attachment to the Protocol, (A) the definition of “Adherence Letter” shall be deemed to be deleted and references to “Adherence Letter” shall be deemed to be to this Section 9(ee) (and references to “the relevant Adherence Letter” and “its Adherence Letter” shall be read accordingly), (B) references to “adheres to the Protocol” shall be deemed to be “enters into this Confirmation”, (C) references to “Covered Master Agreement” shall be deemed to be references to this Confirmation (and each “Covered Master Agreement” shall be read accordingly), and (D) references to “Implementation Date” shall be deemed to be references to the date of this Confirmation. (ii) Counterparty confirms that it enters into this Confirmation as a party making the NFC Representation (as such term is defined in the NFC Representation Protocol). Counterparty shall promptly notify Dealer of any change to its status as a party making the NFC Representation.
- (ff) 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**”):
1. 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
  2. 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 such information becoming available to the public or recipients in a jurisdiction which may have a different level of protection for personal data from that of the relevant party’s home jurisdiction.

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 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.

Please confirm that the foregoing correctly sets forth the terms of our agreement by executing this Confirmation and returning it to Dealer.

Very truly yours,

**GOLDMAN SACHS INTERNATIONAL**

By:           /s/ Authorized Signatory          

Authorized Signatory

Name:





January 30, 2019

To: **NIO Inc.**  
Building 20, No. 56 AnTuo Road, Jiading District  
Shanghai, 201804  
People's Republic of China  
Attention: Louis T. Hsieh, Chief Financial Officer  
Telephone No.: +86 (21) 6908 3306  
Facsimile No.: +86 (21) 3913 0192

From: Credit Suisse Capital LLC  
c/o Credit Suisse Securities (USA) LLC  
Eleven Madison Avenue  
New York, NY 10010

Re: Base Call Option Transaction

The purpose of this letter agreement (this "**Confirmation**") is to confirm the terms and conditions of the call option transaction entered into between Credit Suisse Capital LLC ("**Dealer**") and NIO Inc. ("**Counterparty**") as of the Trade Date specified below (the "**Transaction**"). This letter agreement constitutes a "Confirmation" as referred to in the ISDA Master Agreement specified below. Each party further agrees that this Confirmation together with the Agreement evidence a complete binding agreement between Counterparty and Dealer as to the subject matter and terms of the Transaction to which this Confirmation relates, and shall supersede all prior or contemporaneous written or oral communications with respect thereto.

The definitions and provisions contained in the 2002 ISDA Equity Derivatives Definitions (the "**Equity Definitions**"), as published by the International Swaps and Derivatives Association, Inc. ("**ISDA**") are incorporated into this Confirmation. In the event of any inconsistency between the Equity Definitions and this Confirmation, this Confirmation shall govern. Certain defined terms used herein are based on terms that are defined in the Offering Memorandum dated January 30, 2019 (the "**Offering Memorandum**") relating to the 4.50% Convertible Senior Notes due 2024 (as originally issued by Counterparty, the "**Convertible Notes**" and each USD 1,000 principal amount of Convertible Notes, a "**Convertible Note**") issued by Counterparty in an aggregate initial principal amount of USD 650,000,000 (as increased by up to an aggregate principal amount of USD 100,000,000 if and to the extent that the Initial Purchasers (as defined herein) exercise their option to purchase additional Convertible Notes pursuant to the Purchase Agreement (as defined herein)) pursuant to an Indenture to be dated February 4, 2019 between Counterparty and The Bank of New York Mellon, as trustee (the "**Indenture**"). In the event of any inconsistency between the terms defined in the Offering Memorandum, the Indenture and this Confirmation, this Confirmation shall govern. The parties acknowledge that this Confirmation is entered into on the date hereof with the understanding that (i) definitions set forth in the Indenture which are also defined herein by reference to the Indenture and (ii) sections of the Indenture that are referred to herein will conform to the descriptions thereof in the Offering Memorandum. If any such definitions in the Indenture or any such sections of the Indenture differ from the descriptions thereof in the Offering Memorandum, the descriptions thereof in the Offering Memorandum will govern for purposes of this Confirmation. The parties further acknowledge that the Indenture section numbers used herein are based on the draft of the Indenture last reviewed by Dealer as of the date of this Confirmation, and if any such section numbers are changed in the Indenture as executed, the parties will amend this Confirmation in good faith to preserve the intent of the parties. Subject to the foregoing, references to the Indenture herein are references to the Indenture as in effect on the date of its execution, and if the Indenture is amended or supplemented following such date (other than any amendment or supplement (x) pursuant to Section 10.01(i) of the Indenture that, as determined by the Calculation Agent, conforms the Indenture to the description of Convertible Notes in the Offering Memorandum, and (y) pursuant to Section 14.07(a) of the Indenture, subject, in the case of this clause (y), to the second paragraph under "Method of Adjustment" in Section 3), any such amendment or supplement will be disregarded for purposes of this Confirmation (other than as provided in Section 9(i)(iii) below) unless the parties agree otherwise in writing. For the avoidance of doubt, adjustments pursuant to any Dilution Adjustment Provision shall not constitute amendment, modification, supplement, or waiver in respect of any term of the Indenture or the Convertible Notes for any purpose under this paragraph and under Section 9(i)(iii).

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

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1. This Confirmation evidences a complete and binding agreement between Dealer and Counterparty as to the terms of the Transaction to which this Confirmation relates. This Confirmation shall supplement, form a part of, and be subject to an agreement in the form of the 2002 ISDA Master Agreement (the “**Agreement**”) as if Dealer and Counterparty had executed an agreement in such form (but without any Schedule except for (i) the election of the laws of the State of New York as the governing law (without reference to choice of law doctrine) and (ii) the agreement of the parties hereto that, following the payment of the Premium and the delivery to Dealer of the opinions of counsel as required pursuant to Section 9(a), the condition precedent in Section 2(a)(iii) of the Agreement shall not apply to a payment or delivery owing by Dealer to Counterparty (it being understood that such condition precedent will continue to apply and this clause (ii) will have no effect with respect to a Potential Event of Default, Event of Default and/or Early Termination Date arising under, or with respect to, Section 5(a)(ii) or 5(a)(iv) of the Agreement)) on the Trade Date.

In the event of any inconsistency between provisions of the Agreement and this Confirmation, this Confirmation will prevail for the purpose of the Transaction to which this Confirmation relates. The parties hereby agree that no transaction other than the Transaction to which this Confirmation relates shall be governed by the Agreement. If there exists any ISDA Master Agreement between Dealer and Counterparty or any confirmation or other agreement between Dealer and Counterparty pursuant to which an ISDA Master Agreement is deemed to exist between Dealer and Counterparty, then notwithstanding anything to the contrary in such ISDA Master Agreement, such confirmation or agreement or any other agreement to which Dealer and Counterparty are parties, the Transaction shall not be considered a Transaction under, or otherwise governed by, such existing or deemed ISDA Master Agreement.

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

General Terms.

Trade Date:	January 30, 2019
Effective Date:	The Trade Date.
Option Style:	“Modified American”, as described under “Procedures for Exercise” below
Option Type:	Call
Buyer:	Counterparty
Seller:	Dealer
Shares:	The American Depositary Shares of Counterparty issued or deemed issued under the Deposit Agreement (as defined below) (Symbol: “NIO”), each representing as of the date hereof one Underlying Share.
Underlying Shares:	The Class A ordinary shares of Counterparty, nominal value USD \$0.00025 per Underlying Share.
Number of Options:	650,000. For the avoidance of doubt, the Number of Options shall be reduced by any Options exercised by Counterparty. In no event will the Number of Options be less than zero.
Underlying Shares Issuer:	Counterparty
Applicable Percentage:	30%
Option Entitlement:	A number equal to the product of the Applicable Percentage and 105.1359.

Strike Price: USD 9.5115  
Cap Price: USD 14.9200  
Premium: USD 22,776,000  
Premium Payment Date: February 4, 2019  
Exchange: The New York Stock Exchange  
Related Exchange(s): All Exchanges  
Excluded Provisions: Section 14.04(h) and Section 14.03 of the Indenture.

Procedures for Exercise.

Expiration Time: The Valuation Time  
Expiration Date: February 1, 2024, subject to earlier exercise.  
Multiple Exercise: Applicable, as described under “Automatic Exercise” below.  
Automatic Exercise: Notwithstanding Section 3.4 of the Equity Definitions, all Options then outstanding as of 5:00 p.m. New York City time on the Expiration Date will be deemed to be automatically exercised; *provided* that, for the avoidance of doubt, no such automatic exercise pursuant to this paragraph will occur if the Relevant Price for each Valid Day during the applicable Settlement Averaging Period is less than or equal to the Strike Price.  
Notwithstanding the foregoing, in no event shall the number of Options that are exercised or deemed exercised hereunder exceed the Number of Options.  
Valuation Time: At the close of trading of the regular trading session on the Exchange; *provided* that if the principal trading session is extended, the Calculation Agent shall determine the Valuation Time in its reasonable discretion.  
Market Disruption Event: Section 6.3(a) of the Equity Definitions is hereby replaced in its entirety by the following:  
“‘Market Disruption Event’ means, in respect of a Share, (i) a failure by the primary United States national or regional securities exchange or market on which the Shares are 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 Valid Day for the Shares 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 Shares or in any options contracts or futures contracts relating to the Shares.”

Settlement Terms.

Settlement Method Election:

Applicable; *provided* that (i) Section 7.1 of the Equity Definitions is hereby amended by deleting the word “Physical” in the sixth line thereof and replacing it with the words “Net Share”; and (ii) as of such notice delivery date, Counterparty shall be deemed to have made the following representations:

(A) Counterparty is not aware of any material non-public information with respect to Counterparty, the Underlying Shares Issuer (if other than Counterparty), the Underlying Shares or the Shares;

(B) Counterparty is electing Cash Settlement in good faith and not as part of a plan or scheme to evade compliance with the U.S. federal securities laws; Counterparty is not electing Cash Settlement to create actual or apparent trading activity in the Shares and/or Underlying Shares (or any security convertible into or exchangeable for the Shares and/or Underlying Shares) or to raise or depress or otherwise manipulate the price of the Shares and/or Underlying Shares (or any security convertible into or exchangeable for the Shares and/or Underlying Shares) or otherwise in violation of the Exchange Act; and Counterparty has not entered into or altered any hedging transaction relating to the Shares or the Underlying Shares corresponding to or offsetting the Transaction;

(C) such election and performance of its obligations under this Confirmation do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets; and

(D) any transaction that Dealer makes with respect to the Shares and/or the Underlying Shares during the period beginning at the time that Counterparty delivers such notice and ending at the close of business on the final day of the Settlement Averaging Period shall be made by Dealer at Dealer's sole discretion for Dealer's own account and Counterparty shall not have, and shall not attempt to exercise, any influence over how, when, whether or at what price Dealer effects such transactions, including, without limitation, the prices paid or received by Dealer per Share or Underlying Share pursuant to such transactions, or whether such transactions are made on any securities exchange or privately.

Default Settlement Method:	Net Share Settlement
Settlement Method Election Date:	The third Scheduled Trading Day immediately preceding the first Scheduled Valid Day of the Settlement Averaging Period.
Net Share Settlement:	Dealer will deliver to Counterparty, on the relevant Settlement Date, a number of Shares equal to the Net Shares in respect of any Option exercised or deemed exercised hereunder. In no event will the Net Shares be less than zero.
Net Shares:	In respect of any Option exercised or deemed exercised, a number of Shares equal to the sum of the quotients, for each Valid Day during the Settlement Averaging Period for such Option, of (i) (A) the Daily Option Value for such Valid Day, <i>divided by</i> (B) the Relevant Price on such Valid Day, <i>divided by</i> (ii) the number of Valid Days in the Settlement Averaging Period.  Dealer will pay cash in lieu of delivering any fractional Shares to be delivered with respect to any Net Shares valued at the Relevant Price for the last Valid Day of the Settlement Averaging Period.
Cash Settlement:	If Cash Settlement is applicable to any Option exercised or deemed exercised hereunder, in lieu of Section 8.1 of the Equity Definitions, Dealer will pay to Counterparty, on the relevant Settlement Date for each such Option, an amount of cash (the “ <b>Cash Settlement Amount</b> ”) equal to the sum, for each Valid Day during the Settlement Averaging Period for such Option, of (i) the Daily Option Value for such Valid Day, <i>divided by</i> (ii) the number of Valid Days in the Settlement Averaging Period.
Daily Option Value:	For any Valid Day, an amount equal to (i) the Option Entitlement on such Valid Day, <i>multiplied by</i> (ii) (A) the lesser of the Relevant Price on such Valid Day and the Cap Price, <i>less</i> (B) the Strike Price on such Valid Day; <i>provided</i> that if the calculation contained in clause (ii) above results in a negative number, the Daily Option Value for such Valid Day shall be deemed to be zero. In no event will the Daily Option Value be less than zero.
Valid Day:	A day on which (i) there is no Market Disruption Event and (ii) trading in the Shares generally occurs on the Exchange or, if the Shares are not then listed on the Exchange, on the principal other United States national or regional securities exchange on which the Shares are then listed or, if the Shares are not then listed on a United States national or regional securities exchange, on the principal other market on which the Shares are then listed or admitted for trading. If the Shares are not so listed or admitted for trading, “Valid Day” means a Business Day.
Scheduled Valid Day:	A day that is scheduled to be a Valid Day on the principal United States national or regional securities exchange or market on which the Shares are listed or admitted for trading. If the Shares are not so listed or admitted for trading, “Scheduled Valid Day” means a Business Day.

Business Day:	Any day other than a Saturday, a Sunday or a day on which the Federal Reserve Bank of New York is authorized or required by law or executive order to close or be closed.
Relevant Price:	On any Valid Day, the per Share volume-weighted average price as displayed under the heading “Bloomberg VWAP” on Bloomberg page “NIO <equity> AQR” (or its equivalent successor if such page is not available) in respect of the period from the scheduled opening time of the Exchange to the Scheduled Closing Time of the Exchange on such Valid Day (or if such volume-weighted average price is unavailable at such time, the market value of one Share on such Valid Day, as determined by the Calculation Agent using, if practicable, a volume-weighted average method). The Relevant Price will be determined without regard to after-hours trading or any other trading outside of the regular trading session trading hours.
Settlement Averaging Period:	For any Option being exercised hereunder, the 40 consecutive Valid Days commencing on, and including, the 41st Scheduled Valid Day immediately prior to the Expiration Date.
Settlement Date:	For any Option, the second Business Day immediately following the final Valid Day of the Settlement Averaging Period for such Option.
Settlement Currency:	USD
Other Applicable Provisions:	The provisions of Sections 9.1(c), 9.8, 9.9 and 9.11 of the Equity Definitions will be applicable, except that all references in such provisions to “Physically-settled” shall be read as references to “Net Share Settled”. “Net Share Settled” in relation to any Option means that Net Share Settlement is applicable to that Option.
Representation and Agreement:	Notwithstanding anything to the contrary in the Equity Definitions (including, but not limited to, Section 9.11 thereof), the parties acknowledge that (i) any Shares delivered to Counterparty shall be, upon delivery, subject to restrictions and limitations arising from Counterparty’s status as issuer of the Underlying Shares under applicable securities laws, (ii) Dealer may deliver any Shares required to be delivered hereunder in certificated form or restricted book-entry form, in each case, in lieu of delivery through the Clearance System and (iii) any Shares delivered to Counterparty may be “restricted securities” (as defined in Rule 144 under the Securities Act of 1933, as amended (the “ <b>Securities Act</b> ”)).

3. **Additional Terms applicable to the Transaction.**

Adjustments applicable to the Transaction:

Potential Adjustment Events:

Notwithstanding Section 11.2(e) of the Equity Definitions (which Section shall not apply for the purposes of the Transaction, except as provided in Section 9(y) below), a “Potential Adjustment Event” means an occurrence of any event or condition, as set forth in any Dilution Adjustment Provision, that requires an adjustment to be made under the Indenture to the “Conversion Rate” or the composition of a “unit of Reference Property” or to any “Last Reported Sale Price” (each as defined in the Indenture). For the avoidance of doubt, Dealer shall not have any delivery or payment obligation hereunder, and no adjustment shall be made to the terms of the Transaction, on account of (x) any distribution of cash, property or securities by Counterparty to holders of the Convertible Notes (upon conversion or otherwise) or (y) any other transaction in which holders of the Convertible Notes participate, in each case, in lieu of an adjustment under the Indenture of the type referred to in the immediately preceding sentence (including, without limitation, pursuant to the fourth sentence of the first paragraph of Section 14.04(c) of the Indenture or the fourth sentence of Section 14.04(d) of the Indenture).

Method of Adjustment:

Calculation Agent Adjustment, which means that, notwithstanding Section 11.2(c) of the Equity Definitions, (which Section shall not apply for the purposes of the Transaction, except as provided in Section 9(y) below) upon any Potential Adjustment Event, the Calculation Agent shall make an adjustment to any one or more of the Strike Price, Number of Options, Option Entitlement and any other variable relevant to the exercise, settlement or payment for the Transaction corresponding to the adjustment required to be made pursuant to the Indenture.

Notwithstanding the foregoing and “Consequences of Merger Events / Tender Offers” below:

- (i) if the Calculation Agent in good faith disagrees with any adjustment to the Convertible Notes that involves an exercise of discretion by Counterparty or its board of directors (including, without limitation, pursuant to Section 14.05 of the Indenture, Section 14.07 of the Indenture or any supplemental indenture entered into thereunder or in connection with any proportional adjustment or the determination of the fair value of any securities, property, rights or other assets), then in each such case, the Calculation Agent will determine in good faith and in a commercially reasonable manner, the adjustment to be made to any one or more of the Strike Price, Number of Options, Option Entitlement and any other variable relevant to the exercise, settlement or payment for the Transaction in a commercially reasonable manner; *provided* that, notwithstanding the foregoing, if any Potential Adjustment Event occurs during the Settlement Averaging Period but no adjustment was made to any Convertible Note under the Indenture because the relevant Holder (as such term is defined in the Indenture) was deemed to be a record owner of the underlying Shares on the related Conversion Date (as such term is defined in the Indenture), then the Calculation Agent shall make a commercially reasonable adjustment, as determined by it, to the terms hereof in order to account for such Potential Adjustment Event;

- (ii) in connection with any Potential Adjustment Event as a result of an event or condition set forth in Section 14.04(b) of the Indenture or Section 14.04(c) of the Indenture where, in either case, the period for determining “Y” (as such term is used in Section 14.04(b) of the Indenture) or “SP<sub>0</sub>” (as such term is used in Section 14.04(c) of the Indenture), as the case may be, begins before Counterparty has publicly announced the event or condition giving rise to such Potential Adjustment Event, then the Calculation Agent shall have the right to adjust any variable relevant to the exercise, settlement or payment for the Transaction as appropriate to reflect the costs (to account solely for hedging mismatches and market losses) and expenses incurred by Dealer in connection with its hedging activities, with such adjustments made assuming that Dealer maintains commercially reasonable hedge positions, as a result of such event or condition not having been publicly announced prior to the beginning of such period; and
- (iii) if any Potential Adjustment Event is declared and (a) the event or condition giving rise to such Potential Adjustment Event is subsequently amended, modified, cancelled or abandoned, (b) the “Conversion Rate” (as defined in the Indenture) is otherwise not adjusted at the time or in the manner contemplated by the relevant Dilution Adjustment Provision based on such declaration or (c) the “Conversion Rate” (as defined in the Indenture) is adjusted as a result of such Potential Adjustment Event and subsequently re-adjusted (each of clauses (a), (b) and (c), a “**Potential Adjustment Event Change**”) then, in each case, the Calculation Agent shall have the right to adjust any variable relevant to the exercise, settlement or payment for the Transaction as appropriate to reflect the costs (to account solely for hedging mismatches and market losses) and expenses incurred by Dealer in connection with its hedging activities, with such adjustments made assuming that Dealer maintains commercially reasonable hedge positions, as a result of such Potential Adjustment Event Change.



Dilution Adjustment Provisions:	Sections 14.04(a), (b), (c), (d) and (e) and Section 14.05 of the Indenture.
Extraordinary Events applicable to the Transaction:	
Merger Events:	Applicable; <i>provided</i> that notwithstanding Section 12.1(b) of the Equity Definitions, a “Merger Event” means the occurrence of any event or condition set forth in the definition of “Merger Event” in Section 14.07 of the Indenture.
Tender Offers:	Applicable; <i>provided</i> that notwithstanding Section 12.1(d) of the Equity Definitions, a “Tender Offer” means the occurrence of any event or condition set forth in Section 14.04(e) of the Indenture.
Consequences of Merger Events/ Tender Offers:	Notwithstanding Section 12.2 and Section 12.3 of the Equity Definitions, upon the occurrence of a Merger Event or a Tender Offer, the Calculation Agent shall make a corresponding adjustment in respect of any adjustment under the Indenture to any one or more of the nature of the Shares (in the case of a Merger Event), Strike Price, Number of Options, Option Entitlement and any other variable relevant to the exercise, settlement or payment for the Transaction to the extent that an analogous adjustment is required to be made pursuant to the Indenture in respect of such Merger Event or Tender Offer, subject to the second paragraph under “Method of Adjustment”; <i>provided, however</i> , that such adjustment shall be made without regard to any adjustment to the Conversion Rate pursuant to any Excluded Provision; <i>provided further</i> that if, with respect to a Merger Event or a Tender Offer, (i) the consideration for the Shares or Underlying Shares, as applicable, includes (or, at the option of a holder of Shares, or Underlying Shares, as applicable, may include) shares of an entity or person that is not (1) a corporation or an entity that is treated as a corporation for U.S. federal income tax purposes or (2) organized under the laws of the Cayman Islands or (ii) the Counterparty to the Transaction following such Merger Event or Tender Offer will not be a corporation or an entity that is treated as a corporation for U.S. federal income tax purposes organized under the laws of the Cayman Islands, and/or will not be the Underlying Shares Issuer then, in any case, Cancellation and Payment (Calculation Agent Determination) may apply at Dealer’s commercially reasonable election; <i>provided further</i> that, for the avoidance of doubt, adjustments shall be made pursuant to the provisions set forth above regardless of whether any Merger Event or Tender Offer gives rise to an Early Conversion (as defined below).

Consequences of Announcement Events:

If an Announcement Event occurs, the Calculation Agent shall determine the cumulative economic effect of such Announcement Event (it being understood that the Calculation Agent may take into account any changes to volatility in connection with such Announcement Event within a commercially reasonable (as determined by the Calculation Agent) period of time prior to or after such Announcement Event) on the Transaction on the earliest to occur of (i) the date on which the transaction described in such Announcement Event (as amended) is consummated or otherwise results in a Merger Date or Tender Offer Date, as applicable, (ii) the Valuation Date, or (iii) any earlier date of termination or cancellation with respect to any Option, and if the Calculation Agent determines that such economic effect is material and that making the relevant adjustment would be commercially reasonable, the Calculation Agent shall adjust the Cap Price to reflect such economic effect (but, for the avoidance of doubt, taking into account, and without duplication of, any other adjustment made pursuant to this “Consequences of Announcement Events” provision or pursuant to the provisions opposite the captions “Method of Adjustment”, “Consequences of Merger Events” or “Consequences of Tender Offers” above in respect of the transaction or intention giving rise to such Announcement Event).

Announcement Event:

(i) The public announcement by (x) any entity of any transaction or event that the Calculation Agent determines is reasonably likely to be completed and that, if completed, would constitute a Merger Event or Tender Offer (it being understood that Calculation Agent may make such determination by reference to the impact of such announcement on the market for the Shares and/or Underlying Shares or options relating to the Shares and/or Underlying Shares), (y) Underlying Shares Issuer or any subsidiary thereof of any potential acquisition or disposal by the Underlying Shares Issuer and/or its subsidiaries where the aggregate consideration payable or receivable exceeds 25% of the market capitalization of the Underlying Shares Issuer as of the date of such announcement (a “**Transformative Transaction**”) or (z) Underlying Shares Issuer, any subsidiary of the Underlying Shares Issuer or any Valid Third Party Entity of the intention to enter into a Merger Event or Tender Offer or a Transformative Transaction (in the case of a Valid Third-Party Entity, that the Calculation Agent determines is a bona fide intention, it being understood that the Calculation Agent may make such determination by reference to the impact of such announcement on the market for the Shares and/or Underlying Shares or options relating to the Shares and/or Underlying Shares), (ii) the public announcement by the Underlying Shares Issuer of an intention to solicit or enter into, or to explore strategic alternatives or other similar undertaking that may include, a Merger Event or Tender Offer or a Transformative Transaction or (iii) any subsequent public announcement by any entity of a change to a transaction or intention that is the subject of an announcement of the type described in clause (i) or (ii) of this sentence (including, without limitation, a new announcement, whether or not by the same party, relating to such a transaction or intention or the announcement of a withdrawal from, or the abandonment or discontinuation of, such a transaction or intention), as determined by the Calculation Agent. For the avoidance of doubt, the occurrence of an Announcement Event with respect to any transaction or intention shall not preclude the occurrence of a later Announcement Event with respect to such transaction or intention. For purposes of this definition of “Announcement Event,” (A) “Merger Event” shall mean such term as defined under Section 12.1(b) of the Equity Definitions (but, for the avoidance of doubt, the remainder of the definition of “Merger Event” in Section 12.1(b) of the Equity Definitions following the definition of “Reverse Merger” therein shall be disregarded) and (B) “Tender Offer” shall mean such term as defined under Section 12.1(d) of the Equity Definitions; *provided* that Section 12.1(d) of the Equity Definitions is hereby amended by replacing “10%” with “20%” in the third line thereof.

Valid Third Party Entity:

In respect of any transaction or intention, any third party (i) whose announcement is reasonably determined by the Calculation Agent to have had a material economic effect on the Shares and/or Underlying Shares and/or options on the Shares and/or Underlying Shares and (ii) that is the entity, or an affiliate of the entity, that is, or would be, a party to the relevant transaction or event.

Nationalization, Insolvency or Delisting:

Cancellation and Payment (Calculation Agent Determination); *provided* that, in addition to the provisions of Section 12.6(a)(iii) of the Equity Definitions, it will also constitute a Delisting if the 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 of the New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or their respective successors), such exchange or quotation system shall thereafter be deemed to be the Exchange.

Section 12.1 of the Equity Definitions is hereby amended by deleting subsection (v) thereof in its entirety and replacing it with “(v) in the case of an Insolvency, the date of (A) the institution of a proceeding or presentation of a petition or the passing of a resolution (or the convening of a meeting to pass a resolution or the proposing of a written resolution) (in each case the occurrence of which shall be deemed its announcement) that leads to an Insolvency within the meaning of subsection (A) of the definition thereof, (B) the first public announcement of the institution of a proceeding or presentation of a petition or passing of a resolution (or other analogous procedure in any jurisdiction) that leads to the Insolvency or (C) the occurrence of any of the events specified in Section 5(a)(vii)(1) through (9) of the ISDA Master Agreement with respect to that Issuer”.

Section 12.6(a)(ii) of the Equity Definitions is hereby amended by (1) inserting “(A)” after “means” in the first line thereof and replacing “(A)” and “(B)” in the third and fourth lines thereof with “(1)” and “(2)” respectively, (2) deleting from the fourth line thereof the word “or” after the word “official” and inserting a comma therefor, (3) inserting at the end of renumbered subsection (2) thereof the following wording, “or, under the laws of the Cayman Islands, any other jurisdiction or otherwise, any other impediment to or restriction on the transfer of any Share arises or becomes applicable including, without limitation, where (x) any transfer of a Share or alteration of the status of the members of the Issuer would be void unless a court of the Cayman Islands or any other jurisdiction orders otherwise or (y) any transfer of a Share not being a transfer with the sanction of a liquidator, and any alteration in the status of the Issuer’s members, would be void” and (4) deleting the semi-colon at the end of renumbered subsection (2) thereof and inserting the following words therefor “or (B) at Dealer’s option, the occurrence of any of the events specified in Section 5(a)(vii) (1) through (9) of the ISDA Master Agreement with respect to that Issuer.”

Additional Disruption Events:

Change in Law:

Applicable; *provided* that Section 12.9(a)(ii) of the Equity Definitions is hereby amended by (i) replacing the phrase “the interpretation” in the third line thereof with the phrase “, or public announcement of, the formal or informal interpretation”, (ii) replacing the word “Shares” where it appears in clause (X) thereof with the words “Hedge Position,” (iii) replacing the parenthetical beginning after the word “regulation” in the second line thereof with the words “(including, for the avoidance of doubt and without limitation, (x) any tax law or (y) adoption, effectiveness or promulgation of new regulations authorized or mandated by existing statute)” and (iv) adding the words “*provided* that, in the case of clause (Y) hereof where such determination is based on Dealer’s policies and procedures, such policies and procedures have been adopted by Dealer in good faith and are generally applicable in similar situations and applied in a non-discriminatory manner;” after the semi-colon in the last line thereof.

Failure to Deliver:	Applicable
Hedging Disruption:	Applicable; <i>provided</i> that:  Section 12.9(b)(iii) of the Equity Definitions is hereby amended by inserting in the third line thereof, after the words “to terminate the Transaction”, the words “or a portion of the Transaction affected by such Hedging Disruption”.
Increased Cost of Hedging:	Not Applicable
Hedging Party:	For all applicable Additional Disruption Events, Dealer.
Determining Party:	For all applicable Extraordinary Events, Dealer; <i>provided</i> that when making any determination or calculation as “Determining Party,” Dealer shall make such determinations or calculations in good faith and in a commercially reasonable manner.  Following any determination or calculation by Determining Party hereunder, the Determining Party will, upon written request from Counterparty, promptly (but in any event within five Scheduled Trading Days) provide to Counterparty a report (in a commonly used file format for the storage and manipulation of financial data) displaying in reasonable detail the basis for such determination or calculation (including any assumptions used in making such determination or calculation), it being understood that in no event will the Determining Party be obligated to share with Counterparty any proprietary or confidential data or information or any proprietary or confidential models used by it in making such determination or calculation or any information that is subject to an obligation not to disclose such information.
Non-Reliance:	Applicable
Agreements and Acknowledgments Regarding Hedging Activities:	Applicable
Additional Acknowledgments:	Applicable
<b>4. <u>Calculation Agent.</u></b>	Dealer; <i>provided</i> that, following the occurrence and during the continuance of an Event of Default under Section 5(a)(vii) of the Agreement with respect to which Dealer is the Defaulting Party, Counterparty shall have the right to designate a nationally recognized independent equity derivatives 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 adjustment, determination or calculation by the Calculation Agent hereunder, the Calculation Agent will, upon written request from Counterparty, promptly (but in any event within five Scheduled Trading Days) provide to Counterparty by email a report (in a commonly used file format for the storage and manipulation of financial data) displaying in reasonable detail the basis for such adjustment, determination or calculation (including any assumptions used in making such adjustment, determination or calculation), it being understood that in no event will the Calculation Agent be obligated to share with Counterparty any proprietary or confidential data or information or any proprietary or confidential models used by it in making such adjustment, determination or calculation or any information that is subject to an obligation not to disclose such information.

All calculations and determinations by the Calculation Agent shall be made in good faith and in a commercially reasonable manner.

**5. Account Details.**

- (a) Account for payments to Counterparty:

To be provided.

Account for delivery of Shares to Counterparty:

To be provided.

- (b) Account for payments to Dealer:

To be provided.

Account for delivery of Shares from Dealer:

To be provided.

**6. Offices.**

- (a) The Office of Counterparty for the Transaction is: Inapplicable, Counterparty is not a Multibranch Party.

- (b) The Office of Dealer for the Transaction is: New York

**7. Notices.**

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

NIO Inc.  
Building 20, No. 56 AnTuo Road, Jiading District  
Shanghai, 201804  
People's Republic of China  
Attention: Louis T. Hsieh, Chief Financial Officer  
Telephone No.: +86 (21) 6908 3306  
Facsimile No.: +86 (21) 3913 0192

with a copy to:

Nick Wang  
VP of Finance  
Telephone No.: +86 (21) 6908-2002  
Email: Nick.Wang@nio.com

with a copy to:

Fang Liu  
General Counsel  
Telephone No.: +86 (21) 6908-2277  
Email: Fang.Liu@nio.com

with a copy to:

Sabrina Shi  
Senior Corporate Counsel  
Telephone No.: +86 (21) 6908-3391  
Email: Danting.Shi@nio.com

(b) Address for notices or communications to Dealer:

Credit Suisse Capital LLC  
c/o Credit Suisse Securities (USA) LLC  
Eleven Madison Avenue  
New York, NY 10010  
Attention: Tucker Martin  
Telephone: (212) 325-9182  
Facsimile: (212) 743-3661  
Email: tucker.martin@credit-suisse.com

With a copy to:  
Credit Suisse Securities (USA) LLC  
1 Madison Avenue, 9th Floor  
New York, New York 10010  
Attn: Senior Legal Officer  
Telephone: (212) 538-2616  
Facsimile: (212) 325-8036  
Email: stephen.gray@credit-suisse.com

For payments and deliveries:  
Facsimile No.: (212) 325 8175  
Telephone No.: (212) 325 8678 / (212) 325 3213

For all other communications:

Telephone: (212) 538-6040  
Facsimile: (917) 326-8603

**8. Representations and Warranties of Counterparty.**

Each of the representations and warranties of Counterparty set forth in Section 2 of the Purchase Agreement (the “**Purchase Agreement**”) dated as of January 30, 2019, between Counterparty and Credit Suisse Securities (USA) LLC, J.P. Morgan Securities LLC, Morgan Stanley & Co. LLC, and Goldman Sachs (Asia) LLC, as representatives of the Initial Purchasers party thereto (the “**Initial Purchasers**”), are true and correct and are hereby deemed to be repeated to Dealer as if set forth herein. Counterparty hereby further represents and warrants to Dealer on the date hereof and on and as of the Premium Payment Date, that:

- (a) Counterparty (i) is duly incorporated and validly existing as an exempted company with limited liability under the laws of the Cayman Islands and is in good standing under such laws, and (ii) has all necessary corporate power and authority to execute, deliver and perform its obligations and exercise its rights in respect of the Transaction; such execution, delivery, performance and exercise have been duly authorized by all necessary corporate action on Counterparty's part; and this Confirmation has been duly and validly executed and delivered by Counterparty and constitutes its valid and binding obligation, enforceable against Counterparty in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity) and except that rights to indemnification and contribution hereunder may be limited by federal or state securities laws or public policy relating thereto.
- (b) Neither the execution and delivery of this Confirmation nor the incurrence or performance of obligations nor the exercise of rights of Counterparty hereunder will conflict with or result in a breach of the memorandum and articles of association or by-laws (or any equivalent documents) of Counterparty, or any applicable law or regulation, or any order, writ, injunction or decree of any court or governmental authority or agency, or any agreement or instrument to which Counterparty or any of its subsidiaries is a party or by which Counterparty or any of its subsidiaries is bound or to which Counterparty or any of its subsidiaries is subject, or constitute a default under, or result in the creation of any lien under, any such agreement or instrument.
- (c) No consent, approval, authorization, or order of, or filing with, any governmental agency or body or any court is required in connection with the execution, delivery or performance by Counterparty of this Confirmation, except such as have been obtained or made and such as may be required under the Securities Act or state securities laws.
- (d) Counterparty is not and, after consummation of the transactions contemplated hereby, will not be required to register as an "investment company" as such term is defined in the Investment Company Act of 1940, as amended.
- (e) Counterparty is an "eligible contract participant" (as such term is defined in Section 1a(18) of the Commodity Exchange Act, as amended, other than a person that is an eligible contract participant under Section 1a(18)(C) of the Commodity Exchange Act).
- (f) Counterparty is not, on the date hereof, aware of any material non-public information with respect to Counterparty, the Underlying Shares Issuer (if other than Counterparty), the Underlying Shares or the Shares.
- (g) To the knowledge of Counterparty, no state or local (including any non-U.S. jurisdiction's) law, rule, regulation or regulatory order applicable to the Shares and/or Underlying 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 and/or Underlying Shares (except for filings of Form 13F, Schedule 13D or Schedule 13G under the Exchange Act); *provided* that Counterparty makes no representation or warranty regarding any such requirement that is applicable generally to the ownership of equity securities by Dealer or any of its affiliates solely as a result of it or any of such affiliates being a financial institution or broker-dealer.
- (h) Counterparty (A) is capable of evaluating investment risks independently, both in general and with regard to all transactions and investment strategies involving a security or securities; (B) will exercise independent judgment in evaluating the recommendations of any broker-dealer or its associated persons, unless it has otherwise notified the broker-dealer in writing; (C) has total assets of at least USD 50 million; and (D) is acting for its own account, and it has made its own independent decisions to enter into the Transaction and as to whether the Transaction is appropriate or proper for it (including as to any legal, regulatory, tax, accounting or economic consequences arising from the Transaction) based upon its own judgment and upon advice from such advisers as it has deemed necessary (including legal, financial and accounting advisors).



- (i) Counterparty as of and immediately after the Trade Date and the Premium Payment Date (x) is not, and shall not be after giving effect to the transactions contemplated hereby, “insolvent” (as such term is defined in Section 101(32) of the Bankruptcy Code, (y) would be able to purchase 100,536,150 Shares and the Underlying Shares represented by such number of Shares in compliance with the laws of the jurisdiction of Counterparty’s incorporation or organization, and (z), for the purposes of Cayman Islands law, is able to pay its debts.
- (j) Counterparty’s board of directors (the “**Board**”) has concluded that (A) the Transaction is suitable for Counterparty, for its commercial benefit and in its best interests, in light of its own investment objectives, financial condition and expertise and (B) the Transaction has been duly approved and authorized by the Board after due consideration by the Board of the foregoing matters and those referred to in subparagraph (h)(D) above.

**9. Other Provisions.**

- (a) *Deliverables.* Counterparty shall deliver to Dealer (A) an opinion of U.S. counsel and (B) an opinion of Cayman counsel, each dated as of the Premium Payment Date, with respect to, among other things, the matters set forth in Sections 8(a) through (c) of this Confirmation, it being understood that such opinions of counsel shall be limited to the federal laws of the United States and the laws of the State of New York (in the case of clause (A) above) and the laws Cayman Islands (in the case of clause (B) above) and may contain customary limitations, exceptions and qualifications for transactions of the same type as the Transaction. Delivery of such opinions to Dealer shall be a condition precedent for the purpose of Section 2(a)(iii) of the Agreement with respect to each obligation of Dealer under Section 2(a)(i) of the Agreement; (C) a resolution of the Board authorizing the Transaction; and (D) on or before the Premium Payment Date, a solvency certificate with respect to Counterparty signed by a member of the Board, the chief executive officer or the chief financial officer of the Counterparty certifying the solvency of Counterparty as of and immediately after the Premium Payment Date (after giving effect to Counterparty’s payment of amounts required to be paid by Counterparty on such date under the Transaction and the other transactions described under “Use of Proceeds” in the Offering Memorandum related to the offering of the Convertible Notes), which solvency certificate is reasonably satisfactory to Dealer.

- (b) Repurchase Notices. Counterparty shall, on or prior to the date that is one Scheduled Trading Day following any date on which Counterparty effects any repurchase of Shares and/or Underlying Shares, promptly give Dealer a written notice of such repurchase (a “**Repurchase Notice**”) on such day if following such repurchase, the number of outstanding Underlying Shares as determined on such day is (i) less than 727.2 million (in the case of the first such notice) or (ii) thereafter more than 37.8 million less than the number of Underlying Shares included in the immediately preceding Repurchase Notice; *provided* that Counterparty may provide Dealer advance notice on or prior to any such day including the maximum number of Shares and/or Underlying Shares that may be repurchased under a repurchase program entered into in reliance on Rule 10b5-1(c) and the approximate periods during which such repurchases may occur, to the extent it expects that repurchases effected on such day may result in an obligation to deliver a Repurchase Notice (and in such case, any such advance notice shall be deemed a Repurchase Notice to the maximum extent of repurchases set forth in such advance notice as if Counterparty had executed such repurchases). Counterparty agrees that, if Counterparty ceases to qualify as a “foreign private issuer” as defined in Rule 3b-4 under the Exchange Act or the Shares or Underlying Shares, as applicable, otherwise become subject to the requirements of Section 16 of the Exchange Act, Counterparty will indemnify and hold harmless Dealer and its affiliates and their respective officers, directors, employees, affiliates, advisors, agents and controlling persons (each, an “**Indemnified Person**”) from and against any and all losses (including losses relating to Dealer’s hedging activities as a consequence of becoming, or of the risk of becoming, a Section 16 “insider”, including without limitation, any forbearance from hedging activities or cessation of hedging activities and any losses in connection therewith with respect to the Transaction), claims, damages, judgments, liabilities and reasonable and documented out-of-pocket expenses (including reasonable attorney’s fees of one outside counsel in each relevant jurisdiction), joint or several, which an Indemnified Person may become subject to, in each case, as a result of Counterparty’s failure to provide Dealer with a Repurchase Notice on the day and in the manner specified in this paragraph, and to reimburse, within 30 days, upon written request, each of such Indemnified Persons for any reasonable legal or other out-of-pocket expenses (to the extent supported by invoices or other documentation setting forth in reasonable detail such expenses) incurred in connection with investigating, preparing for, providing testimony or other evidence in connection with or defending any of the foregoing. If any suit, action, proceeding (including any governmental or regulatory investigation), claim or demand shall be brought or asserted against the Indemnified Person as a result of Counterparty’s failure to provide Dealer with a Repurchase Notice in accordance with this paragraph, such Indemnified Person shall promptly notify Counterparty in writing, and Counterparty, upon request of the Indemnified Person, shall retain counsel reasonably satisfactory to the Indemnified Person to represent the Indemnified Person and any others Counterparty may designate in such proceeding and shall pay the reasonable fees and expenses of such counsel related to such proceeding. Counterparty shall not be liable to the extent that the Indemnified Person fails to notify Counterparty within a commercially reasonable period of time after any action is commenced against it in respect of which indemnity may be sought hereunder. In addition, Counterparty shall not have liability for any settlement of any such proceeding contemplated by this paragraph that is effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, Counterparty agrees to indemnify any Indemnified Person from and against any loss or liability by reason of such settlement or judgment. Counterparty shall not, without the prior written consent of the Indemnified Person, effect any settlement of any pending or threatened proceeding contemplated by this paragraph in respect of which any Indemnified Person is or could have been a party and indemnity could have been sought hereunder by such Indemnified Person, unless such settlement includes an unconditional release of such Indemnified Person from all liability on claims that are the subject matter of such proceeding on terms reasonably satisfactory to such Indemnified Person. If the indemnification provided for in this paragraph is unavailable to an Indemnified Person or insufficient in respect of any losses, claims, damages or liabilities referred to therein, then Counterparty hereunder, in lieu of indemnifying such Indemnified Person thereunder, shall contribute to the amount paid or payable by such Indemnified Person as a result of such losses, claims, damages or liabilities. The remedies provided for in this paragraph (b) are not exclusive and shall not limit any rights or remedies which may otherwise be available to any Indemnified Person at law or in equity. The indemnity and contribution agreements contained in this paragraph shall remain operative and in full force and effect regardless of the termination of the Transaction.
- (c) Regulation M. Counterparty is not on the Trade Date engaged in a distribution, as such term is used in Regulation M under the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), of any securities of Counterparty, other than a distribution meeting the requirements of the exception set forth in Rules 101(b)(10) and 102(b)(7) of Regulation M. Counterparty shall not, until the second Scheduled Trading Day immediately following the Effective Date, engage in any such distribution.
- (d) No Manipulation. Counterparty is not entering into the Transaction to create actual or apparent trading activity in the Shares and/or Underlying Shares (or any security convertible into or exchangeable for the Shares and/or Underlying Shares) or to raise or depress or otherwise manipulate the price of the Shares and/or Underlying Shares (or any security convertible into or exchangeable for the Shares and/or Underlying Shares) or otherwise in violation of the Exchange Act.

(e) Transfer or Assignment.

- (i) Counterparty shall have the right to transfer or assign all or any of its rights and obligations hereunder with respect to all, or any, of the Options hereunder (such Options, the “**Transfer Options**”) with the prior written consent of Dealer, such consent not to be unreasonably withheld; *provided* that withholding of such consent by Dealer shall not be considered unreasonable if such transfer or assignment does not meet any of the following conditions:
- (A) With respect to any Transfer Options, Counterparty shall not be released from its notice and indemnification obligations pursuant to Section 9(b) of this Confirmation;
  - (B) Such transfer or assignment shall be effected on terms, including any reasonable undertakings by such third party (including, but not limited to, an undertaking with respect to compliance with applicable securities laws in a manner that, in the reasonable judgment of Dealer, will not expose Dealer to material risks under applicable securities laws) and execution of any documentation and delivery of legal opinions with respect to securities laws and other matters by such third party and Counterparty, as are reasonably requested and reasonably satisfactory to Dealer;
  - (C) Under the applicable law effective on the date of such transfer or assignment, (1) Dealer will not, as a result of such transfer or assignment, be required to pay the transferee or assignee on any payment date or delivery date an amount or a number of Shares, as applicable, under Section 2(d)(i)(4) of the Agreement greater than the amount or the number of Shares, as applicable, that Dealer would have been required to pay to Counterparty in the absence of such transfer or assignment and (2) Dealer will not, as a result of such transfer or assignment, receive from the transferee or assignee on any payment date an amount under Section 2(d)(i)(4) of the Agreement that is less than the amount that Dealer would have received from Counterparty in the absence of such transfer or assignment;
  - (D) No Event of Default, Potential Event of Default or Termination Event will occur as a result of such transfer and assignment;
  - (E) Counterparty shall cause the transferee to make such tax representations and to provide such tax documentation as may be reasonably requested by Dealer to permit Dealer to determine that results described in clauses (C) and (D) will not occur upon or after such transfer and assignment, including but not limited to providing tax documentation specified in Section 9(bb) of this Confirmation and making the tax representations specified in Section 9(aa) of this Confirmation on or prior to such transfer and at the other times specified in such Sections; and
  - (F) Counterparty shall be responsible for all reasonable and documented costs and expenses, including reasonable counsel fees, incurred by Dealer in connection with such transfer or assignment.

- (ii) Dealer may, without Counterparty's consent, transfer or assign all or any part of its rights or obligations under the Transaction to any affiliate of Dealer (1) that has a long-term issuer rating that is equal to or better than Dealer's credit rating at the time of such transfer or assignment, or (2) whose obligations hereunder will be guaranteed, pursuant to the terms of a customary guarantee in a form used by Dealer generally for similar transactions, by Dealer; *provided* that, in the case of any such transfer or assignment, under the applicable law effective on the date of such transfer or assignment, (I) Counterparty will not, as a result of such transfer or assignment, be required to pay the transferee or assignee on any payment date an amount under Section 2(d)(i)(4) of the Agreement greater than the amount that Counterparty would have been required to pay to Dealer in the absence of such transfer or assignment; (II) Counterparty will not, as a result of such transfer or assignment, receive from the transferee or assignee on any payment or delivery date an amount or a number of Shares, as applicable, under Section 2(d)(i)(4) of the Agreement that is less than the amount or the number of Shares that Counterparty would have received from Dealer in the absence of such transfer or assignment; (III) Dealer shall cause the transferee or assignee to make such tax representations and to provide such tax documentation as may be reasonably requested by Counterparty to permit Counterparty to determine that events described in clauses (I) and (II) of this proviso will not occur upon or after such transfer or assignment; and (IV) no Event of Default, Potential Event of Default or Termination Event will occur as a result of such transfer and assignment. If at any time at which (A) the Section 13 Percentage exceeds 8.5%, (B) the Option Equity Percentage exceeds 14.5%, or (C) the Share Amount exceeds the Applicable Share Limit (if any applies) (any such condition described in clauses (A), (B) or (C), an "**Excess Ownership Position**"), Dealer is unable after using its commercially reasonable efforts to effect a transfer or assignment of Options to a third party on pricing terms reasonably acceptable to Dealer and within a time period reasonably acceptable to Dealer such that no Excess Ownership Position exists, then Dealer may designate any Exchange Business Day as an Early Termination Date with respect to a portion of the Transaction (the "**Terminated Portion**"), to the extent necessary so that following such partial termination no Excess Ownership Position exists. In the event that Dealer so designates an Early Termination Date with respect to a portion of the Transaction, a payment shall be made pursuant to Section 6 of the Agreement as if (1) an Early Termination Date had been designated in respect of a Transaction having terms identical to the Transaction and a Number of Options equal to the number of Options underlying the Terminated Portion, (2) Counterparty were the sole Affected Party with respect to such partial termination and (3) the Terminated Portion were the sole Affected Transaction (and, for the avoidance of doubt, the provisions of Section 9(m) shall apply to any amount that is payable by Dealer to Counterparty pursuant to this sentence as if Counterparty was not the Affected Party). The "**Section 13 Percentage**" as of any day is the fraction, expressed as a percentage, (A) the numerator of which is the number of Underlying Shares that Dealer and any of its affiliates or any other person subject to aggregation with Dealer for purposes of the "beneficial ownership" test under Section 13 of the Exchange Act, or any "group" (within the meaning of Section 13 of the Exchange Act) of which Dealer is or may be deemed to be a part beneficially owns (within the meaning of Section 13 of the Exchange Act), without duplication, on such day (or, to the extent that for any reason the equivalent calculation under Section 16 of the Exchange Act applies with respect to the Shares or Underlying Shares, as applicable, and the rules and regulations thereunder results in a higher number, such higher number) and (B) the denominator of which is the number of Underlying Shares outstanding on such day. The "**Option Equity Percentage**" as of any day is the fraction, expressed as a percentage, (A) the numerator of which is the sum of (1) the product of (x) the Number of Options (y) the Option Entitlement and (z) the number of Underlying Shares represented by one Share and (2) the aggregate number of Underlying Shares underlying any other call option transaction sold by Dealer to Counterparty, and (B) the denominator of which is the number of Underlying Shares outstanding. The "**Share Amount**" as of any day is the number of Underlying Shares that Dealer and any person whose ownership position would be aggregated with that of Dealer (Dealer or any such person, a "**Dealer Person**") under any law, rule, regulation, regulatory order or organizational documents or contracts of Counterparty that are, in each case, applicable to ownership of Underlying Shares ("**Applicable Restrictions**"), owns, beneficially owns, constructively owns, controls, holds the power to vote or otherwise meets a relevant definition of ownership under any Applicable Restriction, as determined by Dealer in its reasonable discretion. The "**Applicable Share Limit**" means a number of Underlying Shares equal to (A) the minimum number of Underlying Shares that could give rise to reporting or registration obligations (except for any filing requirements on Form 13F, Schedule 13D or Schedule 13G under the Exchange Act, in each case, as in effect on the Trade Date) or other requirements (including obtaining prior approval from any person or entity) of a Dealer Person, or could result in an adverse effect on a Dealer Person, under any Applicable Restriction, as determined by Dealer in good faith and in its commercially reasonable discretion, *minus* (B) 1% of the number of Underlying Shares outstanding.

- (iii) Notwithstanding any other provision in this Confirmation to the contrary requiring or allowing Dealer to purchase, sell, receive or deliver any Shares, Underlying Shares or other securities, or make or receive any payment in cash, to or from Counterparty, Dealer may designate any of its affiliates to purchase, sell, receive or deliver such Shares, Underlying Shares or other securities, or to make or receive such payment in cash, and otherwise to perform Dealer's obligations in respect of the Transaction and any such designee may assume such obligations. Dealer shall be discharged of its obligations to Counterparty to the extent of any such performance.
- (f) Staggered Settlement. If upon advice of counsel with respect to applicable legal and regulatory requirements, including any requirements relating to Dealer's hedging activities hereunder, Dealer reasonably determines that it would not be practicable or advisable to deliver, or to acquire Shares to deliver, any or all of the Shares to be delivered by Dealer on any Settlement Date for the Transaction, Dealer may, by notice to Counterparty on or prior to any Settlement Date (a "**Nominal Settlement Date**"), elect to deliver the Shares on two or more dates (each, a "**Staggered Settlement Date**") as follows:
  - (i) in such notice, Dealer will specify to Counterparty the related Staggered Settlement Dates (the first of which will be such Nominal Settlement Date and the last of which will be no later than the twentieth (20<sup>th</sup>) Exchange Business Day following such Nominal Settlement Date) and the number of Shares that it will deliver on each Staggered Settlement Date;
  - (ii) the aggregate number of Shares that Dealer will deliver to Counterparty hereunder on all such Staggered Settlement Dates will equal the number of Shares that Dealer would otherwise be required to deliver on such Nominal Settlement Date; and
  - (iii) if the Net Share Settlement terms set forth above were to apply on the Nominal Settlement Date, then the Net Share Settlement terms will apply on each Staggered Settlement Date, except that the Shares otherwise deliverable on such Nominal Settlement Date will be allocated among such Staggered Settlement Dates as specified by Dealer in the notice referred to in clause (i) above.
- (g) Role of Agent. As a broker-dealer registered with the U.S. Securities and Exchange Commission ("SEC"), Credit Suisse Securities (USA) LLC in its capacity as Agent will be responsible for (i) effecting the Transaction, (ii) issuing all required confirmations and statements to Dealer and Counterparty, (iii) maintaining books and records relating to the Transaction as required by Rules 17a-3 and 17a-4 under the Exchange Act and (iv) unless otherwise requested by Counterparty, receiving, delivering, and safeguarding Counterparty's funds and any securities in connection with each Transaction, in compliance with Rule 15c3-3 under the Exchange Act.

Credit Suisse Securities (USA) LLC is acting in connection with the Transaction solely in its capacity as Agent for Dealer and Counterparty pursuant to instructions from Dealer and Counterparty. Credit Suisse Securities (USA) LLC shall have no responsibility or personal liability to Dealer or Counterparty arising from any failure by Dealer or Counterparty to pay or perform any obligations hereunder, or to monitor or enforce compliance by Dealer or Counterparty with any obligation hereunder, including without limitation, any obligations to maintain collateral. Each of Dealer and Counterparty agrees to proceed solely against the other to collect or recover any securities or monies owing to it in connection with or as a result of the Transaction. Credit Suisse Securities (USA) LLC shall otherwise have no liability in respect of the Transaction, except for its gross negligence or willful misconduct in performing its duties as Agent.

Any and all notices, demands, or communications of any kind relating to this Transaction between Dealer and Counterparty shall be transmitted exclusively through Agent at the following address:

Credit Suisse Capital LLC  
c/o Credit Suisse Securities (USA) LLC  
Eleven Madison Avenue  
New York, NY 10010  
Attention: Tucker Martin  
Telephone: (212) 325-9182  
Facsimile: (212) 743-3661  
Email: tucker.martin@credit-suisse.com

With a copy to:

Credit Suisse Securities (USA) LLC  
1 Madison Avenue, 9th Floor  
New York, New York 10010  
Attn: Senior Legal Officer  
Telephone: (212) 538-2616  
Facsimile: (212) 325-8036  
Email: stephen.gray@credit-suisse.com

For payments and deliveries:

Facsimile No.: (212) 325 8175  
Telephone No.: (212) 325 8678 / (212) 325 3213

For all other communications:

Telephone: (212) 538-6040  
Facsimile: (917) 326-8603

The date and time of the Transaction evidenced hereby will be furnished by the Agent to Dealer and Counterparty upon written request.

The Agent will furnish to Counterparty upon written request a statement as to the source and amount of any remuneration received or to be received by the Agent in connection with the Transaction evidenced hereby.

Dealer is not a member of the SIPC (Securities Investor Protection Corporation).

Dealer represents that it is an "OTC derivatives dealer" as such term is defined in the Exchange Act and is an affiliate of a broker-dealer that is registered with and fully-regulated by the SEC, Credit Suisse Securities (USA) LLC.

- (h) QFC Stay Provisions. To the extent that the QFC Stay Rules are applicable hereto, then the parties agree that (i) to the extent that prior to the date hereof both parties have adhered to the 2018 ISDA U.S. Resolution Stay Protocol (the “**Protocol**”), the terms of the Protocol are incorporated into and form a part of this Confirmation, and for such purposes this 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; (ii) to the extent that prior to the date hereof the parties have executed a separate agreement the effect of which is to amend the qualified financial contracts between them to conform with the requirements of the QFC Stay Rules (the “Bilateral Agreement”), the terms of the Bilateral Agreement are incorporated into and form a part of this Confirmation and each party shall be deemed to have the status of “Covered Entity” or “Counterparty Entity” (or other similar term) as applicable to it under the Bilateral Agreement; or (iii) if clause (i) and clause (ii) do not apply, the terms of Section 1 and Section 2 and the related defined terms (together, the “**Bilateral Terms**”) of the form of bilateral template entitled “Full-Length Omnibus (for use between U.S. G-SIBs and Corporate Groups)” published by ISDA on November 2, 2018 (currently available on the 2018 ISDA U.S. Resolution Stay Protocol page at [www.isda.org](http://www.isda.org) and, a copy of which is available upon request), the effect of which is to amend the qualified financial contracts between the parties thereto to conform with the requirements of the QFC Stay Rules, are hereby incorporated into and form a part of this Confirmation, and for such purposes this Confirmation shall be deemed a “Covered Agreement,” Dealer shall be deemed a “Covered Entity” and Counterparty shall be deemed a “Counterparty Entity.” In the event that, after the date of this Confirmation, both parties hereto become adhering parties to the Protocol, the terms of the Protocol will replace the terms of this paragraph. In the event of any inconsistencies between this Confirmation and the terms of the Protocol, the Bilateral Agreement or the Bilateral Terms (each, the “**QFC Stay Terms**”), as applicable, the QFC Stay Terms will govern. Terms used in this paragraph without definition shall have the meanings assigned to them under the QFC Stay Rules. For purposes of this paragraph, references to “this 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**” means 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 FDIC 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.

(i) Additional Termination Events.

- (i) Notwithstanding anything to the contrary in this Confirmation, upon any conversion of a Convertible Note occurring prior to the 45th Scheduled Valid Day immediately prior to the Expiration Date (any such conversion, an “**Early Conversion**”) in respect of which a Conversion Notice that is effective as to Counterparty has been delivered by the relevant converting Holder:
- (A) Counterparty may, within two Scheduled Trading Days of the date on which the Holder (as such term is defined in the Indenture) of such Convertible Note satisfies all of the requirements for conversion thereof as set forth in Section 14.02 of the Indenture (the “**Conversion Date**”) for such Early Conversion, provide written notice (an “**Early Conversion Notice**”) to Dealer specifying the number of Convertible Notes surrendered for conversion on such Conversion Date (such Convertible Notes, the “**Affected Convertible Notes**”), and the giving of such Early Conversion Notice shall constitute an Additional Termination Event as provided in this clause (i) (*provided* that Counterparty acknowledges its responsibilities under applicable securities laws, and in particular Section 9 and Section 10(b) of the Exchange Act and the rules and regulations thereunder, in respect of any Early Conversion Notice);
- (B) upon receipt of any such Early Conversion Notice, Dealer shall designate an Exchange Business Day as an Early Termination Date (which Exchange Business Day shall be no earlier than one Scheduled Trading Day following the Conversion Date for such Early Conversion) with respect to the portion of the Transaction corresponding to a number of Options (the “**Affected Number of Options**”) equal to the lesser of (x) the number of Affected Convertible Notes and (y) the Number of Options as of the Conversion Date for such Early Conversion;

- (C) any payment hereunder with respect to such termination shall be calculated pursuant to Section 6 of the Agreement as if (x) an Early Termination Date had been designated in respect of a Transaction having terms identical to the Transaction and a Number of Options equal to the Affected Number of Options, (y) Counterparty were the sole Affected Party with respect to such Additional Termination Event and (z) the terminated portion of the Transaction were the sole Affected Transaction;
  - (D) for the avoidance of doubt, in determining the amount payable in respect of such Affected Transaction pursuant to Section 6 of the Agreement, the Calculation Agent shall assume that (x) the relevant Early Conversion and any conversions, adjustments, agreements, payments, deliveries or acquisitions by or on behalf of Counterparty leading thereto had not occurred, (y) no adjustments to the Conversion Rate have occurred pursuant to any Excluded Provision and (z) the corresponding Convertible Notes remain outstanding; and
  - (E) the Transaction shall remain in full force and effect, except that, as of the Conversion Date for such Early Conversion, the Number of Options shall be reduced by the Affected Number of Options.
- (ii) Notwithstanding anything to the contrary in this Confirmation if an event of default with respect to Counterparty occurs under the terms of the Convertible Notes as set forth in Section 6.01 of the Indenture and such event of default results in the Convertible Notes being accelerated and declared due and payable, then such event of default shall constitute an Additional Termination Event applicable to the Transaction and, with respect to such Additional Termination Event, (A) Counterparty shall be deemed to be the sole Affected Party, (B) the Transaction shall be the sole Affected Transaction and (C) Dealer shall be the party entitled to designate an Early Termination Date pursuant to Section 6(b) of the Agreement (which Early Termination Date shall be on or as promptly as reasonably practicable after Dealer becomes aware of the occurrence of such acceleration).
  - (iii) Notwithstanding anything to the contrary in this Confirmation, the occurrence of an Amendment Event shall constitute an Additional Termination Event applicable to the Transaction and, with respect to such Additional Termination Event, (A) Counterparty shall be deemed to be the sole Affected Party, (B) the Transaction shall be the sole Affected Transaction and (C) Dealer shall be the party entitled to designate an Early Termination Date pursuant to Section 6(b) of the Agreement. “**Amendment Event**” means that Counterparty amends, modifies, supplements, waives or obtains a waiver in respect of any term of the Indenture or the Convertible Notes governing the principal amount, coupon, maturity, repurchase obligation of Counterparty, tax redemption right of Counterparty, any term relating to conversion of the Convertible Notes (including changes to the conversion rate, conversion rate adjustment provisions, conversion settlement dates or conversion conditions), or any term that would require consent of the holders of not less than 100% of the principal amount of the Convertible Notes to amend (other than, in each case, any amendment or supplement (x) pursuant to Section 10.01(i) of the Indenture that, as determined by the Calculation Agent, conforms the Indenture to the description of Convertible Notes in the Offering Memorandum or (y) pursuant to Section 14.07 of the Indenture), in each case, without the consent of Dealer.



- (iv) Promptly (but in any event within five Scheduled Trading Days) following any Repurchase Event (as defined below), Counterparty shall notify Dealer of such Repurchase Event and the aggregate principal amount of Convertible Notes subject to such Repurchase Event (any such notice, a “**Convertible Notes Repurchase Notice**”); *provided* that any such Convertible Notes Repurchase Notice shall contain a repetition by Counterparty of the representation set forth in Section 8(f) as of the date of such Convertible Notes Repurchase Notice and an acknowledgment by Counterparty of its responsibilities under applicable securities laws, and in particular Section 9 and Section 10(b) of the Exchange Act and the rules and regulations thereunder, in respect of such Repurchase Event and the delivery of such Convertible Notes Repurchase Notice. The receipt by Dealer from Counterparty of any Convertible Notes Repurchase Notice shall constitute an Additional Termination Event as provided in this Section 9(i)(iv). Upon receipt of any such Convertible Notes Repurchase Notice, Dealer shall designate an Exchange Business Day following receipt of such Convertible Notes Repurchase Notice (which Exchange Business Day shall be on or as promptly as reasonably practicable following the settlement date for such Repurchase Event) as an Early Termination Date with respect to the portion of the Transaction corresponding to a number of Options (the “**Repurchase Options**”) equal to the lesser of (A) the aggregate principal amount of such Convertible Notes specified in such Convertible Notes Repurchase Notice, *divided by* USD 1,000 and (B) the Number of Options as of the date Dealer designates such Early Termination Date and, as of such date, the Number of Options shall be reduced by the number of Repurchase Options. Any payment hereunder with respect to such termination (the “**Repurchase Unwind Payment**”) shall be calculated pursuant to Section 6 of the Agreement as if (1) an Early Termination Date had been designated in respect of a Transaction having terms identical to the Transaction and a Number of Options equal to the number of Repurchase Options, (2) Counterparty were the sole Affected Party with respect to such Additional Termination Event and (3) the terminated portion of the Transaction were the sole Affected Transaction (and, for the avoidance of doubt, in determining the amount payable in respect of such Affected Transaction pursuant to Section 6 of the Agreement, Dealer shall assume that (x) the relevant Repurchase Event and any conversions, adjustments, agreements, payments, deliveries or acquisitions by or on behalf of Counterparty leading thereto had not occurred, (y) no adjustments to the Conversion Rate have occurred pursuant to any Excluded Provisions and (z) the corresponding Convertible Notes remain outstanding). “**Repurchase Event**” means that (i) any Convertible Notes are repurchased or redeemed (whether pursuant to Section 15.01 of the Indenture, Section 15.02 of the Indenture, Section 16.01 of the Indenture or otherwise) by Counterparty or any of its subsidiaries, (ii) any Convertible Notes are delivered to Counterparty in exchange for delivery of any property or assets of Counterparty or any of its subsidiaries (howsoever described), including for the avoidance of doubt shares or American depositary shares of Issuer and/or cash, (iii) any principal of any of the Convertible Notes is repaid prior to the final maturity date of the Convertible Notes (other than upon acceleration of the Convertible Notes described in Section 9(i)(ii)), or (iv) any Convertible Notes are exchanged by or for the benefit of the holders thereof for any other securities of Counterparty or any of its affiliates (or any other property, or any combination thereof) pursuant to any exchange offer or similar transaction; *provided* that any conversion of Convertible Notes pursuant to the terms of the Indenture shall not constitute a Repurchase Event. Counterparty acknowledges and agrees that if an Additional Termination Event has occurred under this Section 9(i)(iv) that any related Convertible Notes subject to a Repurchase Event will be promptly cancelled under the applicable provisions of the Indenture and, in any event, will be deemed to be cancelled and disregarded and no longer outstanding for all purposes hereunder.

- (j) Amendments to Equity Definitions.
- (i) Solely in respect of adjustments to the Cap Price pursuant to Section 9(y), Section 11.2(e)(vii) of the Equity Definitions is hereby amended by deleting the words “that may have a diluting or concentrative effect on the theoretical value of the relevant Shares” and replacing them with the words “that is the result of a corporate event involving the Underlying Shares Issuer or its securities that has a material economic effect on the Shares and/or the Underlying Shares or options on the Shares and/or the Underlying Shares; *provided* that such event is not based on (a) an observable market, other than the market for the Underlying Shares Issuer’s own stock or (b) an observable index, other than an index calculated and measured solely by reference to the Underlying Shares Issuer’s own operations.”
- (ii) Section 12.6(a)(ii) of the Equity Definitions is hereby amended by (1) inserting “(1)” immediately following the word “means” in the first line thereof and (2) inserting immediately prior to the semi-colon at the end of subsection (B) thereof the following words: “or (2) the occurrence of any of the events specified in Section 5(a)(vii)(1) through (9) of the ISDA Master Agreement with respect to that Issuer” *provided* that the period for dismissal, discharge, stay or restraint therein shall be increased from “within 15 days” to “within 30 days.”
- (iii) Section 12.9(b)(i) of the Equity Definitions is hereby amended by (1) replacing “either party may elect” with “Dealer may elect” and (2) replacing “notice to the other party” with “notice to Counterparty” in the first sentence of such section.
- (k) Setoff. Neither party shall have the right to set off any obligation that it may have to the other party under the Transaction against any obligation such other party may have to it, whether arising under the Agreement, this Confirmation or any other agreement between the parties hereto, by operation of law or otherwise and each party hereby waives any such right to setoff.
- (l) Adjustments. For the avoidance of doubt, whenever the Calculation Agent is called upon to make an adjustment pursuant to the terms of this Confirmation or the Equity Definitions to take into account the effect of an event (other than on adjustments made by reference to the Indenture), the Calculation Agent shall make such adjustment in a commercially reasonable manner by reference to the effect of such event on Dealer, assuming that Dealer maintains a commercially reasonable hedge position
- (m) Alternative Calculations and Payment on Early Termination and on Certain Extraordinary Events. If (a) an Early Termination Date (whether as a result of an Event of Default or a Termination Event) occurs or is designated with respect to the Transaction or (b) the Transaction is cancelled or terminated upon the occurrence of an Extraordinary Event, and if Dealer would owe any amount to Counterparty pursuant to Section 6(d)(ii) of the Agreement or any Cancellation Amount pursuant to Article 12 of the Equity Definitions (any such amount, a “**Payment Obligation**”), Counterparty may request Dealer to satisfy the Payment Obligation by the Share Termination Alternative (as defined below) (except as a result of (i) a Nationalization, Insolvency or Merger Event in which the consideration to be paid to holders of Shares and/or Underlying Shares, as applicable, consists solely of cash, (ii) an Announcement Event, Merger Event or Tender Offer that is within Counterparty’s control, or (iii) an Event of Default in which Counterparty is the Defaulting Party or a Termination Event in which Counterparty is the Affected Party other than an Event of Default of the type described in Section 5(a)(iii), (v), (vi), (vii) or (viii) of the Agreement or a Termination Event of the type described in Section 5(b) of the Agreement, in each case that resulted from an event or events outside Counterparty’s control), as long as Counterparty remakes the representation set forth in Section 8(f) as of the date of such election, and Counterparty shall give irrevocable telephonic notice to Dealer, confirmed in writing within one Scheduled Trading Day, no later than 12:00 p.m. (New York City time) on the date of the Announcement Event, Merger Date, Tender Offer Date, Announcement Date (in the case of a Nationalization, Insolvency or Delisting), Early Termination Date or date of cancellation, as applicable; *provided* that if Counterparty does not validly request Dealer to satisfy the Payment Obligation by the Share Termination Alternative, Dealer shall have the right, in its sole discretion, to satisfy its Payment Obligation by the Share Termination Alternative, notwithstanding Counterparty’s failure to elect or election to the contrary. If such election is not made, then the provisions of Section 12.7 or Section 12.9 of the Equity Definitions, or the provisions of Section 6(d)(ii) and Section 6(e) of the Agreement, as the case may be, shall apply.

Share Termination Alternative:	If applicable, Dealer shall deliver to Counterparty the Share Termination Delivery Property on, or as promptly as commercially reasonably practicable thereafter, the date when the relevant Payment Obligation would otherwise be due pursuant to Section 12.7 or 12.9 of the Equity Definitions or Section 6(d)(ii) and 6(e) of the Agreement, as applicable, in satisfaction of such Payment Obligation in the manner reasonably requested by Counterparty free of payment.
Share Termination Delivery Property:	A number of Share Termination Delivery Units, as calculated by the Calculation Agent, equal to the Payment Obligation divided by the Share Termination Unit Price. The Calculation Agent shall adjust the Share Termination Delivery Property by replacing any fractional portion of a security therein with an amount of cash equal to the value of such fractional security based on the values used to calculate the Share Termination Unit Price.
Share Termination Unit Price:	The value of property contained in one Share Termination Delivery Unit, as determined by the Calculation Agent in its discretion by commercially reasonable means and notified by the Calculation Agent to Dealer at the time of notification of the Payment Obligation.
Share Termination Delivery Unit:	One Share or, if the Shares or Underlying Shares, as applicable, have changed into cash or any other property or the right to receive cash or any other property as the result of a Nationalization, Insolvency or Merger Event (any such cash or other property, the “ <b>Exchange Property</b> ”), a unit consisting of the type and amount of such Exchange Property received by a holder of one Share or Underlying Share, as applicable (without consideration of any requirement to pay cash or other consideration in lieu of fractional amounts of any securities) in such Nationalization, Insolvency or Merger Event, as determined by the Calculation Agent. If such Nationalization, Insolvency, or Merger Event involves a choice of Exchange Property to be received by holders, such holders shall be deemed to have elected to receive the maximum possible amount of cash.
Failure to Deliver:	Applicable

Other applicable provisions:

If Share Termination Alternative is applicable, the provisions of Sections 9.8, 9.9 and 9.11 (as modified above) of the Equity Definitions and the provisions set forth opposite the caption “Representation and Agreement” in Section 2 will be applicable, except that all references in such provisions to “Physically-settled” shall be read as references to “Share Termination Settled” and all references to “Shares” shall be read as references to “Share Termination Delivery Units”. “Share Termination Settled” in relation to the Transaction means that Share Termination Alternative is applicable to the Transaction.

- (n) Waiver of Jury Trial. Each party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any suit, action or proceeding relating to the Transaction. Each party (i) certifies that no representative, agent or attorney of either party has represented, expressly or otherwise, that such other party would not, in the event of such a suit, action or proceeding, seek to enforce the foregoing waiver and (ii) acknowledges that it and the other party have been induced to enter into the Transaction, as applicable, by, among other things, the mutual waivers and certifications provided herein.
- (o) Registration. Counterparty hereby agrees that if, in the good faith reasonable judgment of Dealer, based on the advice of counsel, the Shares and/or Underlying Shares (“**Hedge Shares**”) acquired by Dealer for the purpose of commercially reasonably hedging its obligations pursuant to the Transaction cannot be sold in the public market by Dealer without registration under the Securities Act, Counterparty shall, at its election, either (i) in order to allow Dealer to sell the Hedge Shares in a registered offering, make available to Dealer an effective registration statement under the Securities Act and enter into an agreement, in form and substance reasonably satisfactory to Dealer, substantially in the form of an underwriting agreement customary for a registered secondary offering of a similar size in respect of a similar issuer; *provided, however*, that if Dealer, in its sole reasonable discretion, is not satisfied with access to due diligence materials, the results of its due diligence investigation, or the procedures and documentation for the registered offering referred to above, then clause (ii) or clause (iii) of this paragraph shall apply at the election of Counterparty, (ii) in order to allow Dealer to sell the Hedge Shares in a private placement, use commercially reasonable efforts to enter into a private placement agreement substantially similar to private placement purchase agreements customary for private placements of equity securities of a similar size in respect of a similar issuer, in form and substance satisfactory to Dealer (in which case, the Calculation Agent shall make any adjustments to the terms of the Transaction that are necessary, in its commercially reasonable judgment, to compensate Dealer for any commercially reasonable discount from the public market price of the Shares and/or Underlying Shares incurred on the sale of Hedge Shares in a private placement), or (iii) purchase the Hedge Shares from Dealer at the then-current market price on such Exchange Business Days, and in the amounts and at such time(s), reasonably requested by Dealer.
- (p) Tax Disclosure. Effective from the date of commencement of discussions concerning the Transaction, Counterparty and each of its employees, representatives, or other agents may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the Transaction and all materials of any kind (including opinions or other tax analyses) that are provided to Counterparty relating to such tax treatment and tax structure.
- (q) Right to Extend. Dealer may postpone or add, in whole or in part, any Valid Day or Valid Days during the Settlement Averaging Period or any other date of valuation, payment or delivery by Dealer, with respect to some or all of the Options hereunder, if Dealer reasonably determines, in the case of clause (i) below, in its commercially reasonable judgment or, in the case of clause (ii) below, based on advice of counsel, that such action is reasonably necessary or appropriate (i) to preserve Dealer’s commercially reasonable hedging or hedge unwind activity hereunder in light of existing liquidity conditions in the relevant market or (ii) to enable Dealer to effect transactions with respect to Shares and/or Underlying Shares in connection with its commercially reasonable hedging, hedge unwind or settlement activity hereunder in a manner that would, if Dealer were Counterparty or an affiliated purchaser of Counterparty, be in compliance with applicable legal, regulatory or self-regulatory requirements, or with related policies and procedures adopted by Dealer in good faith so long as such policies and procedures are generally applicable in similar situations and applied in a non-discriminatory manner); *provided* that no such Valid Day or other date of valuation, payment or delivery may be postponed or added more than 40 Valid Days after the original Valid Day or other date of valuation, payment or delivery, as the case may be.

- (r) Status of Claims in Bankruptcy. Dealer acknowledges and agrees that this Confirmation is not intended to convey to Dealer rights against Counterparty with respect to the Transaction that are senior to the claims of common or ordinary shareholders of Counterparty in any United States or Cayman Islands 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 the Transaction; *provided, further* that nothing herein shall limit or shall be deemed to limit Dealer's rights in respect of any transactions other than the Transaction.
- (s) Securities Contract; Swap Agreement. The parties hereto intend for (i) the Transaction to be a "securities contract" and a "swap agreement" as defined in the Bankruptcy Code (Title 11 of the United States Code) (the "**Bankruptcy Code**"), and the parties hereto to be entitled to the protections afforded by, among other Sections, Sections 362(b)(6), 362(b)(17), 546(e), 546(g), 555 and 560 of the Bankruptcy Code, (ii) a party's right to liquidate the Transaction and to exercise any other remedies upon the occurrence of any Event of Default under the Agreement with respect to the other party to constitute a "contractual right" as described in the Bankruptcy Code, and (iii) each payment and delivery of cash, securities or other property hereunder to constitute a "margin payment" or "settlement payment" and a "transfer" as defined in the Bankruptcy Code.
- (t) Notice of Certain Other Events. Counterparty covenants and agrees that:
- (i) promptly following the public announcement of the results of any election by the holders of Shares and/or Underlying Shares, as applicable, with respect to the consideration due upon consummation of any Merger Event, Counterparty shall give Dealer written notice of (x) the weighted average of the types and amounts of consideration that holders of Shares and/or Underlying Shares, as applicable, have elected to receive upon consummation of such Merger Event or (y) if no holders of Shares and/or Underlying Shares, as applicable, affirmatively make such election, the types and amounts of consideration actually received by holders of Shares and/or Underlying Shares, as applicable, (the date of such notification, the "**Consideration Notification Date**"); *provided* that in no event shall the Consideration Notification Date be later than the date on which such Merger Event is consummated;
  - (ii) (A) Counterparty shall give Dealer commercially reasonable advance (but in no event less than one Exchange Business Day) written notice of the section or sections of the Indenture and, if applicable, the formula therein, pursuant to which any adjustment will be made to the Convertible Notes in connection with any Potential Adjustment Event, Merger Event or Tender Offer and (B) promptly following any such adjustment, Counterparty shall give Dealer written notice of the details of such adjustment; and
  - (iii) Counterparty will provide a written notice to Dealer immediately upon becoming aware that Counterparty is not or will no longer be a "foreign private issuer," as such term is defined in Rule 3b-4 under the Exchange Act.
- (u) 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 Confirmation or the Agreement, as applicable, arising from a termination event, force majeure, illegality, increased costs, regulatory change or similar event under this Confirmation, the Equity Definitions incorporated herein, or the Agreement (including, but not limited to, rights arising from Change in Law, Hedging Disruption, an Excess Ownership Position, or Illegality (as defined in the Agreement)).

- (v) Agreements and Acknowledgements Regarding Hedging. Counterparty understands, acknowledges and agrees that: (A) at any time on and prior to the Expiration Date, Dealer and its affiliates may buy or sell Shares, Underlying Shares or other securities or buy or sell options or futures contracts or enter into swaps or other derivative securities in order to adjust its hedge position with respect to the Transaction; (B) Dealer and its affiliates also may be active in the market for Shares and/or Underlying Shares other than in connection with hedging activities in relation to the Transaction; (C) Dealer shall make its own determination as to whether, when or in what manner any hedging or market activities in securities of Issuer and/or Underlying Shares Issuer shall be conducted and shall do so in a manner that it deems appropriate to hedge its price and market risk with respect to the Relevant Prices; and (D) any market activities of Dealer and its affiliates with respect to Shares and/or Underlying Shares may affect the market price and volatility of Shares and/or Underlying Shares, as well as the Relevant Prices, each in a manner that may be adverse to Counterparty.
- (w) Early Unwind. In the event the sale of the “Underwritten Securities” (as defined in the Purchase Agreement) is not consummated with the Initial Purchasers for any reason, or Counterparty fails to deliver to Dealer opinions of counsel as required pursuant to Section 9(a), in each case by 5:00 p.m. (New York City time) on the Premium Payment Date, or such later date as agreed upon by the parties (the Premium Payment Date or such later date the “**Early Unwind Date**”), the Transaction shall automatically terminate (the “**Early Unwind**”), on the Early Unwind Date and (i) the Transaction and all of the respective rights and obligations of Dealer and Counterparty under the Transaction shall be cancelled and terminated and (ii) each party shall be released and discharged by the other party from and agrees not to make any claim against the other party with respect to any obligations or liabilities of the other party arising out of and to be performed in connection with the Transaction either prior to or after the Early Unwind Date. Each of Dealer and Counterparty represents and acknowledges to the other that, upon an Early Unwind, all obligations with respect to the Transaction shall be deemed fully and finally discharged.
- (x) Payment by Counterparty. In the event that, following payment of the Premium, (i) an Early Termination Date occurs or is designated with respect to the Transaction as a result of a Termination Event or an Event of Default (other than an Event of Default arising under Section 5(a)(ii) or 5(a)(iv) of the Agreement) and, as a result, Counterparty owes to Dealer an amount calculated under Section 6(e) of the Agreement, or (ii) Counterparty owes to Dealer, pursuant to Section 12.7 or Section 12.9 of the Equity Definitions, an amount calculated under Section 12.8 of the Equity Definitions, such amount shall be deemed to be zero.
- (y) Other Adjustments Pursuant to the Equity Definitions. Notwithstanding anything to the contrary in this Confirmation, solely for the purpose of adjusting the Cap Price, the terms “Potential Adjustment Event,” “Merger Event,” and “Tender Offer” shall each have the meanings assigned to such term in the Equity Definitions (as amended by Section 9(j)(i) or, if applicable, by the definition of “Announcement Event”), and upon the occurrence of a Merger Date, the occurrence of a Tender Offer Date, or declaration by Counterparty of the terms of any Potential Adjustment Event, respectively, as such terms are defined in the Equity Definitions, the Calculation Agent may, in its sole discretion, adjust the Cap Price to preserve the fair value of the Options; *provided* that in no event shall the Cap Price be less than the Strike Price; *provided further* that any adjustment to the Cap Price made pursuant to this Section 9(y) shall be made without duplication of any other adjustment hereunder (including, for the avoidance of doubt, adjustment made pursuant to the provisions opposite the captions “Method of Adjustment,” “Consequences of Merger Events/Tender Offers” and “Consequence of Announcement Events” in Section 3 above). For the avoidance of doubt, for purposes of this Section 9(y), Section 12.1(d) of the Equity Definitions is hereby amended by replacing “10%” with “20%” in the third line thereof.

- (z) Service of Process. Counterparty irrevocably appoints Law Debenture Corporate Services Inc. as its authorized agent upon which process may be served in any suit, action or proceeding relating to the Transaction, and agrees that service of process in any manner permitted by applicable law upon such agent shall be deemed in every respect effective service of process in any manner permitted by applicable law upon Counterparty in any such suit, action or proceeding. Counterparty further agrees to take any and all action as may be necessary to maintain such designation and appointment of such agent in full force and effect for a period of five and a half years from the date of this Confirmation. If for any reason such agent shall cease to be such agent for service of process, Counterparty shall forthwith appoint a new agent of recognized standing for service of process in the State of New York and deliver to Dealer a copy of the new agent's acceptance of that appointment within 10 days. Nothing herein shall affect the right of Dealer to serve process in any other manner permitted by law or to commence legal proceedings or otherwise proceed against Counterparty in any other court of competent jurisdiction.
- (aa) Taxes, Foreign Account Tax Compliance Act and HIRE Act. Counterparty is classified as a corporation for the U.S. federal income tax purposes. No income received or to be received under the Agreement will be effectively connected with the conduct of a trade or business by Counterparty in the United States. Counterparty is a "non-U.S. branch of a foreign person" as that term is used in Section 1.1441-4(a)(3) (ii) of the United States Treasury Regulations (the "**Regulations**"), and it is a "foreign person" as that term is used in Section 1.6041-4(a)(4) of the Regulations. The term "Indemnifiable Tax" as defined in Section 14 of the Agreement shall not include any U.S. federal withholding tax imposed or collected pursuant to Sections 1471 through 1474 of the U.S. Internal Revenue Code of 1986, as amended (the "**Code**"), any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b) of the Code, or any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code (a "**FATCA Withholding Tax**"). For the avoidance of doubt, a FATCA Withholding Tax is a Tax the deduction or withholding of which is required by applicable law for the purposes of Section 2(d) of the Agreement. The parties agree that the definitions and provisions contained in the ISDA 2015 Section 871(m) Protocol, as published by the International Swaps and Derivatives Association, Inc. and as may be amended, supplemented, replaced or superseded from time to time (the "**871(m) Protocol**") shall apply to the Agreement as if the parties had adhered to the 871(m) Protocol as of the Effective Date. If there is any inconsistency between this provision and a provision in any other agreement executed between the parties, this provision shall prevail unless such other agreement expressly overrides the provisions of the 871(m) Protocol. Each of Dealer and Counterparty shall provide to the other party tax forms and documents required to be delivered pursuant to Sections 1471(b) or Section 1472(b)(1) of the Code promptly upon request by the other party and any other tax forms and documents they are legally able to provide that are reasonably requested by the other party.
- (bb) U.S. Tax Forms. Without limiting the generality of the foregoing, Counterparty will provide a US Tax Form W-8BEN-E upon the execution of this Confirmation, promptly upon learning that any such tax form previously provided by it has become obsolete or incorrect and promptly upon reasonable demand by Dealer.
- (cc) Additional Definitions and Amendments to Equity Definitions.

(i) For the purposes of this Confirmation the following definitions will apply:

"**Depository**" means, in relation to the Shares, Deutsche Bank Trust Company Americas, or any successor thereto from time to time.

"**Deposit Agreement**" means, (i) that certain Deposit Agreement, dated as of September 11, 2018, by and among Underlying Shares Issuer, Depository and the holders and beneficial owners of the Shares and (ii) the other agreements or other instruments constituting the Shares, as from time to time amended or supplemented in accordance with their terms.

“**DS Amendment**” means, where specified as applicable to a definition or provision, that the following changes shall be made to such definition or provision: (a) all references to “Shares” shall be deleted and replaced with the words “Shares and/or the Underlying Shares, as appropriate”; and (b) all references to “Issuer” shall be deleted and replaced with the words “Issuer or Underlying Shares Issuer, as appropriate”.

“**Replacement DSs**” means depositary shares or receipts, other than the Shares, over the same Underlying Shares.

(ii) The following amendments shall be made to the Equity Definitions:

- (A) The definition of Potential Adjustment Event in Section 11.2(e) of the Equity Definitions shall be amended as follows:
- (i) the DS Amendment shall be applicable, provided that an event under Section 11.2(e)(i) to (vii) of the Equity Definitions in respect of the Underlying Shares shall not constitute a Potential Adjustment Event unless, in the commercially reasonable opinion of the Calculation Agent, such event has a material effect on the theoretical value of the Shares; and
  - (ii) (A) ‘or’ shall be deleted where it appears at the end of subsection (vi);
    - (B) ‘.’ shall be deleted where it appears at the end of subsection (vii) and replaced with ‘;’;
    - (C) the following shall be inserted as subsection (viii): “(viii) the making of any amendment or supplement to the terms of the Deposit Agreement and/or the Shares; or”; and
    - (D) the following shall be inserted as provision (ix): “(ix) any other event as a result of which the Shares represent fewer or more Underlying Shares than, and/or any property or assets in addition to, or as a whole or partial replacement of, in each case, the number of Underlying Shares represented by the Shares prior to such event.”
- (B) In making any adjustment following any Potential Adjustment Event, the Calculation Agent shall have reference to (to the extent necessary or appropriate among other factors) any adjustment made by the Depositary under the Deposit Agreement, any fees and/or expenses of the Depositary and any withholding or deduction of taxes. If the Calculation Agent determines that no adjustment that it could make will produce a commercially reasonable result, it shall notify the parties that the relevant consequence shall be the termination of the relevant Transaction, in which case “Cancellation and Payment (Calculation Agent Determination)” will be deemed to apply and any payment to be made by one party to the other shall be calculated in accordance with Section 12.7 of the Equity Definitions (as amended by this Confirmation).
- (C) If a Potential Adjustment Event occurs under Section 11.2(e)(viii) of the Equity Definitions (as amended by this Confirmation), then the following further amendments shall be deemed to be made to Section 11.2(c) of the Equity Definitions in respect of such Potential Adjustment Event:
- (i) the words “the Calculation Agent will determine whether such Potential Adjustment Event has a material effect on the theoretical value of the relevant Shares, options on the Shares or the Transaction” shall be deleted and replaced with the words “the Calculation Agent will determine whether such Potential Adjustment Event has a material economic effect on such Transaction”; and



- (ii) the words “as the Calculation Agent determines appropriate to account for that material effect” shall be deleted and replaced with the words “as the Calculation Agent determines appropriate to account for such economic effect on such Transaction”.
- (D) The definitions of “Merger Event”, “Tender Offer”, “Announcement Date”, “Share-for-Share”, “Share-for-Other” and “Share-for-Combined” in Section 12.1 of the Equity Definitions shall be amended in accordance with the DS Amendment.
- (E) In making any adjustment in respect of a Merger Event, Tender Offer or Announcement Event in relation to the Underlying Shares, the Calculation Agent shall in determining any adjustment pursuant to Modified Calculation Adjustment, have reference to (amongst other factors) any adjustment made by the Depository under the Deposit Agreement, any fees and/or expenses of the Depository and any withholding or deduction of taxes, as determined by the Calculation Agent in its commercially reasonable discretion.
- (F) The definitions of Nationalization and Insolvency in Section 12.6 of the Equity Definitions shall be amended in accordance with the DS Amendment.
- (G) The consequence of a Nationalization or Insolvency in respect of the Depository shall be Cancellation and Payment.
- (H) If a Delisting of the Shares occurs or the Depository announces that the Deposit Agreement is (or will be) terminated, then:
  - (i) Cancellation and Payment will apply as provided in this Confirmation; and
  - (ii) where Cancellation and Payment applies under (H)(i) above in respect of a termination of the Deposit Agreement, the Equity Definitions shall be interpreted as follows: (i) such termination shall be deemed to be an “Extraordinary Event”; (ii) Cancellation and Payment shall apply as defined in Section 12.6(c)(ii) of the Equity Definitions; and (iii) the definition of “Announcement Date” in Section 12.1(l) of the Equity Definitions shall include the following additional clause (vii) at the end of the first sentence thereof: “(vii) in the case of a termination of the Deposit Agreement, the date of the first public announcement by the Depository that the Deposit Agreement is (or will be) terminated”.
- (I) If Cancellation and Payment applies under Section 9(cc)(ii)(G) or Section 9(cc)(ii)(H) of this Confirmation in respect of a Transaction, then the Determining Party shall be Dealer.
- (J) The definition of “Insolvency Filing” in Section 12.9(a)(iv) of the Equity Definitions shall be amended in accordance with the DS Amendment.
- (K) For the avoidance of doubt, where a provision is amended by this Section 9(cc) in accordance with the DS Amendment, if the event described in such provision occurs in respect of the Underlying Shares or Underlying Shares Issuer, then the consequence of such event shall be interpreted consistently with the DS Amendment and such event.
- (dd) *Incorporation of ISDA 2015 Section 871(m) Protocol.* The parties to this Confirmation agree that the amendments set out in the Attachment to the ISDA 2015 Section 871(m) Protocol published by ISDA on November 2, 2015 and available on the ISDA website (www.isda.org) shall apply to this Confirmation. The parties further agree that this Confirmation will be deemed to be a Covered Master Agreement and that the Implementation Date shall be the effective date of this Confirmation as amended by the parties for the purposes of such Protocol amendments regardless of the definitions of such terms in the Protocol.
- (ee) *Incorporation of ISDA 2012 FATCA Protocol.* The parties to this Confirmation agree that the amendments set out in the Attachment to the ISDA 2012 FATCA Protocol published by ISDA on August 15, 2012 and available on the ISDA website (www.isda.org) shall apply to this Confirmation. The parties further agree that this Confirmation will be deemed to be a Covered Master Agreement and that the Implementation Date shall be the effective date of this Confirmation as amended by the parties for the purposes of such Protocol amendments regardless of the definitions of such terms in the Protocol.

Please confirm that the foregoing correctly sets forth the terms of our agreement by executing this Confirmation and returning it to Dealer.

Very truly yours,

**CREDIT SUISSE CAPITAL LLC**

By: /s/ Authorized Signatory

Authorized Signatory

Name:

By: /s/ Authorized Signatory

Authorized Signatory

Name:

**CREDIT SUISSE SECURITIES (USA) LLC, as agent**

By: /s/ Authorized Signatory

Authorized Signatory

Name:

Accepted and confirmed  
as of the Trade Date:

**NIO Inc.**

By: /s/ Authorized Signatory \_\_\_\_\_  
Authorized Signatory  
Name:

January 30, 2019

To: **NIO Inc.**  
Building 20, No. 56 AnTuo Road, Jiading District  
Shanghai, 201804  
People's Republic of China  
Attention: Louis T. Hsieh, Chief Financial Officer  
Telephone No.: +86 (21) 6908 3306  
Facsimile No.: +86 (21) 3913 0192

**From:** Morgan Stanley & Co. LLC  
1585 Broadway, 5th Floor  
New York, NY 10036

Re: Base Call Option Transaction

The purpose of this letter agreement (this "**Confirmation**") is to confirm the terms and conditions of the call option transaction entered into between Morgan Stanley & Co. LLC ("**Dealer**") and NIO Inc. ("**Counterparty**") as of the Trade Date specified below (the "**Transaction**"). This letter agreement constitutes a "Confirmation" as referred to in the ISDA Master Agreement specified below. Each party further agrees that this Confirmation together with the Agreement evidence a complete binding agreement between Counterparty and Dealer as to the subject matter and terms of the Transaction to which this Confirmation relates, and shall supersede all prior or contemporaneous written or oral communications with respect thereto.

The definitions and provisions contained in the 2002 ISDA Equity Derivatives Definitions (the "**Equity Definitions**"), as published by the International Swaps and Derivatives Association, Inc. ("**ISDA**") are incorporated into this Confirmation. In the event of any inconsistency between the Equity Definitions and this Confirmation, this Confirmation shall govern. Certain defined terms used herein are based on terms that are defined in the Offering Memorandum dated January 30, 2019 (the "**Offering Memorandum**") relating to the 4.50% Convertible Senior Notes due 2024 (as originally issued by Counterparty, the "**Convertible Notes**" and each USD 1,000 principal amount of Convertible Notes, a "**Convertible Note**") issued by Counterparty in an aggregate initial principal amount of USD 650,000,000 (as increased by up to an aggregate principal amount of USD 100,000,000 if and to the extent that the Initial Purchasers (as defined herein) exercise their option to purchase additional Convertible Notes pursuant to the Purchase Agreement (as defined herein)) pursuant to an Indenture to be dated February 4, 2019 between Counterparty and The Bank of New York Mellon, as trustee (the "**Indenture**"). In the event of any inconsistency between the terms defined in the Offering Memorandum, the Indenture and this Confirmation, this Confirmation shall govern. The parties acknowledge that this Confirmation is entered into on the date hereof with the understanding that (i) definitions set forth in the Indenture which are also defined herein by reference to the Indenture and (ii) sections of the Indenture that are referred to herein will conform to the descriptions thereof in the Offering Memorandum. If any such definitions in the Indenture or any such sections of the Indenture differ from the descriptions thereof in the Offering Memorandum, the descriptions thereof in the Offering Memorandum will govern for purposes of this Confirmation. The parties further acknowledge that the Indenture section numbers used herein are based on the draft of the Indenture last reviewed by Dealer as of the date of this Confirmation, and if any such section numbers are changed in the Indenture as executed, the parties will amend this Confirmation in good faith to preserve the intent of the parties. Subject to the foregoing, references to the Indenture herein are references to the Indenture as in effect on the date of its execution, and if the Indenture is amended or supplemented following such date (other than any amendment or supplement (x) pursuant to Section 10.01(i) of the Indenture that, as determined by the Calculation Agent, conforms the Indenture to the description of Convertible Notes in the Offering Memorandum, and (y) pursuant to Section 14.07(a) of the Indenture, subject, in the case of this clause (y), to the second paragraph under "Method of Adjustment" in Section 3), any such amendment or supplement will be disregarded for purposes of this Confirmation (other than as provided in Section 9(i)(iii) below) unless the parties agree otherwise in writing. For the avoidance of doubt, adjustments pursuant to any Dilution Adjustment Provision shall not constitute amendment, modification, supplement, or waiver in respect of any term of the Indenture or the Convertible Notes for any purpose under this paragraph and under Section 9(i)(iii).

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

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1. This Confirmation evidences a complete and binding agreement between Dealer and Counterparty as to the terms of the Transaction to which this Confirmation relates. This Confirmation shall supplement, form a part of, and be subject to an agreement in the form of the 2002 ISDA Master Agreement (the “**Agreement**”) as if Dealer and Counterparty had executed an agreement in such form (but without any Schedule except for (i) the election of the laws of the State of New York as the governing law (without reference to choice of law doctrine) and (ii) the agreement of the parties hereto that, following the payment of the Premium and the delivery to Dealer of the opinions of counsel as required pursuant to Section 9(a), the condition precedent in Section 2(a)(iii) of the Agreement shall not apply to a payment or delivery owing by Dealer to Counterparty (it being understood that such condition precedent will continue to apply and this clause (ii) will have no effect with respect to a Potential Event of Default, Event of Default and/or Early Termination Date arising under, or with respect to, Section 5(a)(ii) or 5(a)(iv) of the Agreement)) on the Trade Date.

In the event of any inconsistency between provisions of the Agreement and this Confirmation, this Confirmation will prevail for the purpose of the Transaction to which this Confirmation relates. The parties hereby agree that no transaction other than the Transaction to which this Confirmation relates shall be governed by the Agreement. If there exists any ISDA Master Agreement between Dealer and Counterparty or any confirmation or other agreement between Dealer and Counterparty pursuant to which an ISDA Master Agreement is deemed to exist between Dealer and Counterparty, then notwithstanding anything to the contrary in such ISDA Master Agreement, such confirmation or agreement or any other agreement to which Dealer and Counterparty are parties, the Transaction shall not be considered a Transaction under, or otherwise governed by, such existing or deemed ISDA Master Agreement.

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

General Terms.

Trade Date:	January 30, 2019
Effective Date:	The Trade Date.
Option Style:	“Modified American”, as described under “Procedures for Exercise” below
Option Type:	Call
Buyer:	Counterparty
Seller:	Dealer
Shares:	The American Depositary Shares of Counterparty issued or deemed issued under the Deposit Agreement (as defined below) (Symbol: “NIO”), each representing as of the date hereof one Underlying Share.
Underlying Shares:	The Class A ordinary shares of Counterparty, nominal value USD \$0.00025 per Underlying Share.
Number of Options:	650,000. For the avoidance of doubt, the Number of Options shall be reduced by any Options exercised by Counterparty. In no event will the Number of Options be less than zero.
Underlying Shares Issuer:	Counterparty
Applicable Percentage:	20%
Option Entitlement:	A number equal to the product of the Applicable Percentage and 105.1359.

Strike Price: USD 9.5115  
Cap Price: USD 14.9200  
Premium: USD 15,184,000  
Premium Payment Date: February 4, 2019  
Exchange: The New York Stock Exchange  
Related Exchange(s): All Exchanges  
Excluded Provisions: Section 14.04(h) and Section 14.03 of the Indenture.

Procedures for Exercise.

Expiration Time: The Valuation Time  
Expiration Date: February 1, 2024, subject to earlier exercise.  
Multiple Exercise: Applicable, as described under “Automatic Exercise” below.  
Automatic Exercise: Notwithstanding Section 3.4 of the Equity Definitions, all Options then outstanding as of 5:00 p.m. New York City time on the Expiration Date will be deemed to be automatically exercised; *provided* that, for the avoidance of doubt, no such automatic exercise pursuant to this paragraph will occur if the Relevant Price for each Valid Day during the applicable Settlement Averaging Period is less than or equal to the Strike Price.  
Notwithstanding the foregoing, in no event shall the number of Options that are exercised or deemed exercised hereunder exceed the Number of Options.  
Valuation Time: At the close of trading of the regular trading session on the Exchange; *provided* that if the principal trading session is extended, the Calculation Agent shall determine the Valuation Time in its reasonable discretion.  
Market Disruption Event: Section 6.3(a) of the Equity Definitions is hereby replaced in its entirety by the following:  
“‘Market Disruption Event’ means, in respect of a Share, (i) a failure by the primary United States national or regional securities exchange or market on which the Shares are 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 Valid Day for the Shares 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 Shares or in any options contracts or futures contracts relating to the Shares.”

Settlement Terms.

Settlement Method Election:

Applicable; *provided* that (i) Section 7.1 of the Equity Definitions is hereby amended by deleting the word “Physical” in the sixth line thereof and replacing it with the words “Net Share”; and (ii) as of such notice delivery date, Counterparty shall be deemed to have made the following representations:

(A) Counterparty is not aware of any material non-public information with respect to Counterparty, the Underlying Shares Issuer (if other than Counterparty), the Underlying Shares or the Shares;

(B) Counterparty is electing Cash Settlement in good faith and not as part of a plan or scheme to evade compliance with the U.S. federal securities laws; Counterparty is not electing Cash Settlement to create actual or apparent trading activity in the Shares and/or Underlying Shares (or any security convertible into or exchangeable for the Shares and/or Underlying Shares) or to raise or depress or otherwise manipulate the price of the Shares and/or Underlying Shares (or any security convertible into or exchangeable for the Shares and/or Underlying Shares) or otherwise in violation of the Exchange Act; and Counterparty has not entered into or altered any hedging transaction relating to the Shares or the Underlying Shares corresponding to or offsetting the Transaction;

(C) such election and performance of its obligations under this Confirmation do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets; and

(D) any transaction that Dealer makes with respect to the Shares and/or the Underlying Shares during the period beginning at the time that Counterparty delivers such notice and ending at the close of business on the final day of the Settlement Averaging Period shall be made by Dealer at Dealer’s sole discretion for Dealer’s own account and Counterparty shall not have, and shall not attempt to exercise, any influence over how, when, whether or at what price Dealer effects such transactions, including, without limitation, the prices paid or received by Dealer per Share or Underlying Share pursuant to such transactions, or whether such transactions are made on any securities exchange or privately.

Default Settlement Method:

Net Share Settlement

Settlement Method Election Date:	The third Scheduled Trading Day immediately preceding the first Scheduled Valid Day of the Settlement Averaging Period.
Net Share Settlement:	Dealer will deliver to Counterparty, on the relevant Settlement Date, a number of Shares equal to the Net Shares in respect of any Option exercised or deemed exercised hereunder. In no event will the Net Shares be less than zero.
Net Shares:	In respect of any Option exercised or deemed exercised, a number of Shares equal to the sum of the quotients, for each Valid Day during the Settlement Averaging Period for such Option, of (i) (A) the Daily Option Value for such Valid Day, <i>divided by</i> (B) the Relevant Price on such Valid Day, <i>divided by</i> (ii) the number of Valid Days in the Settlement Averaging Period.  Dealer will pay cash in lieu of delivering any fractional Shares to be delivered with respect to any Net Shares valued at the Relevant Price for the last Valid Day of the Settlement Averaging Period.
Cash Settlement:	If Cash Settlement is applicable to any Option exercised or deemed exercised hereunder, in lieu of Section 8.1 of the Equity Definitions, Dealer will pay to Counterparty, on the relevant Settlement Date for each such Option, an amount of cash (the “ <b>Cash Settlement Amount</b> ”) equal to the sum, for each Valid Day during the Settlement Averaging Period for such Option, of (i) the Daily Option Value for such Valid Day, <i>divided by</i> (ii) the number of Valid Days in the Settlement Averaging Period.
Daily Option Value:	For any Valid Day, an amount equal to (i) the Option Entitlement on such Valid Day, <i>multiplied by</i> (ii) (A) the lesser of the Relevant Price on such Valid Day and the Cap Price, <i>less</i> (B) the Strike Price on such Valid Day; <i>provided</i> that if the calculation contained in clause (ii) above results in a negative number, the Daily Option Value for such Valid Day shall be deemed to be zero. In no event will the Daily Option Value be less than zero.
Valid Day:	A day on which (i) there is no Market Disruption Event and (ii) trading in the Shares generally occurs on the Exchange or, if the Shares are not then listed on the Exchange, on the principal other United States national or regional securities exchange on which the Shares are then listed or, if the Shares are not then listed on a United States national or regional securities exchange, on the principal other market on which the Shares are then listed or admitted for trading. If the Shares are not so listed or admitted for trading, “Valid Day” means a Business Day.
Scheduled Valid Day:	A day that is scheduled to be a Valid Day on the principal United States national or regional securities exchange or market on which the Shares are listed or admitted for trading. If the Shares are not so listed or admitted for trading, “Scheduled Valid Day” means a Business Day.



Business Day:	Any day other than a Saturday, a Sunday or a day on which the Federal Reserve Bank of New York is authorized or required by law or executive order to close or be closed.
Relevant Price:	On any Valid Day, the per Share volume-weighted average price as displayed under the heading “Bloomberg VWAP” on Bloomberg page “NIO <equity> AQR” (or its equivalent successor if such page is not available) in respect of the period from the scheduled opening time of the Exchange to the Scheduled Closing Time of the Exchange on such Valid Day (or if such volume-weighted average price is unavailable at such time, the market value of one Share on such Valid Day, as determined by the Calculation Agent using, if practicable, a volume-weighted average method). The Relevant Price will be determined without regard to after-hours trading or any other trading outside of the regular trading session trading hours.
Settlement Averaging Period:	For any Option being exercised hereunder, the 40 consecutive Valid Days commencing on, and including, the 41st Scheduled Valid Day immediately prior to the Expiration Date.
Settlement Date:	For any Option, the second Business Day immediately following the final Valid Day of the Settlement Averaging Period for such Option.
Settlement Currency:	USD
Other Applicable Provisions:	The provisions of Sections 9.1(c), 9.8, 9.9 and 9.11 of the Equity Definitions will be applicable, except that all references in such provisions to “Physically-settled” shall be read as references to “Net Share Settled”. “Net Share Settled” in relation to any Option means that Net Share Settlement is applicable to that Option.
Representation and Agreement:	Notwithstanding anything to the contrary in the Equity Definitions (including, but not limited to, Section 9.11 thereof), the parties acknowledge that (i) any Shares delivered to Counterparty shall be, upon delivery, subject to restrictions and limitations arising from Counterparty’s status as issuer of the Underlying Shares under applicable securities laws, (ii) Dealer may deliver any Shares required to be delivered hereunder in certificated form or restricted book-entry form, in each case, in lieu of delivery through the Clearance System and (iii) any Shares delivered to Counterparty may be “restricted securities” (as defined in Rule 144 under the Securities Act of 1933, as amended (the “ <b>Securities Act</b> ”)).

3. **Additional Terms applicable to the Transaction.**

Adjustments applicable to the Transaction:

Potential Adjustment Events:

Notwithstanding Section 11.2(e) of the Equity Definitions (which Section shall not apply for the purposes of the Transaction, except as provided in Section 9(y) below), a “Potential Adjustment Event” means an occurrence of any event or condition, as set forth in any Dilution Adjustment Provision, that requires an adjustment to be made under the Indenture to the “Conversion Rate” or the composition of a “unit of Reference Property” or to any “Last Reported Sale Price” (each as defined in the Indenture). For the avoidance of doubt, Dealer shall not have any delivery or payment obligation hereunder, and no adjustment shall be made to the terms of the Transaction, on account of (x) any distribution of cash, property or securities by Counterparty to holders of the Convertible Notes (upon conversion or otherwise) or (y) any other transaction in which holders of the Convertible Notes participate, in each case, in lieu of an adjustment under the Indenture of the type referred to in the immediately preceding sentence (including, without limitation, pursuant to the fourth sentence of the first paragraph of Section 14.04(c) of the Indenture or the fourth sentence of Section 14.04(d) of the Indenture).

Method of Adjustment:

Calculation Agent Adjustment, which means that, notwithstanding Section 11.2(c) of the Equity Definitions, (which Section shall not apply for the purposes of the Transaction, except as provided in Section 9(y) below) upon any Potential Adjustment Event, the Calculation Agent shall make an adjustment to any one or more of the Strike Price, Number of Options, Option Entitlement and any other variable relevant to the exercise, settlement or payment for the Transaction corresponding to the adjustment required to be made pursuant to the Indenture.

Notwithstanding the foregoing and “Consequences of Merger Events / Tender Offers” below:

- (i) if the Calculation Agent in good faith disagrees with any adjustment to the Convertible Notes that involves an exercise of discretion by Counterparty or its board of directors (including, without limitation, pursuant to Section 14.05 of the Indenture, Section 14.07 of the Indenture or any supplemental indenture entered into thereunder or in connection with any proportional adjustment or the determination of the fair value of any securities, property, rights or other assets), then in each such case, the Calculation Agent will determine in good faith and in a commercially reasonable manner, the adjustment to be made to any one or more of the Strike Price, Number of Options, Option Entitlement and any other variable relevant to the exercise, settlement or payment for the Transaction in a commercially reasonable manner; *provided* that, notwithstanding the foregoing, if any Potential Adjustment Event occurs during the Settlement Averaging Period but no adjustment was made to any Convertible Note under the Indenture because the relevant Holder (as such term is defined in the Indenture) was deemed to be a record owner of the underlying Shares on the related Conversion Date (as such term is defined in the Indenture), then the Calculation Agent shall make a commercially reasonable adjustment, as determined by it, to the terms hereof in order to account for such Potential Adjustment Event;

- (ii) in connection with any Potential Adjustment Event as a result of an event or condition set forth in Section 14.04(b) of the Indenture or Section 14.04(c) of the Indenture where, in either case, the period for determining “Y” (as such term is used in Section 14.04(b) of the Indenture) or “SP<sub>0</sub>” (as such term is used in Section 14.04(c) of the Indenture), as the case may be, begins before Counterparty has publicly announced the event or condition giving rise to such Potential Adjustment Event, then the Calculation Agent shall have the right to adjust any variable relevant to the exercise, settlement or payment for the Transaction as appropriate to reflect the costs (to account solely for hedging mismatches and market losses) and expenses incurred by Dealer in connection with its hedging activities, with such adjustments made assuming that Dealer maintains commercially reasonable hedge positions, as a result of such event or condition not having been publicly announced prior to the beginning of such period; and
- (iii) if any Potential Adjustment Event is declared and (a) the event or condition giving rise to such Potential Adjustment Event is subsequently amended, modified, cancelled or abandoned, (b) the “Conversion Rate” (as defined in the Indenture) is otherwise not adjusted at the time or in the manner contemplated by the relevant Dilution Adjustment Provision based on such declaration or (c) the “Conversion Rate” (as defined in the Indenture) is adjusted as a result of such Potential Adjustment Event and subsequently re-adjusted (each of clauses (a), (b) and (c), a “**Potential Adjustment Event Change**”) then, in each case, the Calculation Agent shall have the right to adjust any variable relevant to the exercise, settlement or payment for the Transaction as appropriate to reflect the costs (to account solely for hedging mismatches and market losses) and expenses incurred by Dealer in connection with its hedging activities, with such adjustments made assuming that Dealer maintains commercially reasonable hedge positions, as a result of such Potential Adjustment Event Change.

Dilution Adjustment Provisions: Sections 14.04(a), (b), (c), (d) and (e) and Section 14.05 of the Indenture.

Extraordinary Events applicable to the Transaction:

Merger Events: Applicable; *provided* that notwithstanding Section 12.1(b) of the Equity Definitions, a “Merger Event” means the occurrence of any event or condition set forth in the definition of “Merger Event” in Section 14.07 of the Indenture.

Tender Offers: Applicable; *provided* that notwithstanding Section 12.1(d) of the Equity Definitions, a “Tender Offer” means the occurrence of any event or condition set forth in Section 14.04(e) of the Indenture.

Consequences of Merger Events/  
Tender Offers: Notwithstanding Section 12.2 and Section 12.3 of the Equity Definitions, upon the occurrence of a Merger Event or a Tender Offer, the Calculation Agent shall make a corresponding adjustment in respect of any adjustment under the Indenture to any one or more of the nature of the Shares (in the case of a Merger Event), Strike Price, Number of Options, Option Entitlement and any other variable relevant to the exercise, settlement or payment for the Transaction to the extent that an analogous adjustment is required to be made pursuant to the Indenture in respect of such Merger Event or Tender Offer, subject to the second paragraph under “Method of Adjustment”; *provided, however*, that such adjustment shall be made without regard to any adjustment to the Conversion Rate pursuant to any Excluded Provision; *provided further* that if, with respect to a Merger Event or a Tender Offer, (i) the consideration for the Shares or Underlying Shares, as applicable, includes (or, at the option of a holder of Shares, or Underlying Shares, as applicable, may include) shares of an entity or person that is not (1) a corporation or an entity that is treated as a corporation for U.S. federal income tax purposes or (2) organized under the laws of the Cayman Islands or (ii) the Counterparty to the Transaction following such Merger Event or Tender Offer will not be a corporation or an entity that is treated as a corporation for U.S. federal income tax purposes organized under the laws of the Cayman Islands, and/or will not be the Underlying Shares Issuer then, in any case, Cancellation and Payment (Calculation Agent Determination) may apply at Dealer’s commercially reasonable election; *provided further* that, for the avoidance of doubt, adjustments shall be made pursuant to the provisions set forth above regardless of whether any Merger Event or Tender Offer gives rise to an Early Conversion (as defined below).

Consequences of Announcement Events:

If an Announcement Event occurs, the Calculation Agent shall determine the cumulative economic effect of such Announcement Event (it being understood that the Calculation Agent may take into account any changes to volatility in connection with such Announcement Event within a commercially reasonable (as determined by the Calculation Agent) period of time prior to or after such Announcement Event) on the Transaction on the earliest to occur of (i) the date on which the transaction described in such Announcement Event (as amended) is consummated or otherwise results in a Merger Date or Tender Offer Date, as applicable, (ii) the Valuation Date, or (iii) any earlier date of termination or cancellation with respect to any Option, and if the Calculation Agent determines that such economic effect is material and that making the relevant adjustment would be commercially reasonable, the Calculation Agent shall adjust the Cap Price to reflect such economic effect (but, for the avoidance of doubt, taking into account, and without duplication of, any other adjustment made pursuant to this “Consequences of Announcement Events” provision or pursuant to the provisions opposite the captions “Method of Adjustment”, “Consequences of Merger Events” or “Consequences of Tender Offers” above in respect of the transaction or intention giving rise to such Announcement Event).

Announcement Event:

(i) The public announcement by (x) any entity of any transaction or event that the Calculation Agent determines is reasonably likely to be completed and that, if completed, would constitute a Merger Event or Tender Offer (it being understood that Calculation Agent may make such determination by reference to the impact of such announcement on the market for the Shares and/or Underlying Shares or options relating to the Shares and/or Underlying Shares), (y) Underlying Shares Issuer or any subsidiary thereof of any potential acquisition or disposal by the Underlying Shares Issuer and/or its subsidiaries where the aggregate consideration payable or receivable exceeds 25% of the market capitalization of the Underlying Shares Issuer as of the date of such announcement (a “**Transformative Transaction**”) or (z) Underlying Shares Issuer, any subsidiary of the Underlying Shares Issuer or any Valid Third Party Entity of the intention to enter into a Merger Event or Tender Offer or a Transformative Transaction (in the case of a Valid Third-Party Entity, that the Calculation Agent determines is a bona fide intention, it being understood that the Calculation Agent may make such determination by reference to the impact of such announcement on the market for the Shares and/or Underlying Shares or options relating to the Shares and/or Underlying Shares), (ii) the public announcement by the Underlying Shares Issuer of an intention to solicit or enter into, or to explore strategic alternatives or other similar undertaking that may include, a Merger Event or Tender Offer or a Transformative Transaction or (iii) any subsequent public announcement by any entity of a change to a transaction or intention that is the subject of an announcement of the type described in clause (i) or (ii) of this sentence (including, without limitation, a new announcement, whether or not by the same party, relating to such a transaction or intention or the announcement of a withdrawal from, or the abandonment or discontinuation of, such a transaction or intention), as determined by the Calculation Agent. For the avoidance of doubt, the occurrence of an Announcement Event with respect to any transaction or intention shall not preclude the occurrence of a later Announcement Event with respect to such transaction or intention. For purposes of this definition of “Announcement Event,” (A) “Merger Event” shall mean such term as defined under Section 12.1(b) of the Equity Definitions (but, for the avoidance of doubt, the remainder of the definition of “Merger Event” in Section 12.1(b) of the Equity Definitions following the definition of “Reverse Merger” therein shall be disregarded) and (B) “Tender Offer” shall mean such term as defined under Section 12.1(d) of the Equity Definitions; *provided* that Section 12.1(d) of the Equity Definitions is hereby amended by replacing “10%” with “20%” in the third line thereof.

Valid Third Party Entity:

In respect of any transaction or intention, any third party (i) whose announcement is reasonably determined by the Calculation Agent to have had a material economic effect on the Shares and/or Underlying Shares and/or options on the Shares and/or Underlying Shares and (ii) that is the entity, or an affiliate of the entity, that is, or would be, a party to the relevant transaction or event.

Nationalization, Insolvency or Delisting:

Cancellation and Payment (Calculation Agent Determination); *provided* that, in addition to the provisions of Section 12.6(a)(iii) of the Equity Definitions, it will also constitute a Delisting if the 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 of the New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or their respective successors), such exchange or quotation system shall thereafter be deemed to be the Exchange.

Section 12.1 of the Equity Definitions is hereby amended by deleting subsection (v) thereof in its entirety and replacing it with “(v) in the case of an Insolvency, the date of (A) the institution of a proceeding or presentation of a petition or the passing of a resolution (or the convening of a meeting to pass a resolution or the proposing of a written resolution) (in each case the occurrence of which shall be deemed its announcement) that leads to an Insolvency within the meaning of subsection (A) of the definition thereof, (B) the first public announcement of the institution of a proceeding or presentation of a petition or passing of a resolution (or other analogous procedure in any jurisdiction) that leads to the Insolvency or (C) the occurrence of any of the events specified in Section 5(a)(vii)(1) through (9) of the ISDA Master Agreement with respect to that Issuer”.

Section 12.6(a)(ii) of the Equity Definitions is hereby amended by (1) inserting “(A)” after “means” in the first line thereof and replacing “(A)” and “(B)” in the third and fourth lines thereof with “(1)” and “(2)” respectively, (2) deleting from the fourth line thereof the word “or” after the word “official” and inserting a comma therefor, (3) inserting at the end of renumbered subsection (2) thereof the following wording, “or, under the laws of the Cayman Islands, any other jurisdiction or otherwise, any other impediment to or restriction on the transfer of any Share arises or becomes applicable including, without limitation, where (x) any transfer of a Share or alteration of the status of the members of the Issuer would be void unless a court of the Cayman Islands or any other jurisdiction orders otherwise or (y) any transfer of a Share not being a transfer with the sanction of a liquidator, and any alteration in the status of the Issuer’s members, would be void” and (4) deleting the semi-colon at the end of renumbered subsection (2) thereof and inserting the following words therefor “or (B) at Dealer’s option, the occurrence of any of the events specified in Section 5(a)(vii) (1) through (9) of the ISDA Master Agreement with respect to that Issuer.”

Additional Disruption Events:

Change in Law:

Applicable; *provided* that Section 12.9(a)(ii) of the Equity Definitions is hereby amended by (i) replacing the phrase “the interpretation” in the third line thereof with the phrase “, or public announcement of, the formal or informal interpretation”, (ii) replacing the word “Shares” where it appears in clause (X) thereof with the words “Hedge Position,” (iii) replacing the parenthetical beginning after the word “regulation” in the second line thereof with the words “(including, for the avoidance of doubt and without limitation, (x) any tax law or (y) adoption, effectiveness or promulgation of new regulations authorized or mandated by existing statute)” and (iv) adding the words “*provided* that, in the case of clause (Y) hereof where such determination is based on Dealer’s policies and procedures, such policies and procedures have been adopted by Dealer in good faith and are generally applicable in similar situations and applied in a non-discriminatory manner;” after the semi-colon in the last line thereof.

Failure to Deliver:	Applicable
Hedging Disruption:	Applicable; <i>provided</i> that:  Section 12.9(b)(iii) of the Equity Definitions is hereby amended by inserting in the third line thereof, after the words “to terminate the Transaction”, the words “or a portion of the Transaction affected by such Hedging Disruption”.
Increased Cost of Hedging:	Not Applicable
Hedging Party:	For all applicable Additional Disruption Events, Dealer.
Determining Party:	For all applicable Extraordinary Events, Dealer; <i>provided</i> that when making any determination or calculation as “Determining Party,” Dealer shall make such determinations or calculations in good faith and in a commercially reasonable manner.  Following any determination or calculation by Determining Party hereunder, the Determining Party will, upon written request from Counterparty, promptly (but in any event within five Scheduled Trading Days) provide to Counterparty a report (in a commonly used file format for the storage and manipulation of financial data) displaying in reasonable detail the basis for such determination or calculation (including any assumptions used in making such determination or calculation), it being understood that in no event will the Determining Party be obligated to share with Counterparty any proprietary or confidential data or information or any proprietary or confidential models used by it in making such determination or calculation or any information that is subject to an obligation not to disclose such information.
Non-Reliance:	Applicable
Agreements and Acknowledgments Regarding Hedging Activities:	Applicable
Additional Acknowledgments:	Applicable

**4. Calculation Agent.**

Dealer; *provided* that, following the occurrence and during the continuance of an Event of Default under Section 5(a)(vii) of the Agreement with respect to which Dealer is the Defaulting Party, Counterparty shall have the right to designate a nationally recognized independent equity derivatives 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 adjustment, determination or calculation by the Calculation Agent hereunder, the Calculation Agent will, upon written request from Counterparty, promptly (but in any event within five Scheduled Trading Days) provide to Counterparty by email a report (in a commonly used file format for the storage and manipulation of financial data) displaying in reasonable detail the basis for such adjustment, determination or calculation (including any assumptions used in making such adjustment, determination or calculation), it being understood that in no event will the Calculation Agent be obligated to share with Counterparty any proprietary or confidential data or information or any proprietary or confidential models used by it in making such adjustment, determination or calculation or any information that is subject to an obligation not to disclose such information.

All calculations and determinations by the Calculation Agent shall be made in good faith and in a commercially reasonable manner.

**5. Account Details.**

- (a) Account for payments to Counterparty:

To be provided.

Account for delivery of Shares to Counterparty:

To be provided.

- (b) Account for payments to Dealer:

To be provided.

Account for delivery of Shares from Dealer:

To be provided.

**6. Offices.**

- (a) The Office of Counterparty for the Transaction is: Inapplicable, Counterparty is not a Multibranch Party.

- (b) The Office of Dealer for the Transaction is: Morgan Stanley & Co. LLC, 1221 Avenue of the Americas, New York, NY 10020

**7. Notices.**

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

NIO Inc.  
Building 20, No. 56 AnTuo Road, Jiading District  
Shanghai, 201804  
People's Republic of China  
Attention: Louis T. Hsieh, Chief Financial Officer  
Telephone No.: +86(21) 6908 3306  
Facsimile No.: +86 (21) 3913 0192

with a copy to:  
Nick Wang  
VP of Finance  
Telephone No.: +86 (21) 6908-2002

Email: Nick.Wang@nio.com

with a copy to:  
Fang Liu  
General Counsel  
Telephone No.: +86 (21) 6908-2277

Email: Fang.Liu@nio.com

with a copy to:  
Sabrina Shi  
Senior Corporate Counsel  
Telephone No.: +86 (21) 6908-3391

Email: Danting.Shi@nio.com

- (b) Address for notices or communications to Dealer:  
Morgan Stanley & Co. LLC  
1585 Broadway, 5<sup>th</sup> Floor  
New York, NY 10036  
Attn: Global Capital Markets  
Telephone: +1 212 761-9363  
Facsimile: +1 212 404-9481  
Email: nycd-notices@morganstanley.com

With a copy to: Morgan Stanley & Co. LLC  
1221 Avenue of the Americas, 34<sup>th</sup> Floor  
New York, NY 10020  
Attn: Global Capital Markets  
Telephone: +1 212 761-9363  
Facsimile: +1 212 404-9481  
Email: nycd-notices@morganstanley.com

With a copy to: Steven.Seltzer1@morganstanley.com; David.Oakes@morganstanley.com; and Saurabh.Dinakar@morganstanley.com

**8. Representations and Warranties of Counterparty.**

Each of the representations and warranties of Counterparty set forth in Section 2 of the Purchase Agreement (the “**Purchase Agreement**”) dated as of January 30, 2019, between Counterparty and Credit Suisse Securities (USA) LLC, J.P. Morgan Securities LLC, Morgan Stanley & Co. LLC, and Goldman Sachs (Asia) LLC, as representatives of the Initial Purchasers party thereto (the “**Initial Purchasers**”), are true and correct and are hereby deemed to be repeated to Dealer as if set forth herein. Counterparty hereby further represents and warrants to Dealer on the date hereof and on and as of the Premium Payment Date, that:

- (a) Counterparty (i) is duly incorporated and validly existing as an exempted company with limited liability under the laws of the Cayman Islands and is in good standing under such laws, and (ii) has all necessary corporate power and authority to execute, deliver and perform its obligations and exercise its rights in respect of the Transaction; such execution, delivery, performance and exercise have been duly authorized by all necessary corporate action on Counterparty's part; and this Confirmation has been duly and validly executed and delivered by Counterparty and constitutes its valid and binding obligation, enforceable against Counterparty in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity) and except that rights to indemnification and contribution hereunder may be limited by federal or state securities laws or public policy relating thereto.
- (b) Neither the execution and delivery of this Confirmation nor the incurrence or performance of obligations nor the exercise of rights of Counterparty hereunder will conflict with or result in a breach of the memorandum and articles of association or by-laws (or any equivalent documents) of Counterparty, or any applicable law or regulation, or any order, writ, injunction or decree of any court or governmental authority or agency, or any agreement or instrument to which Counterparty or any of its subsidiaries is a party or by which Counterparty or any of its subsidiaries is bound or to which Counterparty or any of its subsidiaries is subject, or constitute a default under, or result in the creation of any lien under, any such agreement or instrument.
- (c) No consent, approval, authorization, or order of, or filing with, any governmental agency or body or any court is required in connection with the execution, delivery or performance by Counterparty of this Confirmation, except such as have been obtained or made and such as may be required under the Securities Act or state securities laws.
- (d) Counterparty is not and, after consummation of the transactions contemplated hereby, will not be required to register as an "investment company" as such term is defined in the Investment Company Act of 1940, as amended.
- (e) Counterparty is an "eligible contract participant" (as such term is defined in Section 1a(18) of the Commodity Exchange Act, as amended, other than a person that is an eligible contract participant under Section 1a(18)(C) of the Commodity Exchange Act).
- (f) Counterparty is not, on the date hereof, aware of any material non-public information with respect to Counterparty, the Underlying Shares Issuer (if other than Counterparty), the Underlying Shares or the Shares.
- (g) To the knowledge of Counterparty, no state or local (including any non-U.S. jurisdiction's) law, rule, regulation or regulatory order applicable to the Shares and/or Underlying 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 and/or Underlying Shares (except for filings of Form 13F, Schedule 13D or Schedule 13G under the Exchange Act); *provided* that Counterparty makes no representation or warranty regarding any such requirement that is applicable generally to the ownership of equity securities by Dealer or any of its affiliates solely as a result of it or any of such affiliates being a financial institution or broker-dealer.
- (h) Counterparty (A) is capable of evaluating investment risks independently, both in general and with regard to all transactions and investment strategies involving a security or securities; (B) will exercise independent judgment in evaluating the recommendations of any broker-dealer or its associated persons, unless it has otherwise notified the broker-dealer in writing; (C) has total assets of at least USD 50 million; and (D) is acting for its own account, and it has made its own independent decisions to enter into the Transaction and as to whether the Transaction is appropriate or proper for it (including as to any legal, regulatory, tax, accounting or economic consequences arising from the Transaction) based upon its own judgment and upon advice from such advisers as it has deemed necessary (including legal, financial and accounting advisors).

- (i) Counterparty as of and immediately after the Trade Date and the Premium Payment Date (x) is not, and shall not be after giving effect to the transactions contemplated hereby, “insolvent” (as such term is defined in Section 101(32) of the Bankruptcy Code, (y) would be able to purchase 100,536,150 Shares and the Underlying Shares represented by such number of Shares in compliance with the laws of the jurisdiction of Counterparty’s incorporation or organization, and (z), for the purposes of Cayman Islands law, is able to pay its debts.
- (j) Counterparty’s board of directors (the “**Board**”) has concluded that (A) the Transaction is suitable for Counterparty, for its commercial benefit and in its best interests, in light of its own investment objectives, financial condition and expertise and (B) the Transaction has been duly approved and authorized by the Board after due consideration by the Board of the foregoing matters and those referred to in subparagraph (h)(D) above.

**9. Other Provisions.**

- (a) *Deliverables.* Counterparty shall deliver to Dealer (A) an opinion of U.S. counsel and (B) an opinion of Cayman counsel, each dated as of the Premium Payment Date, with respect to, among other things, the matters set forth in Sections 8(a) through (c) of this Confirmation, it being understood that such opinions of counsel shall be limited to the federal laws of the United States and the laws of the State of New York (in the case of clause (A) above) and the laws Cayman Islands (in the case of clause (B) above) and may contain customary limitations, exceptions and qualifications for transactions of the same type as the Transaction. Delivery of such opinions to Dealer shall be a condition precedent for the purpose of Section 2(a)(iii) of the Agreement with respect to each obligation of Dealer under Section 2(a)(i) of the Agreement; (C) a resolution of the Board authorizing the Transaction; and (D) on or before the Premium Payment Date, a solvency certificate with respect to Counterparty signed by a member of the Board, the chief executive officer or the chief financial officer of the Counterparty certifying the solvency of Counterparty as of and immediately after the Premium Payment Date (after giving effect to Counterparty’s payment of amounts required to be paid by Counterparty on such date under the Transaction and the other transactions described under “Use of Proceeds” in the Offering Memorandum related to the offering of the Convertible Notes), which solvency certificate is reasonably satisfactory to Dealer.

- (b) Repurchase Notices. Counterparty shall, on or prior to the date that is one Scheduled Trading Day following any date on which Counterparty effects any repurchase of Shares and/or Underlying Shares, promptly give Dealer a written notice of such repurchase (a “**Repurchase Notice**”) on such day if following such repurchase, the number of outstanding Underlying Shares as determined on such day is (i) less than 727.2 million (in the case of the first such notice) or (ii) thereafter more than 37.8 million less than the number of Underlying Shares included in the immediately preceding Repurchase Notice; *provided* that Counterparty may provide Dealer advance notice on or prior to any such day including the maximum number of Shares and/or Underlying Shares that may be repurchased under a repurchase program entered into in reliance on Rule 10b5-1(c) and the approximate periods during which such repurchases may occur, to the extent it expects that repurchases effected on such day may result in an obligation to deliver a Repurchase Notice (and in such case, any such advance notice shall be deemed a Repurchase Notice to the maximum extent of repurchases set forth in such advance notice as if Counterparty had executed such repurchases). Counterparty agrees that, if Counterparty ceases to qualify as a “foreign private issuer” as defined in Rule 3b-4 under the Exchange Act or the Shares or Underlying Shares, as applicable, otherwise become subject to the requirements of Section 16 of the Exchange Act, Counterparty will indemnify and hold harmless Dealer and its affiliates and their respective officers, directors, employees, affiliates, advisors, agents and controlling persons (each, an “**Indemnified Person**”) from and against any and all losses (including losses relating to Dealer’s hedging activities as a consequence of becoming, or of the risk of becoming, a Section 16 “insider”, including without limitation, any forbearance from hedging activities or cessation of hedging activities and any losses in connection therewith with respect to the Transaction), claims, damages, judgments, liabilities and reasonable and documented out-of-pocket expenses (including reasonable attorney’s fees of one outside counsel in each relevant jurisdiction), joint or several, which an Indemnified Person may become subject to, in each case, as a result of Counterparty’s failure to provide Dealer with a Repurchase Notice on the day and in the manner specified in this paragraph, and to reimburse, within 30 days, upon written request, each of such Indemnified Persons for any reasonable legal or other out-of-pocket expenses (to the extent supported by invoices or other documentation setting forth in reasonable detail such expenses) incurred in connection with investigating, preparing for, providing testimony or other evidence in connection with or defending any of the foregoing. If any suit, action, proceeding (including any governmental or regulatory investigation), claim or demand shall be brought or asserted against the Indemnified Person as a result of Counterparty’s failure to provide Dealer with a Repurchase Notice in accordance with this paragraph, such Indemnified Person shall promptly notify Counterparty in writing, and Counterparty, upon request of the Indemnified Person, shall retain counsel reasonably satisfactory to the Indemnified Person to represent the Indemnified Person and any others Counterparty may designate in such proceeding and shall pay the reasonable fees and expenses of such counsel related to such proceeding. Counterparty shall not be liable to the extent that the Indemnified Person fails to notify Counterparty within a commercially reasonable period of time after any action is commenced against it in respect of which indemnity may be sought hereunder. In addition, Counterparty shall not have liability for any settlement of any such proceeding contemplated by this paragraph that is effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, Counterparty agrees to indemnify any Indemnified Person from and against any loss or liability by reason of such settlement or judgment. Counterparty shall not, without the prior written consent of the Indemnified Person, effect any settlement of any pending or threatened proceeding contemplated by this paragraph in respect of which any Indemnified Person is or could have been a party and indemnity could have been sought hereunder by such Indemnified Person, unless such settlement includes an unconditional release of such Indemnified Person from all liability on claims that are the subject matter of such proceeding on terms reasonably satisfactory to such Indemnified Person. If the indemnification provided for in this paragraph is unavailable to an Indemnified Person or insufficient in respect of any losses, claims, damages or liabilities referred to therein, then Counterparty hereunder, in lieu of indemnifying such Indemnified Person thereunder, shall contribute to the amount paid or payable by such Indemnified Person as a result of such losses, claims, damages or liabilities. The remedies provided for in this paragraph (b) are not exclusive and shall not limit any rights or remedies which may otherwise be available to any Indemnified Person at law or in equity. The indemnity and contribution agreements contained in this paragraph shall remain operative and in full force and effect regardless of the termination of the Transaction.
- (c) Regulation M. Counterparty is not on the Trade Date engaged in a distribution, as such term is used in Regulation M under the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), of any securities of Counterparty, other than a distribution meeting the requirements of the exception set forth in Rules 101(b)(10) and 102(b)(7) of Regulation M. Counterparty shall not, until the second Scheduled Trading Day immediately following the Effective Date, engage in any such distribution.
- (d) No Manipulation. Counterparty is not entering into the Transaction to create actual or apparent trading activity in the Shares and/or Underlying Shares (or any security convertible into or exchangeable for the Shares and/or Underlying Shares) or to raise or depress or otherwise manipulate the price of the Shares and/or Underlying Shares (or any security convertible into or exchangeable for the Shares and/or Underlying Shares) or otherwise in violation of the Exchange Act.
- (e) Transfer or Assignment.
- (i) Counterparty shall have the right to transfer or assign all or any of its rights and obligations hereunder with respect to all, or any, of the Options hereunder (such Options, the “**Transfer Options**”) with the prior written consent of Dealer, such consent not to be unreasonably withheld; *provided* that withholding of such consent by Dealer shall not be considered unreasonable if such transfer or assignment does not meet any of the following conditions:

- (A) With respect to any Transfer Options, Counterparty shall not be released from its notice and indemnification obligations pursuant to Section 9(b) of this Confirmation;
- (B) Such transfer or assignment shall be effected on terms, including any reasonable undertakings by such third party (including, but not limited to, an undertaking with respect to compliance with applicable securities laws in a manner that, in the reasonable judgment of Dealer, will not expose Dealer to material risks under applicable securities laws) and execution of any documentation and delivery of legal opinions with respect to securities laws and other matters by such third party and Counterparty, as are reasonably requested and reasonably satisfactory to Dealer;
- (C) Under the applicable law effective on the date of such transfer or assignment, (1) Dealer will not, as a result of such transfer or assignment, be required to pay the transferee or assignee on any payment date or delivery date an amount or a number of Shares, as applicable, under Section 2(d)(i)(4) of the Agreement greater than the amount or the number of Shares, as applicable, that Dealer would have been required to pay to Counterparty in the absence of such transfer or assignment and (2) Dealer will not, as a result of such transfer or assignment, receive from the transferee or assignee on any payment date an amount under Section 2(d)(i)(4) of the Agreement that is less than the amount that Dealer would have received from Counterparty in the absence of such transfer or assignment;
- (D) No Event of Default, Potential Event of Default or Termination Event will occur as a result of such transfer and assignment;
- (E) Counterparty shall cause the transferee to make such tax representations and to provide such tax documentation as may be reasonably requested by Dealer to permit Dealer to determine that results described in clauses (C) and (D) will not occur upon or after such transfer and assignment, including but not limited to providing tax documentation specified in Section 9(bb) of this Confirmation and making the tax representations specified in Section 9(aa) of this Confirmation on or prior to such transfer and at the other times specified in such Sections; and
- (F) Counterparty shall be responsible for all reasonable and documented costs and expenses, including reasonable counsel fees, incurred by Dealer in connection with such transfer or assignment.

- (ii) Dealer may, without Counterparty's consent, transfer or assign all or any part of its rights or obligations under the Transaction to any affiliate of Dealer (1) that has a long-term issuer rating that is equal to or better than Dealer's credit rating at the time of such transfer or assignment, or (2) whose obligations hereunder will be guaranteed, pursuant to the terms of a customary guarantee in a form used by Dealer generally for similar transactions, by Dealer or Morgan Stanley; *provided* that, in the case of any such transfer or assignment, under the applicable law effective on the date of such transfer or assignment, (I) Counterparty will not, as a result of such transfer or assignment, be required to pay the transferee or assignee on any payment date an amount under Section 2(d)(i)(4) of the Agreement greater than the amount that Counterparty would have been required to pay to Dealer in the absence of such transfer or assignment; (II) Counterparty will not, as a result of such transfer or assignment, receive from the transferee or assignee on any payment or delivery date an amount or a number of Shares, as applicable, under Section 2(d)(i)(4) of the Agreement that is less than the amount or the number of Shares that Counterparty would have received from Dealer in the absence of such transfer or assignment; (III) Dealer shall cause the transferee or assignee to make such tax representations and to provide such tax documentation as may be reasonably requested by Counterparty to permit Counterparty to determine that events described in clauses (I) and (II) of this proviso will not occur upon or after such transfer or assignment; and (IV) no Event of Default, Potential Event of Default or Termination Event will occur as a result of such transfer and assignment. If at any time at which (A) the Section 13 Percentage exceeds 8.5%, (B) the Option Equity Percentage exceeds 14.5%, or (C) the Share Amount exceeds the Applicable Share Limit (if any applies) (any such condition described in clauses (A), (B) or (C), an "**Excess Ownership Position**"), Dealer is unable after using its commercially reasonable efforts to effect a transfer or assignment of Options to a third party on pricing terms reasonably acceptable to Dealer and within a time period reasonably acceptable to Dealer such that no Excess Ownership Position exists, then Dealer may designate any Exchange Business Day as an Early Termination Date with respect to a portion of the Transaction (the "**Terminated Portion**"), to the extent necessary so that following such partial termination no Excess Ownership Position exists. In the event that Dealer so designates an Early Termination Date with respect to a portion of the Transaction, a payment shall be made pursuant to Section 6 of the Agreement as if (1) an Early Termination Date had been designated in respect of a Transaction having terms identical to the Transaction and a Number of Options equal to the number of Options underlying the Terminated Portion, (2) Counterparty were the sole Affected Party with respect to such partial termination and (3) the Terminated Portion were the sole Affected Transaction (and, for the avoidance of doubt, the provisions of Section 9(m) shall apply to any amount that is payable by Dealer to Counterparty pursuant to this sentence as if Counterparty was not the Affected Party). The "**Section 13 Percentage**" as of any day is the fraction, expressed as a percentage, (A) the numerator of which is the number of Underlying Shares that Dealer and any of its affiliates or any other person subject to aggregation with Dealer for purposes of the "beneficial ownership" test under Section 13 of the Exchange Act, or any "group" (within the meaning of Section 13 of the Exchange Act) of which Dealer is or may be deemed to be a part beneficially owns (within the meaning of Section 13 of the Exchange Act), without duplication, on such day (or, to the extent that for any reason the equivalent calculation under Section 16 of the Exchange Act applies with respect to the Shares or Underlying Shares, as applicable, and the rules and regulations thereunder results in a higher number, such higher number) and (B) the denominator of which is the number of Underlying Shares outstanding on such day. The "**Option Equity Percentage**" as of any day is the fraction, expressed as a percentage, (A) the numerator of which is the sum of (1) the product of (x) the Number of Options (y) the Option Entitlement and (z) the number of Underlying Shares represented by one Share and (2) the aggregate number of Underlying Shares underlying any other call option transaction sold by Dealer to Counterparty, and (B) the denominator of which is the number of Underlying Shares outstanding. The "**Share Amount**" as of any day is the number of Underlying Shares that Dealer and any person whose ownership position would be aggregated with that of Dealer (Dealer or any such person, a "**Dealer Person**") under any law, rule, regulation, regulatory order or organizational documents or contracts of Counterparty that are, in each case, applicable to ownership of Underlying Shares ("**Applicable Restrictions**"), owns, beneficially owns, constructively owns, controls, holds the power to vote or otherwise meets a relevant definition of ownership under any Applicable Restriction, as determined by Dealer in its reasonable discretion. The "**Applicable Share Limit**" means a number of Underlying Shares equal to (A) the minimum number of Underlying Shares that could give rise to reporting or registration obligations (except for any filing requirements on Form 13F, Schedule 13D or Schedule 13G under the Exchange Act, in each case, as in effect on the Trade Date) or other requirements (including obtaining prior approval from any person or entity) of a Dealer Person, or could result in an adverse effect on a Dealer Person, under any Applicable Restriction, as determined by Dealer in good faith and in its commercially reasonable discretion, *minus* (B) 1% of the number of Underlying Shares outstanding.

- (iii) Notwithstanding any other provision in this Confirmation to the contrary requiring or allowing Dealer to purchase, sell, receive or deliver any Shares, Underlying Shares or other securities, or make or receive any payment in cash, to or from Counterparty, Dealer may designate any of its affiliates to purchase, sell, receive or deliver such Shares, Underlying Shares or other securities, or to make or receive such payment in cash, and otherwise to perform Dealer's obligations in respect of the Transaction and any such designee may assume such obligations. Dealer shall be discharged of its obligations to Counterparty to the extent of any such performance.
- (f) Staggered Settlement. If upon advice of counsel with respect to applicable legal and regulatory requirements, including any requirements relating to Dealer's hedging activities hereunder, Dealer reasonably determines that it would not be practicable or advisable to deliver, or to acquire Shares to deliver, any or all of the Shares to be delivered by Dealer on any Settlement Date for the Transaction, Dealer may, by notice to Counterparty on or prior to any Settlement Date (a "**Nominal Settlement Date**"), elect to deliver the Shares on two or more dates (each, a "**Staggered Settlement Date**") as follows:
- (i) in such notice, Dealer will specify to Counterparty the related Staggered Settlement Dates (the first of which will be such Nominal Settlement Date and the last of which will be no later than the twentieth (20<sup>th</sup>) Exchange Business Day following such Nominal Settlement Date) and the number of Shares that it will deliver on each Staggered Settlement Date;
- (ii) the aggregate number of Shares that Dealer will deliver to Counterparty hereunder on all such Staggered Settlement Dates will equal the number of Shares that Dealer would otherwise be required to deliver on such Nominal Settlement Date; and
- (iii) if the Net Share Settlement terms set forth above were to apply on the Nominal Settlement Date, then the Net Share Settlement terms will apply on each Staggered Settlement Date, except that the Shares otherwise deliverable on such Nominal Settlement Date will be allocated among such Staggered Settlement Dates as specified by Dealer in the notice referred to in clause (i) above.
- (g) Reserved.
- (h) QFC Stay Provisions. The parties agree that (i) to the extent that prior to the date hereof both parties have adhered to the 2018 ISDA U.S. Resolution Stay Protocol (the "**Protocol**"), the terms of the Protocol are incorporated into and form a part of this Confirmation, and for such purposes this 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; (ii) to the extent that prior to the date hereof the parties have executed a separate agreement the effect of which is to amend the qualified financial contracts between them to conform with the requirements of the QFC Stay Rules (the "**Bilateral Agreement**"), the terms of the Bilateral Agreement are incorporated into and form a part of this Confirmation and each party shall be deemed to have the status of "**Covered Entity**" or "**Counterparty Entity**" (or other similar term) as applicable to it under the Bilateral Agreement; or (iii) if clause (i) and clause (ii) do not apply, the terms of Section 1 and Section 2 and the related defined terms (together, the "**Bilateral Terms**") of the form of bilateral template entitled "Full-Length Omnibus (for use between U.S. G-SIBs and Corporate Groups)" published by ISDA on November 2, 2018 (currently available on the 2018 ISDA U.S. Resolution Stay Protocol page at [www.isda.org](http://www.isda.org) and, a copy of which is available upon request), the effect of which is to amend the qualified financial contracts between the parties thereto to conform with the requirements of the QFC Stay Rules, are hereby incorporated into and form a part of this Confirmation, and for such purposes this Confirmation shall be deemed a "**Covered Agreement**," Dealer shall be deemed a "**Covered Entity**" and Counterparty shall be deemed a "**Counterparty Entity**." In the event that, after the date of this Confirmation, both parties hereto become adhering parties to the Protocol, the terms of the Protocol will replace the terms of this section. In the event of any inconsistencies between this Confirmation and the terms of the Protocol, the Bilateral Agreement or the Bilateral Terms (each, the "**QFC Stay Terms**"), as applicable, the QFC Stay Terms will govern. Terms used in this paragraph without definition shall have the meanings assigned to them under the QFC Stay Rules. For purposes of this paragraph, references to "this 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**” means 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 FDIC 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.

(i) Additional Termination Events.

- (i) Notwithstanding anything to the contrary in this Confirmation, upon any conversion of a Convertible Note occurring prior to the 45th Scheduled Valid Day immediately prior to the Expiration Date (any such conversion, an “**Early Conversion**”) in respect of which a Conversion Notice that is effective as to Counterparty has been delivered by the relevant converting Holder:
- (A) Counterparty may, within two Scheduled Trading Days of the date on which the Holder (as such term is defined in the Indenture) of such Convertible Note satisfies all of the requirements for conversion thereof as set forth in Section 14.02 of the Indenture (the “**Conversion Date**”) for such Early Conversion, provide written notice (an “**Early Conversion Notice**”) to Dealer specifying the number of Convertible Notes surrendered for conversion on such Conversion Date (such Convertible Notes, the “**Affected Convertible Notes**”), and the giving of such Early Conversion Notice shall constitute an Additional Termination Event as provided in this clause (i) (*provided* that Counterparty acknowledges its responsibilities under applicable securities laws, and in particular Section 9 and Section 10(b) of the Exchange Act and the rules and regulations thereunder, in respect of any Early Conversion Notice);
  - (B) upon receipt of any such Early Conversion Notice, Dealer shall designate an Exchange Business Day as an Early Termination Date (which Exchange Business Day shall be no earlier than one Scheduled Trading Day following the Conversion Date for such Early Conversion) with respect to the portion of the Transaction corresponding to a number of Options (the “**Affected Number of Options**”) equal to the lesser of (x) the number of Affected Convertible Notes and (y) the Number of Options as of the Conversion Date for such Early Conversion;
  - (C) any payment hereunder with respect to such termination shall be calculated pursuant to Section 6 of the Agreement as if (x) an Early Termination Date had been designated in respect of a Transaction having terms identical to the Transaction and a Number of Options equal to the Affected Number of Options, (y) Counterparty were the sole Affected Party with respect to such Additional Termination Event and (z) the terminated portion of the Transaction were the sole Affected Transaction;

- (D) for the avoidance of doubt, in determining the amount payable in respect of such Affected Transaction pursuant to Section 6 of the Agreement, the Calculation Agent shall assume that (x) the relevant Early Conversion and any conversions, adjustments, agreements, payments, deliveries or acquisitions by or on behalf of Counterparty leading thereto had not occurred, (y) no adjustments to the Conversion Rate have occurred pursuant to any Excluded Provision and (z) the corresponding Convertible Notes remain outstanding; and
  - (E) the Transaction shall remain in full force and effect, except that, as of the Conversion Date for such Early Conversion, the Number of Options shall be reduced by the Affected Number of Options.
- (ii) Notwithstanding anything to the contrary in this Confirmation if an event of default with respect to Counterparty occurs under the terms of the Convertible Notes as set forth in Section 6.01 of the Indenture and such event of default results in the Convertible Notes being accelerated and declared due and payable, then such event of default shall constitute an Additional Termination Event applicable to the Transaction and, with respect to such Additional Termination Event, (A) Counterparty shall be deemed to be the sole Affected Party, (B) the Transaction shall be the sole Affected Transaction and (C) Dealer shall be the party entitled to designate an Early Termination Date pursuant to Section 6(b) of the Agreement (which Early Termination Date shall be on or as promptly as reasonably practicable after Dealer becomes aware of the occurrence of such acceleration).
  - (iii) Notwithstanding anything to the contrary in this Confirmation, the occurrence of an Amendment Event shall constitute an Additional Termination Event applicable to the Transaction and, with respect to such Additional Termination Event, (A) Counterparty shall be deemed to be the sole Affected Party, (B) the Transaction shall be the sole Affected Transaction and (C) Dealer shall be the party entitled to designate an Early Termination Date pursuant to Section 6(b) of the Agreement. “**Amendment Event**” means that Counterparty amends, modifies, supplements, waives or obtains a waiver in respect of any term of the Indenture or the Convertible Notes governing the principal amount, coupon, maturity, repurchase obligation of Counterparty, tax redemption right of Counterparty, any term relating to conversion of the Convertible Notes (including changes to the conversion rate, conversion rate adjustment provisions, conversion settlement dates or conversion conditions), or any term that would require consent of the holders of not less than 100% of the principal amount of the Convertible Notes to amend (other than, in each case, any amendment or supplement (x) pursuant to Section 10.01(i) of the Indenture that, as determined by the Calculation Agent, conforms the Indenture to the description of Convertible Notes in the Offering Memorandum or (y) pursuant to Section 14.07 of the Indenture), in each case, without the consent of Dealer.

(iv) Promptly (but in any event within five Scheduled Trading Days) following any Repurchase Event (as defined below), Counterparty shall notify Dealer of such Repurchase Event and the aggregate principal amount of Convertible Notes subject to such Repurchase Event (any such notice, a “**Convertible Notes Repurchase Notice**”); *provided* that any such Convertible Notes Repurchase Notice shall contain a repetition by Counterparty of the representation set forth in Section 8(f) as of the date of such Convertible Notes Repurchase Notice and an acknowledgment by Counterparty of its responsibilities under applicable securities laws, and in particular Section 9 and Section 10(b) of the Exchange Act and the rules and regulations thereunder, in respect of such Repurchase Event and the delivery of such Convertible Notes Repurchase Notice. The receipt by Dealer from Counterparty of any Convertible Notes Repurchase Notice shall constitute an Additional Termination Event as provided in this Section 9(i)(iv). Upon receipt of any such Convertible Notes Repurchase Notice, Dealer shall designate an Exchange Business Day following receipt of such Convertible Notes Repurchase Notice (which Exchange Business Day shall be on or as promptly as reasonably practicable following the settlement date for such Repurchase Event) as an Early Termination Date with respect to the portion of the Transaction corresponding to a number of Options (the “**Repurchase Options**”) equal to the lesser of (A) the aggregate principal amount of such Convertible Notes specified in such Convertible Notes Repurchase Notice, *divided by* USD 1,000 and (B) the Number of Options as of the date Dealer designates such Early Termination Date and, as of such date, the Number of Options shall be reduced by the number of Repurchase Options. Any payment hereunder with respect to such termination (the “**Repurchase Unwind Payment**”) shall be calculated pursuant to Section 6 of the Agreement as if (1) an Early Termination Date had been designated in respect of a Transaction having terms identical to the Transaction and a Number of Options equal to the number of Repurchase Options, (2) Counterparty were the sole Affected Party with respect to such Additional Termination Event and (3) the terminated portion of the Transaction were the sole Affected Transaction (and, for the avoidance of doubt, in determining the amount payable in respect of such Affected Transaction pursuant to Section 6 of the Agreement, Dealer shall assume that (x) the relevant Repurchase Event and any conversions, adjustments, agreements, payments, deliveries or acquisitions by or on behalf of Counterparty leading thereto had not occurred, (y) no adjustments to the Conversion Rate have occurred pursuant to any Excluded Provisions and (z) the corresponding Convertible Notes remain outstanding). “**Repurchase Event**” means that (i) any Convertible Notes are repurchased or redeemed (whether pursuant to Section 15.01 of the Indenture, Section 15.02 of the Indenture, Section 16.01 of the Indenture or otherwise) by Counterparty or any of its subsidiaries, (ii) any Convertible Notes are delivered to Counterparty in exchange for delivery of any property or assets of Counterparty or any of its subsidiaries (howsoever described), including for the avoidance of doubt shares or American depositary shares of Issuer and/or cash, (iii) any principal of any of the Convertible Notes is repaid prior to the final maturity date of the Convertible Notes (other than upon acceleration of the Convertible Notes described in Section 9(i)(ii)), or (iv) any Convertible Notes are exchanged by or for the benefit of the holders thereof for any other securities of Counterparty or any of its affiliates (or any other property, or any combination thereof) pursuant to any exchange offer or similar transaction; *provided* that any conversion of Convertible Notes pursuant to the terms of the Indenture shall not constitute a Repurchase Event. Counterparty acknowledges and agrees that if an Additional Termination Event has occurred under this Section 9(i)(iv) that any related Convertible Notes subject to a Repurchase Event will be promptly cancelled under the applicable provisions of the Indenture and, in any event, will be deemed to be cancelled and disregarded and no longer outstanding for all purposes hereunder.

(j) Amendments to Equity Definitions.

- (i) Solely in respect of adjustments to the Cap Price pursuant to Section 9(y), Section 11.2(e)(vii) of the Equity Definitions is hereby amended by deleting the words “that may have a diluting or concentrative effect on the theoretical value of the relevant Shares” and replacing them with the words “that is the result of a corporate event involving the Underlying Shares Issuer or its securities that has a material economic effect on the Shares and/or the Underlying Shares or options on the Shares and/or the Underlying Shares; *provided* that such event is not based on (a) an observable market, other than the market for the Underlying Shares Issuer’s own stock or (b) an observable index, other than an index calculated and measured solely by reference to the Underlying Shares Issuer’s own operations.”
- (ii) Section 12.6(a)(ii) of the Equity Definitions is hereby amended by (1) inserting “(1)” immediately following the word “means” in the first line thereof and (2) inserting immediately prior to the semi-colon at the end of subsection (B) thereof the following words: “or (2) the occurrence of any of the events specified in Section 5(a)(vii)(1) through (9) of the ISDA Master Agreement with respect to that Issuer” *provided* that the period for dismissal, discharge, stay or restraint therein shall be increased from “within 15 days” to “within 30 days.”

- (iii) Section 12.9(b)(i) of the Equity Definitions is hereby amended by (1) replacing “either party may elect” with “Dealer may elect” and (2) replacing “notice to the other party” with “notice to Counterparty” in the first sentence of such section.
- (k) Setoff. Neither party shall have the right to set off any obligation that it may have to the other party under the Transaction against any obligation such other party may have to it, whether arising under the Agreement, this Confirmation or any other agreement between the parties hereto, by operation of law or otherwise and each party hereby waives any such right to setoff.
- (l) Adjustments. For the avoidance of doubt, whenever the Calculation Agent is called upon to make an adjustment pursuant to the terms of this Confirmation or the Equity Definitions to take into account the effect of an event (other than on adjustments made by reference to the Indenture), the Calculation Agent shall make such adjustment in a commercially reasonable manner by reference to the effect of such event on Dealer, assuming that Dealer maintains a commercially reasonable hedge position
- (m) Alternative Calculations and Payment on Early Termination and on Certain Extraordinary Events. If (a) an Early Termination Date (whether as a result of an Event of Default or a Termination Event) occurs or is designated with respect to the Transaction or (b) the Transaction is cancelled or terminated upon the occurrence of an Extraordinary Event, and if Dealer would owe any amount to Counterparty pursuant to Section 6(d)(ii) of the Agreement or any Cancellation Amount pursuant to Article 12 of the Equity Definitions (any such amount, a “**Payment Obligation**”), Counterparty may request Dealer to satisfy the Payment Obligation by the Share Termination Alternative (as defined below) (except as a result of (i) a Nationalization, Insolvency or Merger Event in which the consideration to be paid to holders of Shares and/or Underlying Shares, as applicable, consists solely of cash, (ii) an Announcement Event, Merger Event or Tender Offer that is within Counterparty’s control, or (iii) an Event of Default in which Counterparty is the Defaulting Party or a Termination Event in which Counterparty is the Affected Party other than an Event of Default of the type described in Section 5(a)(iii), (v), (vi), (vii) or (viii) of the Agreement or a Termination Event of the type described in Section 5(b) of the Agreement, in each case that resulted from an event or events outside Counterparty’s control), as long as Counterparty remakes the representation set forth in Section 8(f) as of the date of such election, and Counterparty shall give irrevocable telephonic notice to Dealer, confirmed in writing within one Scheduled Trading Day, no later than 12:00 p.m. (New York City time) on the date of the Announcement Event, Merger Date, Tender Offer Date, Announcement Date (in the case of a Nationalization, Insolvency or Delisting), Early Termination Date or date of cancellation, as applicable; *provided* that if Counterparty does not validly request Dealer to satisfy the Payment Obligation by the Share Termination Alternative, Dealer shall have the right, in its sole discretion, to satisfy its Payment Obligation by the Share Termination Alternative, notwithstanding Counterparty’s failure to elect or election to the contrary. If such election is not made, then the provisions of Section 12.7 or Section 12.9 of the Equity Definitions, or the provisions of Section 6(d)(ii) and Section 6(e) of the Agreement, as the case may be, shall apply.

Share Termination Alternative:

If applicable, Dealer shall deliver to Counterparty the Share Termination Delivery Property on, or as promptly as commercially reasonably practicable thereafter, the date when the relevant Payment Obligation would otherwise be due pursuant to Section 12.7 or 12.9 of the Equity Definitions or Section 6(d)(ii) and 6(e) of the Agreement, as applicable, in satisfaction of such Payment Obligation in the manner reasonably requested by Counterparty free of payment.

Share Termination Delivery Property:	A number of Share Termination Delivery Units, as calculated by the Calculation Agent, equal to the Payment Obligation divided by the Share Termination Unit Price. The Calculation Agent shall adjust the Share Termination Delivery Property by replacing any fractional portion of a security therein with an amount of cash equal to the value of such fractional security based on the values used to calculate the Share Termination Unit Price.
Share Termination Unit Price:	The value of property contained in one Share Termination Delivery Unit, as determined by the Calculation Agent in its discretion by commercially reasonable means and notified by the Calculation Agent to Dealer at the time of notification of the Payment Obligation.
Share Termination Delivery Unit:	One Share or, if the Shares or Underlying Shares, as applicable, have changed into cash or any other property or the right to receive cash or any other property as the result of a Nationalization, Insolvency or Merger Event (any such cash or other property, the “ <b>Exchange Property</b> ”), a unit consisting of the type and amount of such Exchange Property received by a holder of one Share or Underlying Share, as applicable (without consideration of any requirement to pay cash or other consideration in lieu of fractional amounts of any securities) in such Nationalization, Insolvency or Merger Event, as determined by the Calculation Agent. If such Nationalization, Insolvency, or Merger Event involves a choice of Exchange Property to be received by holders, such holders shall be deemed to have elected to receive the maximum possible amount of cash.
Failure to Deliver:	Applicable
Other applicable provisions:	If Share Termination Alternative is applicable, the provisions of Sections 9.8, 9.9 and 9.11 (as modified above) of the Equity Definitions and the provisions set forth opposite the caption “Representation and Agreement” in Section 2 will be applicable, except that all references in such provisions to “Physically-settled” shall be read as references to “Share Termination Settled” and all references to “Shares” shall be read as references to “Share Termination Delivery Units”. “Share Termination Settled” in relation to the Transaction means that Share Termination Alternative is applicable to the Transaction.

- (n) Waiver of Jury Trial. Each party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any suit, action or proceeding relating to the Transaction. Each party (i) certifies that no representative, agent or attorney of either party has represented, expressly or otherwise, that such other party would not, in the event of such a suit, action or proceeding, seek to enforce the foregoing waiver and (ii) acknowledges that it and the other party have been induced to enter into the Transaction, as applicable, by, among other things, the mutual waivers and certifications provided herein.
- (o) Registration. Counterparty hereby agrees that if, in the good faith reasonable judgment of Dealer, based on the advice of counsel, the Shares and/or Underlying Shares (“**Hedge Shares**”) acquired by Dealer for the purpose of commercially reasonably hedging its obligations pursuant to the Transaction cannot be sold in the public market by Dealer without registration under the Securities Act, Counterparty shall, at its election, either (i) in order to allow Dealer to sell the Hedge Shares in a registered offering, make available to Dealer an effective registration statement under the Securities Act and enter into an agreement, in form and substance reasonably satisfactory to Dealer, substantially in the form of an underwriting agreement customary for a registered secondary offering of a similar size in respect of a similar issuer; *provided, however*, that if Dealer, in its sole reasonable discretion, is not satisfied with access to due diligence materials, the results of its due diligence investigation, or the procedures and documentation for the registered offering referred to above, then clause (ii) or clause (iii) of this paragraph shall apply at the election of Counterparty, (ii) in order to allow Dealer to sell the Hedge Shares in a private placement, use commercially reasonable efforts to enter into a private placement agreement substantially similar to private placement purchase agreements customary for private placements of equity securities of a similar size in respect of a similar issuer, in form and substance satisfactory to Dealer (in which case, the Calculation Agent shall make any adjustments to the terms of the Transaction that are necessary, in its commercially reasonable judgment, to compensate Dealer for any commercially reasonable discount from the public market price of the Shares and/or Underlying Shares incurred on the sale of Hedge Shares in a private placement), or (iii) purchase the Hedge Shares from Dealer at the then-current market price on such Exchange Business Days, and in the amounts and at such time(s), reasonably requested by Dealer.
- (p) Tax Disclosure. Effective from the date of commencement of discussions concerning the Transaction, Counterparty and each of its employees, representatives, or other agents may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the Transaction and all materials of any kind (including opinions or other tax analyses) that are provided to Counterparty relating to such tax treatment and tax structure.
- (q) Right to Extend. Dealer may postpone or add, in whole or in part, any Valid Day or Valid Days during the Settlement Averaging Period or any other date of valuation, payment or delivery by Dealer, with respect to some or all of the Options hereunder, if Dealer reasonably determines, in the case of clause (i) below, in its commercially reasonable judgment or, in the case of clause (ii) below, based on advice of counsel, that such action is reasonably necessary or appropriate (i) to preserve Dealer’s commercially reasonable hedging or hedge unwind activity hereunder in light of existing liquidity conditions in the relevant market or (ii) to enable Dealer to effect transactions with respect to Shares and/or Underlying Shares in connection with its commercially reasonable hedging, hedge unwind or settlement activity hereunder in a manner that would, if Dealer were Counterparty or an affiliated purchaser of Counterparty, be in compliance with applicable legal, regulatory or self-regulatory requirements, or with related policies and procedures adopted by Dealer in good faith so long as such policies and procedures are generally applicable in similar situations and applied in a non-discriminatory manner); *provided* that no such Valid Day or other date of valuation, payment or delivery may be postponed or added more than 40 Valid Days after the original Valid Day or other date of valuation, payment or delivery, as the case may be.
- (r) Status of Claims in Bankruptcy. Dealer acknowledges and agrees that this Confirmation is not intended to convey to Dealer rights against Counterparty with respect to the Transaction that are senior to the claims of common or ordinary shareholders of Counterparty in any United States or Cayman Islands 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 the Transaction; *provided, further* that nothing herein shall limit or shall be deemed to limit Dealer’s rights in respect of any transactions other than the Transaction.

- (s) Securities Contract; Swap Agreement. The parties hereto intend for (i) the Transaction to be a “securities contract” and a “swap agreement” as defined in the Bankruptcy Code (Title 11 of the United States Code) (the “**Bankruptcy Code**”), and the parties hereto to be entitled to the protections afforded by, among other Sections, Sections 362(b)(6), 362(b)(17), 546(e), 546(g), 555 and 560 of the Bankruptcy Code, (ii) a party’s right to liquidate the Transaction and to exercise any other remedies upon the occurrence of any Event of Default under the Agreement with respect to the other party to constitute a “contractual right” as described in the Bankruptcy Code, and (iii) each payment and delivery of cash, securities or other property hereunder to constitute a “margin payment” or “settlement payment” and a “transfer” as defined in the Bankruptcy Code.
- (t) Notice of Certain Other Events. Counterparty covenants and agrees that:
- (i) promptly following the public announcement of the results of any election by the holders of Shares and/or Underlying Shares, as applicable, with respect to the consideration due upon consummation of any Merger Event, Counterparty shall give Dealer written notice of (x) the weighted average of the types and amounts of consideration that holders of Shares and/or Underlying Shares, as applicable, have elected to receive upon consummation of such Merger Event or (y) if no holders of Shares and/or Underlying Shares, as applicable, affirmatively make such election, the types and amounts of consideration actually received by holders of Shares and/or Underlying Shares, as applicable, (the date of such notification, the “**Consideration Notification Date**”); *provided* that in no event shall the Consideration Notification Date be later than the date on which such Merger Event is consummated;
  - (ii) (A) Counterparty shall give Dealer commercially reasonable advance (but in no event less than one Exchange Business Day) written notice of the section or sections of the Indenture and, if applicable, the formula therein, pursuant to which any adjustment will be made to the Convertible Notes in connection with any Potential Adjustment Event, Merger Event or Tender Offer and (B) promptly following any such adjustment, Counterparty shall give Dealer written notice of the details of such adjustment; and
  - (iii) Counterparty will provide a written notice to Dealer immediately upon becoming aware that Counterparty is not or will no longer be a “foreign private issuer,” as such term is defined in Rule 3b-4 under the Exchange Act.
- (u) 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 Confirmation or the Agreement, as applicable, arising from a termination event, force majeure, illegality, increased costs, regulatory change or similar event under this Confirmation, the Equity Definitions incorporated herein, or the Agreement (including, but not limited to, rights arising from Change in Law, Hedging Disruption, an Excess Ownership Position, or Illegality (as defined in the Agreement)).
- (v) Agreements and Acknowledgements Regarding Hedging. Counterparty understands, acknowledges and agrees that: (A) at any time on and prior to the Expiration Date, Dealer and its affiliates may buy or sell Shares, Underlying Shares or other securities or buy or sell options or futures contracts or enter into swaps or other derivative securities in order to adjust its hedge position with respect to the Transaction; (B) Dealer and its affiliates also may be active in the market for Shares and/or Underlying Shares other than in connection with hedging activities in relation to the Transaction; (C) Dealer shall make its own determination as to whether, when or in what manner any hedging or market activities in securities of Issuer and/or Underlying Shares Issuer shall be conducted and shall do so in a manner that it deems appropriate to hedge its price and market risk with respect to the Relevant Prices; and (D) any market activities of Dealer and its affiliates with respect to Shares and/or Underlying Shares may affect the market price and volatility of Shares and/or Underlying Shares, as well as the Relevant Prices, each in a manner that may be adverse to Counterparty.

- (w) Early Unwind. In the event the sale of the “Underwritten Securities” (as defined in the Purchase Agreement) is not consummated with the Initial Purchasers for any reason, or Counterparty fails to deliver to Dealer opinions of counsel as required pursuant to Section 9(a), in each case by 5:00 p.m. (New York City time) on the Premium Payment Date, or such later date as agreed upon by the parties (the Premium Payment Date or such later date the “**Early Unwind Date**”), the Transaction shall automatically terminate (the “**Early Unwind**”), on the Early Unwind Date and (i) the Transaction and all of the respective rights and obligations of Dealer and Counterparty under the Transaction shall be cancelled and terminated and (ii) each party shall be released and discharged by the other party from and agrees not to make any claim against the other party with respect to any obligations or liabilities of the other party arising out of and to be performed in connection with the Transaction either prior to or after the Early Unwind Date. Each of Dealer and Counterparty represents and acknowledges to the other that, upon an Early Unwind, all obligations with respect to the Transaction shall be deemed fully and finally discharged.
- (x) Payment by Counterparty. In the event that, following payment of the Premium, (i) an Early Termination Date occurs or is designated with respect to the Transaction as a result of a Termination Event or an Event of Default (other than an Event of Default arising under Section 5(a)(ii) or 5(a)(iv) of the Agreement) and, as a result, Counterparty owes to Dealer an amount calculated under Section 6(e) of the Agreement, or (ii) Counterparty owes to Dealer, pursuant to Section 12.7 or Section 12.9 of the Equity Definitions, an amount calculated under Section 12.8 of the Equity Definitions, such amount shall be deemed to be zero.
- (y) Other Adjustments Pursuant to the Equity Definitions. Notwithstanding anything to the contrary in this Confirmation, solely for the purpose of adjusting the Cap Price, the terms “Potential Adjustment Event,” “Merger Event,” and “Tender Offer” shall each have the meanings assigned to such term in the Equity Definitions (as amended by Section 9(j)(i) or, if applicable, by the definition of “Announcement Event”), and upon the occurrence of a Merger Date, the occurrence of a Tender Offer Date, or declaration by Counterparty of the terms of any Potential Adjustment Event, respectively, as such terms are defined in the Equity Definitions, the Calculation Agent may, in its sole discretion, adjust the Cap Price to preserve the fair value of the Options; *provided* that in no event shall the Cap Price be less than the Strike Price; *provided further* that any adjustment to the Cap Price made pursuant to this Section 9(y) shall be made without duplication of any other adjustment hereunder (including, for the avoidance of doubt, adjustment made pursuant to the provisions opposite the captions “Method of Adjustment,” “Consequences of Merger Events/Tender Offers” and “Consequence of Announcement Events” in Section 3 above). For the avoidance of doubt, for purposes of this Section 9(y), Section 12.1(d) of the Equity Definitions is hereby amended by replacing “10%” with “20%” in the third line thereof.
- (z) Service of Process. Counterparty irrevocably appoints Law Debenture Corporate Services Inc. as its authorized agent upon which process may be served in any suit, action or proceeding relating to the Transaction, and agrees that service of process in any manner permitted by applicable law upon such agent shall be deemed in every respect effective service of process in any manner permitted by applicable law upon Counterparty in any such suit, action or proceeding. Counterparty further agrees to take any and all action as may be necessary to maintain such designation and appointment of such agent in full force and effect for a period of five and a half years from the date of this Confirmation. If for any reason such agent shall cease to be such agent for service of process, Counterparty shall forthwith appoint a new agent of recognized standing for service of process in the State of New York and deliver to Dealer a copy of the new agent’s acceptance of that appointment within 10 days. Nothing herein shall affect the right of Dealer to serve process in any other manner permitted by law or to commence legal proceedings or otherwise proceed against Counterparty in any other court of competent jurisdiction.



- (aa) Taxes, Foreign Account Tax Compliance Act and HIRE Act. Counterparty is classified as a corporation for the U.S. federal income tax purposes. No income received or to be received under the Agreement will be effectively connected with the conduct of a trade or business by Counterparty in the United States. Counterparty is a “non-U.S. branch of a foreign person” as that term is used in Section 1.1441-4(a)(3)(ii) of the United States Treasury Regulations (the “**Regulations**”), and it is a “foreign person” as that term is used in Section 1.6041-4(a)(4) of the Regulations. The term “Indemnifiable Tax” as defined in Section 14 of the Agreement shall not include any U.S. federal withholding tax imposed or collected pursuant to Sections 1471 through 1474 of the U.S. Internal Revenue Code of 1986, as amended (the “**Code**”), any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b) of the Code, or any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code (a “**FATCA Withholding Tax**”). For the avoidance of doubt, a FATCA Withholding Tax is a Tax the deduction or withholding of which is required by applicable law for the purposes of Section 2(d) of the Agreement. The parties agree that the definitions and provisions contained in the ISDA 2015 Section 871(m) Protocol, as published by the International Swaps and Derivatives Association, Inc. and as may be amended, supplemented, replaced or superseded from time to time (the “**871(m) Protocol**”) shall apply to the Agreement as if the parties had adhered to the 871(m) Protocol as of the Effective Date. If there is any inconsistency between this provision and a provision in any other agreement executed between the parties, this provision shall prevail unless such other agreement expressly overrides the provisions of the 871(m) Protocol. Each of Dealer and Counterparty shall provide to the other party tax forms and documents required to be delivered pursuant to Sections 1471(b) or Section 1472(b)(1) of the Code promptly upon request by the other party and any other tax forms and documents they are legally able to provide that are reasonably requested by the other party.
- (bb) U.S. Tax Forms. Without limiting the generality of the foregoing, Counterparty will provide a US Tax Form W-8BEN-E upon the execution of this Confirmation, promptly upon learning that any such tax form previously provided by it has become obsolete or incorrect and promptly upon reasonable demand by Dealer.

(cc) Additional Definitions and Amendments to Equity Definitions.

(i) For the purposes of this Confirmation the following definitions will apply:

“**Depository**” means, in relation to the Shares, Deutsche Bank Trust Company Americas, or any successor thereto from time to time.

“**Deposit Agreement**” means, (i) that certain Deposit Agreement, dated as of September 11, 2018, by and among Underlying Shares Issuer, Depository and the holders and beneficial owners of the Shares and (ii) the other agreements or other instruments constituting the Shares, as from time to time amended or supplemented in accordance with their terms.

“**DS Amendment**” means, where specified as applicable to a definition or provision, that the following changes shall be made to such definition or provision: (a) all references to “Shares” shall be deleted and replaced with the words “Shares and/or the Underlying Shares, as appropriate”; and (b) all references to “Issuer” shall be deleted and replaced with the words “Issuer or Underlying Shares Issuer, as appropriate”.

“**Replacement DSS**” means depository shares or receipts, other than the Shares, over the same Underlying Shares.

(ii) The following amendments shall be made to the Equity Definitions:

- (A) The definition of Potential Adjustment Event in Section 11.2(e) of the Equity Definitions shall be amended as follows:
- (i) the DS Amendment shall be applicable, provided that an event under Section 11.2(e)(i) to (vii) of the Equity Definitions in respect of the Underlying Shares shall not constitute a Potential Adjustment Event unless, in the commercially reasonable opinion of the Calculation Agent, such event has a material effect on the theoretical value of the Shares; and
  - (ii) (A) ‘or’ shall be deleted where it appears at the end of subsection (vi);  
(B) ‘.’ shall be deleted where it appears at the end of subsection (vii) and replaced with ‘;’;  
(C) the following shall be inserted as subsection (viii): “(viii) the making of any amendment or supplement to the terms of the Deposit Agreement and/or the Shares; or”; and  
(D) the following shall be inserted as provision (ix): “(ix) any other event as a result of which the Shares represent fewer or more Underlying Shares than, and/or any property or assets in addition to, or as a whole or partial replacement of, in each case, the number of Underlying Shares represented by the Shares prior to such event.”
- (B) In making any adjustment following any Potential Adjustment Event, the Calculation Agent shall have reference to (to the extent necessary or appropriate among other factors) any adjustment made by the Depositary under the Deposit Agreement, any fees and/or expenses of the Depositary and any withholding or deduction of taxes. If the Calculation Agent determines that no adjustment that it could make will produce a commercially reasonable result, it shall notify the parties that the relevant consequence shall be the termination of the relevant Transaction, in which case “Cancellation and Payment (Calculation Agent Determination)” will be deemed to apply and any payment to be made by one party to the other shall be calculated in accordance with Section 12.7 of the Equity Definitions (as amended by this Confirmation).
- (C) If a Potential Adjustment Event occurs under Section 11.2(e)(viii) of the Equity Definitions (as amended by this Confirmation), then the following further amendments shall be deemed to be made to Section 11.2(c) of the Equity Definitions in respect of such Potential Adjustment Event:
- (i) the words “the Calculation Agent will determine whether such Potential Adjustment Event has a material effect on the theoretical value of the relevant Shares, options on the Shares or the Transaction” shall be deleted and replaced with the words “the Calculation Agent will determine whether such Potential Adjustment Event has a material economic effect on such Transaction”; and
  - (ii) the words “as the Calculation Agent determines appropriate to account for that material effect” shall be deleted and replaced with the words “as the Calculation Agent determines appropriate to account for such economic effect on such Transaction”.
- (D) The definitions of “Merger Event”, “Tender Offer”, “Announcement Date”, “Share-for-Share”, “Share-for-Other” and “Share-for-Combined” in Section 12.1 of the Equity Definitions shall be amended in accordance with the DS Amendment.

- (E) In making any adjustment in respect of a Merger Event, Tender Offer or Announcement Event in relation to the Underlying Shares, the Calculation Agent shall in determining any adjustment pursuant to Modified Calculation Adjustment, have reference to (amongst other factors) any adjustment made by the Depositary under the Deposit Agreement, any fees and/or expenses of the Depositary and any withholding or deduction of taxes, as determined by the Calculation Agent in its commercially reasonable discretion.
- (F) The definitions of Nationalization and Insolvency in Section 12.6 of the Equity Definitions shall be amended in accordance with the DS Amendment.
- (G) The consequence of a Nationalization or Insolvency in respect of the Depositary shall be Cancellation and Payment.
- (H) If a Delisting of the Shares occurs or the Depositary announces that the Deposit Agreement is (or will be) terminated, then:
  - (i) Cancellation and Payment will apply as provided in this Confirmation; and
  - (ii) where Cancellation and Payment applies under (H)(i) above in respect of a termination of the Deposit Agreement, the Equity Definitions shall be interpreted as follows: (i) such termination shall be deemed to be an “Extraordinary Event”; (ii) Cancellation and Payment shall apply as defined in Section 12.6(c)(ii) of the Equity Definitions; and (iii) the definition of “Announcement Date” in Section 12.1(l) of the Equity Definitions shall include the following additional clause (vii) at the end of the first sentence thereof: “(vii) in the case of a termination of the Deposit Agreement, the date of the first public announcement by the Depositary that the Deposit Agreement is (or will be) terminated”.
- (I) If Cancellation and Payment applies under Section 9(cc)(ii)(G) or Section 9(cc)(ii)(H) of this Confirmation in respect of a Transaction, then the Determining Party shall be Dealer.
- (J) The definition of “Insolvency Filing” in Section 12.9(a)(iv) of the Equity Definitions shall be amended in accordance with the DS Amendment.
- (K) For the avoidance of doubt, where a provision is amended by this Section 9(cc) in accordance with the DS Amendment, if the event described in such provision occurs in respect of the Underlying Shares or Underlying Shares Issuer, then the consequence of such event shall be interpreted consistently with the DS Amendment and such event.

Please confirm that the foregoing correctly sets forth the terms of our agreement by executing this Confirmation and returning it to Dealer.  
Very truly yours,

**MORGAN STANLEY & CO. LLC**

By:           /s/           Authorized Signatory  
Authorized Signatory

Name:

Accepted and confirmed  
as of the Trade Date:

**NIO Inc.**

By:           /s/ Authorized Signatory            
Authorized Signatory  
Name:

JPMorgan Chase Bank, National Association  
 London Branch  
 25 Bank Street  
 Canary Wharf  
 London E14 5JP  
 England

January 30, 2019

NIO Inc. (“**Counterparty**”)  
 Building 20, No. 56 AnTuo Road, Jiading District  
 Shanghai, 201804  
 People’s Republic of China  
 Attention: Louis T. Hsieh, Chief Financial Officer  
 Telephone No.: +86 (21) 6908 3306  
 Facsimile No.: +86 (21) 3913 0192

### Call Transaction

The purpose of this letter agreement (this “**Confirmation**”) is to confirm the terms and conditions of the call option transaction entered into between JPMorgan Chase Bank, National Association, London Branch (“**Dealer**”) and Counterparty as of the Trade Date specified below (the “**Transaction**”). This Confirmation constitutes a “Confirmation” as referred to in the ISDA Master Agreement specified below. This Confirmation shall replace any previous agreements and serve as the final documentation for the Transaction.

The definitions and provisions contained in the 2002 ISDA Equity Derivatives Definitions (the “**Equity Definitions**”), as published by the International Swaps and Derivatives Association, Inc. (“**ISDA**”) are incorporated into this Confirmation. The Transaction constitutes a Share Option Transaction for purposes of the Equity Definitions. In the event of any inconsistency between the Equity Definitions and this Confirmation, this Confirmation will govern. For the avoidance of doubt, references herein to sections of the Purchase Agreement (the “**Purchase Agreement**”), to be dated on or around January 30, 2019, among Counterparty and Credit Suisse Securities (USA) LLC, Goldman Sachs (Asia) L.L.C., J.P. Morgan Securities LLC and Morgan Stanley & Co. LLC (the “**Initial Purchasers**”) are based on the draft of the Purchase Agreement most recently reviewed by the parties at the time of execution of this Confirmation. Certain defined terms used herein are based on terms that are defined in the Offering Memorandum dated January 30, 2019 (the “**Offering Memorandum**”) relating to the 4.50% Convertible Senior Notes due 2024 (as originally issued by Counterparty, the “**Convertible Notes**” and each USD 1,000 principal amount of Convertible Notes, a “**Convertible Note**”) issued by Counterparty in an aggregate initial principal amount of USD650,000,000 (as increased by up to an aggregate principal amount of USD100,000,000 if and to the extent that the Initial Purchasers (as defined herein) exercise their option to purchase additional Convertible Notes pursuant to the Purchase Agreement (as defined herein)) pursuant to an Indenture.

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

1. This Confirmation evidences a complete and binding agreement between Dealer and Counterparty as to the terms of the Transaction to which this Confirmation relates. This Confirmation shall supplement, form a part of, and be subject to an agreement in the form of the 2002 ISDA Master Agreement (the “**Agreement**”) as if Dealer and Counterparty had executed an agreement in such form (but without any Schedule except for (a) the election of the laws of the State of New York as the governing law (without reference to choice of law doctrine) and (b) the agreement of the parties hereto that, following the payment of the Premium and the delivery to Dealer of the opinions of counsel as required pursuant to Section 9(a), the condition precedent in Section 2(a)(iii) of the Agreement shall not apply to a payment or delivery owing by Dealer to Counterparty (it being understood that such condition precedent will continue to apply and this clause (b) will have no effect with respect to a Potential Event of Default, Event of Default and/or Early Termination Date arising under, or with respect to, Section 5(a)(ii) or 5(a)(iv) of the Agreement)) on the Trade Date. In the event of any inconsistency between provisions of the Agreement and this Confirmation, this Confirmation will prevail for the purpose of the Transaction to which this Confirmation relates. The parties hereby agree that no transaction other than the Transaction to which this Confirmation relates shall be governed by the Agreement.

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

**General Terms:**

Trade Date:	January 30, 2019
Option Style:	European
Option Type:	Call
Seller:	Dealer
Buyer:	Counterparty
Shares:	The American Depository Shares of Counterparty issued or deemed issued under the Deposit Agreement (as defined below) (Exchange symbol: "NIO"), each of which represents as if the date hereof one Underlying Shares
Underlying Shares:	Initially, Class A ordinary shares, nominal value USD 0.00025 per Underlying Share, of Counterparty and any and all other securities, property and cash that are the subject of the Deposit Agreement (as defined below).
Underlying Shares Issuer:	Counterparty
Number of Options:	6,702,413. For the avoidance of doubt, the Number of Options shall be reduced by the number of any Options settled pursuant to Early Settlement (as defined below) or exercised by Counterparty. In no event will the Number of Options be less than zero.
Option Entitlement:	One. For the avoidance of doubt, the Option Entitlement shall be subject to adjustment from time to time, as described under "Method of Adjustment" below.
Number of Shares:	As of any date, the product of the Number of Options and the Option Entitlement.
Strike Price:	USD 0.00
Premium:	USD 50,000,000.98
Premium Per Option:	The amount equal to the Premium <i>divided by</i> the Number of Options.
Premium Payment Date:	February 4, 2019.
Exchange(s):	New York Stock Exchange, or any successor to such exchange or quotation system.
Related Exchange(s):	All Exchanges

Market Disruption Event: The definition of “Market Disruption Event” in Section 6.3(a) of the Equity Definitions is hereby amended (A) 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 Averaging Date” after the word “material,” in the third line thereof, and (B) by replacing the words “or (iii) an Early Closure.” therein with “(iii) an Early Closure, or (iv) a Regulatory Disruption.”

Section 6.3(d) of the Equity Definitions is hereby amended by deleting the remainder of the provision following the term “Scheduled Closing Time” in the fourth line thereof.

Regulatory Disruption: Any event that Dealer, in its reasonable discretion and in good faith, based on the advice of counsel, determines makes it appropriate with regard to any legal, regulatory or self-regulatory requirements or related policies and procedures for Dealer, that are generally applicable in similar situations and applied in a non-discriminatory manner, to refrain from or decrease any market activity in connection with the Transaction. Dealer shall notify Counterparty as soon as reasonably practicable that a Regulatory Disruption has occurred and the Averaging Dates affected by it.

Disrupted Day: The definition of “Disrupted Day” in Section 6.4 of the Equity Definitions shall be amended by adding the following sentence after the first sentence: “A Scheduled Trading Day on which a Related Exchange fails to open during its regular trading session will not be a Disrupted Day if the Calculation Agent determines, in its commercially reasonable discretion, that such failure will not have a material adverse impact on Dealer’s ability to unwind any related hedging transactions related to the Transaction.”.

Non-Disrupted Day: An Exchange Business Day that is not a Disrupted Day.

**Procedure for Exercise:**

Expiration Time: The Valuation Time

Expiration Date: The 40th Non-Disrupted Day following the Note Maturity Date

Securities Maturity Date: February 1, 2024

Automatic Exercise: Applicable



**Valuation:**

Valuation Time:	At the close of trading on the Exchange, without regard to extended or after hours trading.
Valuation Date:	The Expiration Date, subject to “Early Settlement” below.
Averaging Dates:	The 40 consecutive Non-Disrupted Days commencing on, and including, the Note Maturity Date, subject to “Early Settlement” below.
Averaging Date Disruption:	Modified Postponement; <i>provided</i> that, notwithstanding anything to the contrary in the Equity Definitions and in addition to the provisions of Section 6.7(c)(iii) of the Equity Definitions, if any Averaging Date is a Disrupted Day, the Calculation Agent may, in its commercially reasonable discretion, assign additional dates to be Averaging Dates and/or make adjustments to the number of Options to which each Averaging Date relates (including increasing such number or reducing such number to zero with respect to one or more Averaging Dates).

**Settlement Terms:**

Settlement Currency:	USD
Settlement Method Election:	Not applicable.
Restricted Certificated Shares:	Notwithstanding anything to the contrary in the Equity Definitions or this Confirmation, in satisfaction of any Share delivery obligation it may have under the Transaction, Dealer may, in whole or in part, deliver Shares in certificated form representing the Number of Shares to be Delivered to Counterparty in lieu of delivery through the Clearance System.
Physical Settlement:	Applicable. Except in the case of any Early Settlement, a relevant portion of the Transaction shall expire on each Averaging Date with respect to a number of Options equal to the Number of Averaging Date Options for such Averaging Date. On the Physical Settlement Delivery Date for such Physical Settlement, Dealer shall deliver to Counterparty the sum of the Number of Averaging Date Options for each Averaging Date <i>multiplied by</i> the Option Entitlement as of each such Averaging Date for all Averaging Dates, and will pay to Counterparty the Fractional Share Amount, if any.
Physical Settlement Delivery Date:	The date that is one Settlement Cycle immediately following the Valuation Date.
Other Applicable Provisions in Respect of Physical Settlement:	The representations and agreements 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 or under the Deposit Agreement (as defined below) that exist as a result of the fact that Counterparty is the issuer of the Underlying Shares.

**Share Adjustments:**

Method of Adjustment: Calculation Agent Adjustment. For the avoidance of doubt, in the case of any dividend or distribution of the type described in Sections 11.2(e)(i) or 11.2(e)(ii)(A) of the Equity Definitions, the Calculation Agent shall make a proportional adjustment to the Number of Shares to reflect such dividend or distribution.

Extraordinary Dividend: Any dividend or distribution on the Shares or the Underlying Shares with an ex-dividend date occurring during the period from, and including, the Trade Date to, and including, the Expiration Date (other than 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).

**Extraordinary Events:**

New Shares: In the definition of New Shares in Section 12.1(i) of the Equity Definitions, the text in clause (i) shall be deleted in its entirety and replaced with “publicly quoted, traded or listed on any of the New York Stock Exchange, the NASDAQ Global Select Market or the NASDAQ Global Market (or their respective successors)”.

Consequences of Merger Events:

- (a) Share-for-Share Modified Calculation Agent Adjustment
- (b) Share-for-Other Modified Calculation Agent Adjustment or Cancellation and Payment (Calculation Agent Determination) at the commercially reasonable election of Dealer.
- (c) Share-for-Combined Modified Calculation Agent Adjustment or Component Adjustment at the commercially reasonable election of Dealer.

Tender Offer: Applicable

Consequences of Tender Offers:

- (a) Share-for-Share Modified Calculation Agent Adjustment
- (b) Share-for-Other Modified Calculation Agent Adjustment
- (c) Share-for-Combined Modified Calculation Agent Adjustment

Modified Calculation Agent Adjustment: If, with respect to a Merger Event or a Tender Offer, (i) the consideration for the Shares or Underlying Shares, as applicable, includes (or, at the option of a holder of Shares, or Underlying Shares, as applicable, may include) shares of an entity or person that is not (1) a corporation or an entity that is treated as a corporation for U.S. federal income tax purposes or (2) organized under the laws of the Cayman Islands or (ii) the Counterparty to the Transaction following such Merger Event or Tender Offer will not be a corporation or an entity that is treated as a corporation for U.S. federal income tax purposes organized under the laws of the Cayman Islands, and/or will not be the Underlying Shares Issuer then, in any case, Cancellation and Payment (Calculation Agent Determination) may apply at Dealer's commercially reasonable election.

Composition of Combined Consideration: Not Applicable

Nationalization, Insolvency or Delisting: Cancellation and Payment (Calculation Agent Determination).

The definition of "Delisting" in Section 12.6 of the Equity Definitions shall be deleted in its entirety and replaced with the following: "Delisting" means that the Exchange announces that pursuant to the rules of such Exchange, the Shares cease (or will cease) to be listed, traded or publicly quoted on the Exchange for any reason (other than a Merger Event or Tender Offer) and 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 thereafter be deemed to be the Exchange.

Section 12.1 of the Equity Definitions is hereby amended by deleting subsection (v) thereof in its entirety and replacing it with "(v) in the case of an Insolvency, the date of (A) the institution of a proceeding or presentation of a petition or the passing of a resolution (or the convening of a meeting to pass a resolution or the proposing of a written resolution) (in each case the occurrence of which shall be deemed its announcement) that leads to an Insolvency within the meaning of subsection (A) of the definition thereof, (B) the first public announcement of the institution of a proceeding or presentation of a petition or passing of a resolution (or other analogous procedure in any jurisdiction) that leads to the Insolvency or (C) the occurrence of any of the events specified in Section 5(a)(vii)(1) through (9) of the ISDA Master Agreement with respect to that Issuer".

Section 12.6(a)(ii) of the Equity Definitions is hereby amended by (1) inserting “(A)” after “means” in the first line thereof and replacing “(A)” and “(B)” in the third and fourth lines thereof with “(1)” and “(2)” respectively, (2) deleting from the fourth line thereof the word “or” after the word “official” and inserting a comma therefor, (3) inserting at the end of renumbered subsection (2) thereof the following wording, “or, under the laws of the Cayman Islands, any other jurisdiction or otherwise, any other impediment to or restriction on the transfer of any Share arises or becomes applicable including, without limitation, where (x) any transfer of a Share or alteration of the status of the members of the Issuer would be void unless a court of the Cayman Islands or any other jurisdiction orders otherwise or (y) any transfer of a Share not being a transfer with the sanction of a liquidator, and any alteration in the status of the Issuer’s members, would be void” and (4) deleting the semi-colon at the end of renumbered subsection (2) thereof and inserting the following words therefor “or (B) at Dealer’s option, the occurrence of any of the events specified in Section 5(a)(vii)(1) through (9) of the ISDA Master Agreement with respect to that Issuer.”

**Additional Disruption Events:**

Change in Law:

Applicable; *provided* that Section 12.9(a)(ii) of the Equity Definitions is hereby amended by (i) replacing the phrase “the interpretation” in the third line thereof with the phrase “, or public announcement of, the formal or informal interpretation”, (ii) replacing the word “Shares” where it appears in clause (X) thereof with the words “Hedge Position” and (iii) replacing the parenthetical beginning after the word “regulation” in the second line thereof with the words “(including, for the avoidance of doubt and without limitation, (x) any tax law or (y) adoption, effectiveness or promulgation of new regulations authorized or mandated by existing statute)”, and *provided further* that any determination as to whether (A) the adoption of or any change in any applicable law or regulation (including, for the avoidance of doubt and without limitation, (x) any tax law or (y) adoption, effectiveness or promulgation of new regulations authorized or mandated by existing statute) or (B) the promulgation of or any change in the interpretation by any court, tribunal or regulatory authority with competent jurisdiction of any applicable law or regulation (including any action taken by a taxing authority), in each case, constitutes a “Change in Law” shall be made without regard to Section 739 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 or any similar legal certainty provision in any legislation enacted, or rule or regulation promulgated, on or after the Trade Date.

Failure to Deliver:

Applicable

Insolvency Filing:	Applicable  Section 12.9(b)(i) of the Equity Definitions is hereby amended by adding the following sentence at the end: "If neither party elects to terminate the Transaction, the Calculation Agent may in its sole discretion decide to apply adjustments to the terms of the Transaction upon the occurrence of such an event pursuant to Calculation Agent Adjustment (as if such event were a Tender Offer). For the avoidance of doubt, such adjustments shall be made in a commercially reasonable manner."
Hedging Disruption:	Applicable
Increased Cost of Hedging:	Applicable
Loss of Stock Borrow:	Not Applicable
Increased Cost of Stock Borrow:	Not Applicable
Hedging Party:	Dealer shall be the Hedging Party for all applicable events
Determining Party:	For all applicable Extraordinary Events, Dealer; <i>provided</i> that when making any determination or calculation as "Determining Party," Dealer shall make such determinations or calculations in good faith and in a commercially reasonable manner.  Following any determination or calculation by Determining Party hereunder, the Determining Party will, upon written request from Counterparty, promptly (but in any event within five Scheduled Trading Days) provide to Counterparty a report (in a commonly used file format for the storage and manipulation of financial data) displaying in reasonable detail the basis for such determination or calculation (including any assumptions used in making such determination or calculation), it being understood that in no event will the Determining Party be obligated to share with Counterparty any proprietary or confidential data or information or any proprietary or confidential models used by it in making such determination or calculation or any information that is subject to an obligation not to disclose such information.
Hedging Adjustments:	For the avoidance of doubt, whenever the Calculation Agent is called upon to make an adjustment pursuant to the terms of this Confirmation or the Equity Definitions to take into account the effect of an event, the Calculation Agent shall make such adjustment in a commercially reasonable manner by reference to the effect of such event on Dealer, assuming that Dealer maintains a commercially reasonable Hedge Position.

**Representations:**

Non-Reliance: Applicable

Agreements and Acknowledgments Regarding Hedging Activities: Applicable

Additional Acknowledgments: Applicable

**3. Additional Representations and Warranties of Counterparty:**

Each of the representations and warranties of Counterparty set forth in Section 2 of the Purchase Agreement are true and correct and are hereby deemed to be repeated to Dealer as if set forth herein. In lieu of the representations set forth in Section 3(a) of the Agreement, Counterparty represents and warrants to Dealer on the date hereof and as of the Premium Payment Date that:

- (a) Counterparty (i) is duly incorporated and validly existing as an exempted company with limited liability under the laws of the Cayman Islands and is in good standing under such laws, and (ii) has all necessary corporate power and authority to execute, deliver and perform its obligations and exercise its rights in respect of the Transaction; such execution, delivery, performance and exercise have been duly authorized by all necessary corporate action on Counterparty's part; and this Confirmation has been duly and validly executed and delivered by Counterparty and constitutes its valid and binding obligation, enforceable against Counterparty in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity) and except that rights to indemnification and contribution hereunder may be limited by federal or state securities laws or public policy relating thereto.
- (b) (i) It is not entering into the Transaction on behalf of or for the accounts of any other person or entity, and will not transfer or assign its obligations under the Transaction or any portion of such obligations to any other person or entity except in compliance with applicable laws and the terms of the Transaction; (ii) it understands that the 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 (iii) it has consulted with its legal advisor(s) and has reached its own conclusions about the Transaction, and any legal, regulatory, tax, accounting or economic consequences arising from the Transaction.
- (c) Neither Dealer nor any of its affiliates has advised it with respect to any legal, regulatory, tax, accounting or economic consequences arising from the Transaction, and neither Dealer nor any of its affiliates is acting as agent, or advisor for Counterparty in connection with the Transaction.
- (d) Neither the execution and delivery of this Confirmation nor the incurrence or performance of obligations nor the exercise of rights of Counterparty hereunder will conflict with or result in a breach of the memorandum and articles of association or by-laws (or any equivalent documents) of Counterparty, or any applicable law or regulation, or any order, writ, injunction or decree of any court or governmental authority or agency, or any agreement or instrument to which Counterparty or any of its subsidiaries is a party or by which Counterparty or any of its subsidiaries is bound or to which Counterparty or any of its subsidiaries is subject, or constitute a default under, or result in the creation of any lien under, any such agreement or instrument.
- (e) No consent, approval, authorization, or order of, or filing with, any governmental agency or body or any court is required in connection with the execution, delivery or performance by Counterparty of this Confirmation, except such as have been obtained or made and such as may be required under the Securities Act or state securities laws.

- (f) It has not entered into any obligation that would contractually limit it from effecting Physical Settlement (including in connection with an Early Settlement) under the Transaction.
- (g) The Transaction has been duly approved and authorized by Counterparty's board of directors after due consideration by the board of directors of the matters, and after having reached the conclusions referred to in paragraph (b) above and, prior to the Trade Date Counterparty shall deliver to Dealer a resolution of Counterparty's board of directors authorizing the Transaction and such other certificate or certificates, as Dealer shall reasonably request. For the avoidance of doubt, each representation, warranty and certification made by Counterparty in such certificate shall be deemed a representation and warranty made by Counterparty in this paragraph (g).
- (h) It is not entering into the Transaction to create actual or apparent trading activity in the Shares or Underlying Shares (or any security convertible into or exchangeable for Shares or Underlying Shares), or to manipulate the price of the Shares or Underlying Shares (or any security convertible into or exchangeable for Shares or Underlying Shares).
- (i) Counterparty is not and, after consummation of the transactions contemplated hereby, will not be required to register as an "investment company" as such term is defined in the Investment Company Act of 1940, as amended.
- (j) Counterparty is an "eligible contract participant" (as such term is defined in Section 1a(18) of the Commodity Exchange Act, as amended, other than a person that is an eligible contract participant under Section 1a(18)(C) of the Commodity Exchange Act).
- (k) Counterparty is not, on the date hereof and on each day pursuant to the terms hereof on which this representation is repeated or deemed repeated, aware of any material non-public information with respect to Counterparty, the Underlying Shares Issuer (if other than Counterparty), the Underlying Shares or the Shares.
- (l) On and immediately after the Trade Date and the Premium Payment Date, and on each day pursuant to the terms hereof on which this representation is required to be repeated or deemed repeated, (A) the assets of Counterparty at their fair valuation exceed the liabilities of Counterparty, including contingent liabilities, (B) the capital of Counterparty is adequate to conduct the business of Counterparty, (C) Counterparty has the ability to pay its debts and obligations as such debts mature and does not intend to, or does not believe that it will, incur debt beyond its ability to pay as such debts mature, (D) Counterparty is not, and will not be, "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**")), (E) Counterparty would be able to purchase 100,536,150 Shares and the Underlying Shares represented by such number of Shares in compliance with the laws of the jurisdiction of Counterparty's incorporation or organization, and (F) for the purposes of Cayman Islands law, Counterparty is able to pay its debts.
- (m) To the knowledge of Counterparty, no state or local (including any non-U.S. jurisdiction's) law, rule, regulation or regulatory order applicable to the Shares and/or Underlying 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 and/or Underlying Shares (except for filings of Form 13F, Schedule 13D or Schedule 13G under the Exchange Act); *provided* that Counterparty makes no representation or warranty regarding any such requirement that is applicable generally to the ownership of equity securities by Dealer or any of its affiliates solely as a result of it or any of such affiliates being a financial institution or broker-dealer.
- (n) Counterparty is not on the Trade Date engaged in a distribution, as such term is used in Regulation M ("**Regulation M**") under the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), of any securities of Counterparty other than a distribution meeting the requirements of the exception set forth in Rule 102(b)(7) of Regulation M.

- (o) Counterparty (A) is capable of evaluating investment risks independently, both in general and with regard to all transactions and investment strategies involving a security or securities; (B) will exercise independent judgment in evaluating the recommendations of any broker-dealer or its associated persons, unless it has otherwise notified the broker-dealer in writing; (C) has total assets of at least USD 50 million; and (D) is acting for its own account, and it has made its own independent decisions to enter into the Transaction and as to whether the Transaction is appropriate or proper for it (including as to any legal, regulatory, tax, accounting or economic consequences arising from the Transaction) based upon its own judgment and upon advice from such advisers as it has deemed necessary (including legal, financial and accounting advisors).
- (p) Counterparty acknowledges that the offer and sale of the Transaction to it is intended to be exempt from registration under the Securities Act of 1933, as amended (the “**Securities Act**”), by virtue of Section 4(a)(2) thereof. Accordingly, Counterparty represents and warrants to Dealer that (i) it has the financial ability to bear the economic risk of its investment in the Transaction and is able to bear a total loss of its investment, (ii) it is an “accredited investor” as that term is defined in Regulation D as promulgated under the Securities Act, (iii) it is entering into the Transaction for its own account without a view to the distribution or resale thereof and (iv) the assignment, transfer or other disposition of the Transaction has not been and will not be registered under the Securities Act and is restricted under this Confirmation, the Securities Act and state securities laws.
- (q) It has the corporate power and authority and all necessary consents to effect Physical Settlement of the Transaction as contemplated by the Agreement.
- (r) Counterparty’s board of directors (the “**Board**”) has concluded that (A) the Transaction is suitable for Counterparty, for its commercial benefit and in its best interests, in light of its own investment objectives, financial condition and expertise and (B) the Transaction has been duly approved and authorized by the Board after due consideration by the Board of the foregoing matters and those referred to in sub-paragraph (b) (iii) above.

**4. Additional Mutual Representations and Warranties:**

In addition to the representations set forth in the Agreement, each of Dealer and Counterparty further represents and warrants to the other party that as of the Trade Date that it is an “eligible contract participant” as the term is defined in the U.S. Commodity Exchange Act, as amended.

**5. Additional Covenants and Acknowledgements:**

- (a) Counterparty shall deliver to Dealer (A) an opinion of U.S. counsel and (B) an opinion of Cayman counsel, each dated as of the Premium Payment Date, with respect to, among other things, the matters set forth in Sections 3(a), (d) and (e) of this Confirmation, it being understood that such opinions of counsel shall be limited to the federal laws of the United States and the laws of the State of New York (in the case of clause (A) above) and the laws Cayman Islands (in the case of clause (B) above) and may contain customary limitations, exceptions and qualifications for transactions of the same type as the Transaction. Delivery of such opinions to Dealer shall be a condition precedent for the purpose of Section 2(a)(iii) of the Agreement with respect to each obligation of Dealer under Section 2(a)(i) of the Agreement; and (C) on or before the Premium Payment Date, a solvency certificate with respect to Counterparty signed by a member of the Board, the chief executive officer or the chief financial officer of the Counterparty certifying the solvency of Counterparty as of and immediately after the Premium Payment Date (after giving effect to Counterparty’s payment of amounts required to be paid by Counterparty on such date under the Transaction and the other transactions described under “Use of Proceeds” in the Offering Memorandum related to the offering of the Convertible Notes), which solvency certificate is reasonably satisfactory to Dealer.
- (b) (i) Counterparty shall not engage in any distribution as such term is used in Regulation M of any securities of Counterparty or otherwise permit the Shares or the Underlying Shares to be subject to a restricted period, as such term is used in Regulation M, in each case, during the period (the “**Restricted Period**”) from, and including, the scheduled first Averaging Date to, and including, the Exchange Business Day immediately succeeding the Valuation Date (determined without regard to any Early Settlement); provided, for the avoidance of doubt, that the foregoing shall not apply with respect to any Early Settlement.



- (ii) In connection with any Early Settlement, Counterparty shall notify Dealer, as soon as practicable, and in any event no later than the Exchange Business Day immediately following the Notice Date with respect to such Early Settlement, of any distribution or restricted period, as such terms are used in Regulation M with respect to any securities of Counterparty that is occurring on the date Counterparty delivers such notice to Dealer or that Counterparty expects at such time may occur on any Averaging Date, Valuation Date or the Exchange Business Day immediately succeeding the Valuation Date relating to such Early Settlement.
- (c) On the Trade Date, and on each day during the Restricted Period, neither Counterparty nor any “affiliated purchaser” (each as defined in Rule 10b-18 under the Exchange Act (“**Rule 10b-18**”)) shall directly or indirectly (including, without limitation, by means of any cash-settled or other derivative instrument) purchase, offer to purchase, place any bid or limit order that would effect a purchase of, or commence any tender offer relating to, any Shares or Underlying Shares (or an equivalent interest, including a unit of beneficial interest in a trust or limited partnership or a depository share) or any security convertible into or exchangeable or exercisable for Shares or Underlying Shares.
- (d) 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 Confirmation or the Agreement, as applicable, arising from a termination event, force majeure, illegality, increased costs, regulatory change or similar event under this Confirmation, the Equity Definitions incorporated herein, or the Agreement (including, but not limited to, rights arising from Change in Law, Hedging Disruption, Increased Cost of Hedging, an Excess Ownership Position, or Illegality (as defined in the Agreement)).

#### **6. Other Provisions:**

- (a) **Agreements and Acknowledgements Regarding Hedging.** Counterparty understands, acknowledges and agrees that: (A) at any time on and prior to the Expiration Date, Dealer and its affiliates may buy or sell Shares or other securities or buy or sell options or futures contracts or enter into swaps or other derivative securities in order to adjust its hedge position with respect to the Transaction; (B) Dealer and its affiliates also may be active in the market for Shares other than in connection with hedging activities in relation to the Transaction; (C) Dealer shall make its own determination as to whether, when or in what manner any hedging or market activities in securities of Counterparty shall be conducted and shall do so in a manner that it deems appropriate to hedge its price and market risk; and (D) any market activities of Dealer and its affiliates with respect to Shares may affect the market price and volatility of Shares, each in a manner that may be adverse to Counterparty.
- (b) **Transfer.**
- (i) Counterparty shall have the right to transfer or assign all or any of its rights and obligations hereunder with respect to all, or any, of the Options hereunder (such Options, the “**Transfer Options**”) with the prior written consent of Dealer, such consent not to be unreasonably withheld; *provided* that withholding of such consent by Dealer shall not be considered unreasonable if such transfer or assignment does not meet any of the following conditions:

- (A) With respect to any Transfer Options, Counterparty shall not be released from its notice and indemnification obligations pursuant to Section 9(m) of this Confirmation;
  - (B) Such transfer or assignment shall be effected on terms, including any reasonable undertakings by such third party (including, but not limited to, an undertaking with respect to compliance with applicable securities laws in a manner that, in the reasonable judgment of Dealer, will not expose Dealer to material risks under applicable securities laws) and execution of any documentation and delivery of legal opinions with respect to securities laws and other matters by such third party and Counterparty, as are reasonably requested and reasonably satisfactory to Dealer;
  - (C) Under the applicable law effective on the date of such transfer or assignment, (1) Dealer will not, as a result of such transfer or assignment, be required to pay the transferee or assignee on any payment date or delivery date an amount or a number of Shares, as applicable, under Section 2(d)(i)(4) of the Agreement greater than the amount or the number of Shares, as applicable, that Dealer would have been required to pay to Counterparty in the absence of such transfer or assignment and (2) Dealer will not, as a result of such transfer or assignment, receive from the transferee or assignee on any payment date an amount under Section 2(d)(i)(4) of the Agreement that is less than the amount that Dealer would have received from Counterparty in the absence of such transfer or assignment;
  - (D) No Event of Default, Potential Event of Default or Termination Event will occur as a result of such transfer and assignment;
  - (E) Counterparty shall cause the transferee to make such tax representations and to provide such tax documentation as may be reasonably requested by Dealer to permit Dealer to determine that results described in clauses (C) and (D) will not occur upon or after such transfer and assignment, including but not limited to providing tax documentation specified in Section 9(bb) of this Confirmation and making the tax representations specified in Section 9(aa) of this Confirmation on or prior to such transfer and at the other times specified in such Sections; and
  - (F) Counterparty shall be responsible for all reasonable and documented costs and expenses, including reasonable counsel fees, incurred by Dealer in connection with such transfer or assignment.
- (ii) Dealer may, without Counterparty's consent, transfer or assign all or any part of its rights or obligations under the Transaction to any affiliate of Dealer (1) that has a long-term issuer rating that is equal to or better than Dealer's credit rating at the time of such transfer or assignment, or (2) whose obligations hereunder will be guaranteed, pursuant to the terms of a customary guarantee in a form used by Dealer generally for similar transactions, by Dealer or JPMorgan Chase & Co.; *provided* that, in the case of any such transfer or assignment, under the applicable law effective on the date of such transfer or assignment, (I) Counterparty will not, as a result of such transfer or assignment, be required to pay the transferee or assignee on any payment date an amount under Section 2(d)(i)(4) of the Agreement greater than the amount that Counterparty would have been required to pay to Dealer in the absence of such transfer or assignment; (II) Counterparty will not, as a result of such transfer or assignment, receive from the transferee or assignee on any payment or delivery date an amount or a number of Shares, as applicable, under Section 2(d)(i)(4) of the Agreement that is less than the amount or the number of Shares that Counterparty would have received from Dealer in the absence of such transfer or assignment; (III) Dealer shall cause the transferee or assignee to make such tax representations and to provide such tax documentation as may be reasonably requested by Counterparty to permit Counterparty to determine that events described in clauses (I) and (II) of this proviso will not occur upon or after such transfer or assignment; and (IV) no Event of Default, Potential Event of Default or Termination Event will occur as a result of such transfer and assignment.

If at any time at which (A) the Section 13 Percentage exceeds 8.5%, (B) the Option Equity Percentage exceeds 14.5%, or (C) the Share Amount exceeds the Applicable Share Limit (if any applies) (any such condition described in clauses (A), (B) or (C), an “**Excess Ownership Position**”), Dealer is unable after using its commercially reasonable efforts to effect a transfer or assignment of Options to a third party on pricing terms reasonably acceptable to Dealer and within a time period reasonably acceptable to Dealer such that no Excess Ownership Position exists, then Dealer may designate any Exchange Business Day as an Early Termination Date with respect to a portion of the Transaction (the “**Terminated Portion**”), to the extent necessary so that no Excess Ownership Position exists following such partial termination. In the event that Dealer so designates an Early Termination Date with respect to a portion of the Transaction, a payment shall be made pursuant to Section 6 of the Agreement as if (1) an Early Termination Date had been designated in respect of a Transaction having terms identical to the Transaction and a Number of Options equal to the number of Options underlying the Terminated Portion, (2) Counterparty were the sole Affected Party with respect to such partial termination and (3) the Terminated Portion were the sole Affected Transaction. The “**Section 13 Percentage**” as of any day is the fraction, expressed as a percentage, (A) the numerator of which is the number of Underlying Shares that Dealer and any of its affiliates or any other person subject to aggregation with Dealer for purposes of the “beneficial ownership” test under Section 13 of the Exchange Act, or any “group” (within the meaning of Section 13 of the Exchange Act) of which Dealer is or may be deemed to be a part beneficially owns (within the meaning of Section 13 of the Exchange Act), without duplication, on such day (or, to the extent that for any reason the equivalent calculation under Section 16 of the Exchange Act applies with respect to the Shares or Underlying Shares, as applicable, and the rules and regulations thereunder results in a higher number, such higher number) and (B) the denominator of which is the number of Underlying Shares outstanding on such day. The “**Option Equity Percentage**” as of any day is the fraction, expressed as a percentage, (A) the numerator of which is the sum of (1) the product of (x) the Number of Options (y) the Option Entitlement and (z) the number of Underlying Shares represented by one Share and (2) the aggregate number of Underlying Shares underlying any other call option transaction sold by Dealer to Counterparty, and (B) the denominator of which is the number of Underlying Shares outstanding. The “**Share Amount**” as of any day is the number of Underlying Shares that Dealer and any person whose ownership position would be aggregated with that of Dealer (Dealer or any such person, a “**Dealer Person**”) under any law, rule, regulation, regulatory order or organizational documents or contracts of Counterparty that are, in each case, applicable to ownership of Underlying Shares (“**Applicable Restrictions**”), owns, beneficially owns, constructively owns, controls, holds the power to vote or otherwise meets a relevant definition of ownership under any Applicable Restriction, as determined by Dealer in its reasonable discretion. The “**Applicable Share Limit**” means a number of Underlying Shares equal to (A) the minimum number of Underlying Shares that could give rise to reporting or registration obligations (except for any filing requirements on Form 13F, Schedule 13D or Schedule 13G under the Exchange Act, in each case, as in effect on the Trade Date) or other requirements (including obtaining prior approval from any person or entity) of a Dealer Person, or could result in an adverse effect on a Dealer Person, under any Applicable Restriction, as determined by Dealer in good faith and in its commercially reasonable discretion, *minus* (B) 1% of the number of Underlying Shares outstanding.

- (c) **Designation.** Notwithstanding any other provision in this Confirmation to the contrary requiring or allowing Dealer to purchase, sell, receive or deliver any Shares or other securities, or make or receive any payment in cash, to or from Counterparty, Dealer may designate any of its affiliates to purchase, sell, receive or deliver such Shares or other securities, or to make or receive such payment in cash, and otherwise to perform Dealer’s obligations in respect of the Transaction and any such designee may assume such obligations. Dealer shall be discharged of its obligations to Counterparty to the extent of any such performance.

- (d) **No Collateral.** No collateral is required to be posted by Counterparty or Dealer, in respect of the Transaction.
- (e) **Bankruptcy Code Provisions.** Each of Dealer and Counterparty agrees and acknowledges that Dealer is one or more of a “swap participant” and/or “financial participant” within the meaning of Sections 101(53C) and 101(22A) of the Bankruptcy Code. The parties hereto further agree and acknowledge (A) that this Confirmation is (i) a “securities contract,” as such term is defined in Section 741(7) of the Bankruptcy Code, with respect to which each payment and delivery hereunder or in connection herewith is a “settlement payment,” as such term is defined in Section 741(8) of the Bankruptcy Code, and (ii) a “swap agreement,” as such term is defined in Section 101(53B) of the Bankruptcy Code, with respect to which each payment and delivery hereunder or in connection herewith is a “termination value,” “payment amount” or “other transfer obligation” within the meaning of Section 362 of the Bankruptcy Code and a “transfer,” as such term is defined in Section 101(54) of the Bankruptcy Code, and a “payment or transfer of property” within the meaning of Sections 362 and 546 of the Bankruptcy Code, and (B) that Dealer is entitled to the protections afforded by, among other sections, Sections 362(b)(6), 362(b)(17), 362(b)(27), 362(o), 546(e), 546(g), 546(j), 555, 560 and 561 of the Bankruptcy Code.
- (f) **Early Unwind.** In the event the sale of the Underwritten Securities (as defined in the Purchase Agreement) is not consummated with the Initial Purchasers for any reason, or Counterparty fails to deliver to Dealer opinions of counsel as required pursuant to Section 5(a), in each case by 5:00 p.m. (New York City time) on the Premium Payment Date, or such later date as agreed upon by the parties (the Premium Payment Date or such later date the “**Early Unwind Date**”), the Transaction shall automatically terminate (the “**Early Unwind**”), on the Early Unwind Date and (i) the Transaction and all of the respective rights and obligations of Dealer and Counterparty under the Transaction shall be cancelled and terminated and (ii) each party shall be released and discharged by the other party from and agrees not to make any claim against the other party with respect to any obligations or liabilities of the other party arising out of and to be performed in connection with the Transaction either prior to or after the Early Unwind Date. Each of Dealer and Counterparty represents and acknowledges to the other that, upon an Early Unwind, all obligations with respect to the Transaction shall be deemed fully and finally discharged.
- (g) **Amendments to Equity Definitions.**
- a. Section 11.2(e)(vii) of the Equity Definitions is hereby amended by deleting the words “that may have a diluting or concentrative effect on the theoretical value of the relevant Shares” and replacing them with the words “that is the result of a corporate event involving the Underlying Shares Issuer or its securities that has a material economic effect on the Shares and/or the Underlying Shares or options on the Shares and/or the Underlying Shares; *provided* that such event is not based on (a) an observable market, other than the market for the Underlying Shares Issuer’s own stock or (b) an observable index, other than an index calculated and measured solely by reference to the Underlying Shares Issuer’s own operations.”
  - b. Section 12.6(a)(ii) of the Equity Definitions is hereby amended by (1) inserting “(1)” immediately following the word “means” in the first line thereof and (2) inserting immediately prior to the semi-colon at the end of subsection (B) thereof the following words: “or (2) the occurrence of any of the events specified in Section 5(a)(vii)(1) through (9) of the ISDA Master Agreement with respect to that Issuer” *provided* that the period for dismissal, discharge, stay or restraint therein shall be increased from “within 15 days” to “within 30 days.”
  - c. Section 12.9(b)(i) of the Equity Definitions is hereby amended by (1) replacing “either party may elect” with “Dealer may elect” and (2) replacing “notice to the other party” with “notice to Counterparty” in the first sentence of such section.

- d. Section 12.9(b)(vi) of the Equity Definitions is hereby amended by (1) adding the word “or” immediately before subsection “(B)”, (2) deleting the comma at the end of subsection (A), (3) deleting subsection (C) in its entirety, (4) deleting the word “or” immediately preceding subsection (C) and (5) replacing the words “either party” in the last sentence of such Section with “Dealer”.

(h) **Early Settlement.**

- a. Dealer may, from time to time on or after the 30th day following the Trade Date, settle the Transaction early (“**Early Settlement**”), in whole or in part, by delivering a written notice to Counterparty on any Exchange Business Day (the “**Notice Date**”) specifying the portion of the Transaction to be settled early (the “**Early Settled Portion**”).
- b. With respect to any Early Settled Portion, Dealer shall provide notice to Counterparty no later than 3 Scheduled Trading Days following the Notice Date, specifying the Averaging Date(s) (if any), the number of Options that shall expire on each such Averaging Date and the Valuation Date in respect of such Early Settlement, and Dealer will deliver to Counterparty a number of Shares equal to the product of (x) the sum of the number of Options expiring on each such Averaging Date, *multiplied by* (y) the Option Entitlement, and will pay to Counterparty the Fractional Share Amount, if any, on the Physical Settlement Delivery Date relating to the specified Valuation Date with respect to such Physical Early Settled Portion.
- c. Such delivery and any such payment will be made through the relevant Clearance System on the applicable settlement dates; provided that, for the avoidance of doubt, “Restricted Certificated Shares” above shall also apply with respect to Early Settlement.

(i) **Depository Shares Provisions.**

- (i) For the purposes of this Confirmation the following definitions will apply:

“**Depository**” means, in relation to the Shares, Deutsche Bank Trust Company Americas, or any successor thereto from time to time.

“**Deposit Agreement**” means, (i) that certain Deposit Agreement, dated as of September 11, 2018, by and among Underlying Shares Issuer, Depository and the holders and beneficial owners of the Shares and (ii) the other agreements or other instruments constituting the Shares, as from time to time amended or supplemented in accordance with their terms.

“**DS Amendment**” means, where specified as applicable to a definition or provision, that the following changes shall be made to such definition or provision: (a) all references to “Shares” shall be deleted and replaced with the words “Shares and/or the Underlying Shares, as appropriate”; and (b) all references to “Issuer” shall be deleted and replaced with the words “Issuer or Underlying Shares Issuer, as appropriate”.

“**Replacement DSs**” means depository shares or receipts, other than the Shares, over the same Underlying Shares.

- (ii) The following amendments shall be made to the Equity Definitions:

(A) The definition of Potential Adjustment Event in Section 11.2(e) of the Equity Definitions shall be amended as follows:

- (i) the DS Amendment shall be applicable, provided that an event under Section 11.2(e)(i) to (vii) of the Equity Definitions in respect of the Underlying Shares shall not constitute a Potential Adjustment Event unless, in the commercially reasonable opinion of the Calculation Agent, such event has a material effect on the theoretical value of the Shares; and

- (ii) (A) 'or' shall be deleted where it appears at the end of subsection (vi);
  - (B) '.' shall be deleted where it appears at the end of subsection (vii) and replaced with ',';
  - (C) the following shall be inserted as subsection (viii): "(viii) the making of any amendment or supplement to the terms of the Deposit Agreement and/or the Shares; or"; and
  - (D) the following shall be inserted as provision (ix): "(ix) any other event as a result of which the Shares represent fewer or more Underlying Shares than, and/or any property or assets in addition to, or as a whole or partial replacement of, in each case, the number of Underlying Shares represented by the Shares prior to such event."
- (B) In making any adjustment following any Potential Adjustment Event, the Calculation Agent shall have reference to (to the extent necessary or appropriate among other factors) any adjustment made by the Depositary under the Deposit Agreement, any fees and/or expenses of the Depositary and any withholding or deduction of taxes. If the Calculation Agent determines that no adjustment that it could make will produce a commercially reasonable result, it shall notify the parties that the relevant consequence shall be the termination of the relevant Transaction, in which case "Cancellation and Payment (Calculation Agent Determination)" will be deemed to apply and any payment to be made by one party to the other shall be calculated in accordance with Section 12.7 of the Equity Definitions (as amended by this Confirmation).
- (C) If a Potential Adjustment Event occurs under Section 11.2(e)(viii) of the Equity Definitions (as amended by this Confirmation), then the following further amendments shall be deemed to be made to Section 11.2(c) of the Equity Definitions in respect of such Potential Adjustment Event:
- (i) the words "the Calculation Agent will determine whether such Potential Adjustment Event has a material effect on the theoretical value of the relevant Shares, options on the Shares or the Transaction" shall be deleted and replaced with the words "the Calculation Agent will determine whether such Potential Adjustment Event has a material economic effect on such Transaction"; and
  - (ii) the words "as the Calculation Agent determines appropriate to account for that material effect" shall be deleted and replaced with the words "as the Calculation Agent determines appropriate to account for such economic effect on such Transaction".
- (D) The definitions of "Merger Event", "Tender Offer", "Announcement Date", "Share-for-Share", "Share-for-Other" and "Share-for-Combined" in Section 12.1 of the Equity Definitions shall be amended in accordance with the DS Amendment.
- (E) In making any adjustment in respect of a Merger Event, Tender Offer or Announcement Event in relation to the Underlying Shares, the Calculation Agent shall in determining any adjustment pursuant to Modified Calculation Adjustment, have reference to (amongst other factors) any adjustment made by the Depositary under the Deposit Agreement, any fees and/or expenses of the Depositary and any withholding or deduction of taxes, as determined by the Calculation Agent in its commercially reasonable discretion.

- (F) The definitions of Nationalization and Insolvency in Section 12.6 of the Equity Definitions shall be amended in accordance with the DS Amendment.
- (G) The consequence of a Nationalization or Insolvency in respect of the Depositary shall be Cancellation and Payment.
- (H) If a Delisting of the Shares occurs or the Depositary announces that the Deposit Agreement is (or will be) terminated, then:
  - (i) Cancellation and Payment will apply as provided in this Confirmation; and
  - (ii) where Cancellation and Payment applies under (H)(i) above in respect of a termination of the Deposit Agreement, the Equity Definitions shall be interpreted as follows: (i) such termination shall be deemed to be an “Extraordinary Event”; (ii) Cancellation and Payment shall apply as defined in Section 12.6(c)(ii) of the Equity Definitions; and (iii) the definition of “Announcement Date” in Section 12.1(l) of the Equity Definitions shall include the following additional clause (vii) at the end of the first sentence thereof: “(vii) in the case of a termination of the Deposit Agreement, the date of the first public announcement by the Depositary that the Deposit Agreement is (or will be) terminated”.
- (I) If Cancellation and Payment applies under Section 5(h)(ii)(G) or Section 5(h)(ii)(H) of this Confirmation in respect of a Transaction, then the Determining Party shall be Dealer.
- (J) The definition of “Insolvency Filing” in Section 12.9(a)(iv) of the Equity Definitions shall be amended in accordance with the DS Amendment.
- (K) For the avoidance of doubt, where a provision is amended by this Section 5(h) in accordance with the DS Amendment, if the event described in such provision occurs in respect of the Underlying Shares or Underlying Shares Issuer, then the consequence of such event shall be interpreted consistently with the DS Amendment and such event.
- (j) **Right to Extend.** Dealer may postpone or extend, for as long as it is reasonably necessary, any Averaging Date, the Expiration Date, the Physical Settlement Delivery Date or any other date of payment or delivery by Dealer, with respect to some or all of the Options hereunder, if Dealer reasonably determines, in the case of clause (i) below, in its commercially reasonable judgment or, in the case of clause (ii) below, based on advice of counsel, that such action is reasonably necessary or appropriate (i) to preserve Dealer’s commercially reasonable hedging or hedge unwind activity hereunder in light of existing liquidity conditions in the relevant market or (ii) to enable Dealer to effect transactions with respect to Shares and/or Underlying Shares in connection with its commercially reasonable hedging, hedge unwind or settlement activity hereunder in a manner that would, if Dealer were Counterparty or an affiliated purchaser of Counterparty, be in compliance with applicable legal, regulatory or self-regulatory requirements, or with related policies and procedures adopted by Dealer in good faith so long as such policies and procedures are generally applicable in similar situations and applied in a non-discriminatory manner).
- (k) **Staggered Settlement.** If upon advice of counsel with respect to applicable legal and regulatory requirements, including any requirements relating to Dealer’s hedging activities hereunder, Dealer reasonably determines that it would not be practicable or advisable to deliver, or to acquire Shares to deliver, any or all of the Shares to be delivered by Dealer on any Settlement Date for the Transaction, Dealer may, by notice to Counterparty on or prior to any Settlement Date (a “Nominal Settlement Date”), elect to deliver the Shares on two or more dates (each, a “Staggered Settlement Date”) as follows:
  - (i) in such notice, Dealer will specify to Counterparty the related Staggered Settlement Dates (the first of which will be such Nominal Settlement Date and the last of which will be no later than the twentieth (20th) Exchange Business Day following such Nominal Settlement Date) and the number of Shares that it will deliver on each Staggered Settlement Date; and

- (ii) the aggregate number of Shares that Dealer will deliver to Counterparty hereunder on all such Staggered Settlement Dates will equal the number of Shares that Dealer would otherwise be required to deliver on such Nominal Settlement Date.
- (l) **Registration.** Counterparty hereby agrees that if, in the good faith reasonable judgment of Dealer, based on the advice of counsel, the Shares and/or Underlying Shares (“**Hedge Shares**”) acquired by Dealer for the purpose of commercially reasonably hedging its obligations pursuant to the Transaction cannot be sold in the public market by Dealer without registration under the Securities Act, Counterparty shall, at its election, either (i) in order to allow Dealer to sell the Hedge Shares in a registered offering, make available to Dealer an effective registration statement under the Securities Act and enter into an agreement, in form and substance reasonably satisfactory to Dealer, substantially in the form of an underwriting agreement customary for a registered secondary offering of a similar size in respect of a similar issuer; *provided, however*, that if Dealer, in its sole reasonable discretion, is not satisfied with access to due diligence materials, the results of its due diligence investigation, or the procedures and documentation for the registered offering referred to above, then clause (ii) or clause (iii) of this paragraph shall apply at the election of Counterparty, (ii) in order to allow Dealer to sell the Hedge Shares in a private placement, use commercially reasonable efforts to enter into a private placement agreement substantially similar to private placement purchase agreements customary for private placements of equity securities of a similar size in respect of a similar issuer, in form and substance satisfactory to Dealer (in which case, the Calculation Agent shall make any adjustments to the terms of the Transaction that are necessary, in its commercially reasonable judgment, to compensate Dealer for any commercially reasonable discount from the public market price of the Shares and/or Underlying Shares incurred on the sale of Hedge Shares in a private placement), or (iii) purchase the Hedge Shares from Dealer at the then-current market price on such Exchange Business Days, and in the amounts and at such time(s), reasonably requested by Dealer.
- (m) **Repurchase Notices.** Counterparty shall, on or prior to the date that is one Scheduled Trading Day following any date on which Counterparty effects any repurchase of Shares and/or Underlying Shares, promptly give Dealer a written notice of such repurchase (a “**Repurchase Notice**”) on such day if following such repurchase, the number of outstanding Underlying Shares as determined on such day is (i) less than 727.2 million (in the case of the first such notice) or (ii) thereafter more than 37.8 million less than the number of Underlying Shares included in the immediately preceding Repurchase Notice; *provided* that Counterparty may provide Dealer advance notice on or prior to any such day including the maximum number of Shares and/or Underlying Shares that may be repurchased under a repurchase program entered into in reliance on Rule 10b5-1(c) and the approximate periods during which such repurchases may occur, to the extent it expects that repurchases effected on such day may result in an obligation to deliver a Repurchase Notice (and in such case, any such advance notice shall be deemed a Repurchase Notice to the maximum extent of repurchases set forth in such advance notice as if Counterparty had executed such repurchases). Counterparty agrees that, if Counterparty ceases to qualify as a “foreign private issuer” as defined in Rule 3b-4 under the Exchange Act or the Shares or Underlying Shares, as applicable, otherwise become subject to the requirements of Section 16 of the Exchange Act, Counterparty will indemnify and hold harmless Dealer and its affiliates and their respective officers, directors, employees, affiliates, advisors, agents and controlling persons (each, an “**Indemnified Person**”) from and against any and all losses (including losses relating to Dealer’s hedging activities as a consequence of becoming, or of the risk of becoming, a Section 16 “insider”, including without limitation, any forbearance from hedging activities or cessation of hedging activities and any losses in connection therewith with respect to the Transaction), claims, damages, judgments, liabilities and reasonable and documented out-of-pocket expenses (including reasonable attorney’s fees of one outside counsel in each relevant jurisdiction), joint or several, which an Indemnified Person may become subject to, in each case, as a result of Counterparty’s failure to provide Dealer with a Repurchase Notice on the day and in the manner specified in this paragraph, and to reimburse, within 30 days, upon written request, each of such Indemnified Persons for any reasonable legal or other out-of-pocket expenses (to the extent supported by invoices or other documentation setting forth in reasonable detail such expenses) incurred in connection with investigating, preparing for, providing testimony or other evidence in connection with or defending any of the foregoing. If any suit, action, proceeding (including any governmental or regulatory investigation), claim or demand shall be brought or asserted against the Indemnified Person as a result of Counterparty’s failure to provide Dealer with a Repurchase Notice in accordance with this paragraph, such Indemnified Person shall promptly notify Counterparty in writing, and Counterparty, upon request of the Indemnified Person, shall retain counsel reasonably satisfactory to the Indemnified Person to represent the Indemnified Person and any others Counterparty may designate in such proceeding and shall pay the reasonable fees and expenses of such counsel related to such proceeding. Counterparty shall not be liable to the extent that the Indemnified Person fails to notify Counterparty within a commercially reasonable period of time after any action is commenced against it in respect of which indemnity may be sought hereunder. In addition, Counterparty shall not have liability for any settlement of any such proceeding contemplated by this paragraph that is effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, Counterparty agrees to indemnify any Indemnified Person from and against any loss or liability by reason of such settlement or judgment. Counterparty shall not, without the prior written consent of the Indemnified Person, effect any settlement of any pending or threatened proceeding contemplated by this paragraph in respect of which any Indemnified Person is or could have been a party and indemnity could have been sought hereunder by such Indemnified Person, unless such settlement includes an unconditional release of such Indemnified Person from all liability on claims that are the subject matter of such proceeding on terms reasonably satisfactory to such Indemnified Person. If the indemnification provided for in this paragraph is unavailable to an Indemnified Person or insufficient in respect of any losses, claims, damages or liabilities referred to therein, then Counterparty hereunder, in lieu of indemnifying such Indemnified Person thereunder, shall contribute to the amount paid or payable by such Indemnified Person as a result of such losses, claims, damages or liabilities. The remedies provided for in this paragraph are not exclusive and shall not limit any rights or remedies which may otherwise be available to any Indemnified Person at law or in equity. The indemnity and contribution agreements contained in this paragraph shall remain operative and in full force and effect regardless of the termination of the Transaction.



- (n) **Additional Notices.** Counterparty shall provide a written notice to Dealer as promptly as practicable upon becoming aware that Counterparty is not or will no longer be a “foreign private issuer,” as such term is defined in Rule 3b-4 under the Exchange Act.
- (o) **Termination Currency.** USD
- (p) **Alternative Calculations and Payment on Early Termination and on Certain Extraordinary Events.** If Dealer shall owe Counterparty any amount pursuant to “Consequences of Merger Events” above or Sections 12.6, 12.7 or 12.9 of the Equity Definitions or pursuant to Section 6(d)(ii) of the Agreement (a “**Payment Obligation**”), Dealer shall satisfy any such Payment Obligation by the Share Termination Alternative (as defined below) except in the event (i) of an Insolvency, a Nationalization, a Merger Event, or a Bankruptcy Event of Default under Section 5(a)(vii) of the Agreement, in each case, in which the consideration or proceeds to be paid to holders of Shares consists solely of cash, (ii) of an Event of Default in which Counterparty is the Defaulting Party or a Termination Event in which Counterparty is the Affected Party or an Extraordinary Event, which Event of Default, Termination Event or Extraordinary Event resulted from an event or events within Counterparty’s control, or (iii) any Event of Default resulting from a breach by Counterparty of its representations contained in paragraph (g) or (l) of the section “Additional Representations and Warranties of Counterparty” as of or immediately after the Trade Date or as of or immediately after the Premium Payment Date; *provided* that Counterparty shall have the right, in its sole discretion, to elect to require Dealer to satisfy any Payment Obligation in cash by giving irrevocable telephonic notice to Dealer, confirmed in writing within one Scheduled Trading Day, no later than 9:30 A.M. New York City time on the relevant Merger Date, Announcement Date, Early Termination Date or date of cancellation or termination in respect of an Extraordinary Event, as applicable (“**Notice of Cash Termination**”) so long as Counterparty repeats the representations set forth in paragraph (g) of the section “Additional Representations and Warranties of Counterparty” as of the date of such election, *provided further* that Dealer shall have the right, in its sole discretion, to elect to satisfy its Payment Obligation by the Share Termination Alternative, notwithstanding Counterparty’s election to require Dealer to satisfy any Payment Obligation in cash. The following provisions shall apply for the Share Termination Alternative on the Scheduled Trading Day immediately following the relevant merger date, Announcement Date, Early Termination Date or date of cancellation or termination in respect of an Extraordinary Event, as applicable:

Share Termination Alternative:	Applicable. Dealer shall deliver to Counterparty the Share Termination Delivery Property on, or as promptly as commercially reasonably practicable thereafter, the date on which the Payment Obligation would otherwise be due pursuant to “Consequences of Merger Events” above, Section 12.7 or 12.9 of the Equity Definitions or Section 6(d)(ii) of the Agreement, as applicable, in satisfaction of the Payment Obligation.
Share Termination Delivery Property:	A number of Share Termination Delivery Units, as calculated by the Calculation Agent, equal to the Payment Obligation divided by the Share Termination Unit Price. The Calculation Agent shall adjust the Share Termination Delivery Property by replacing any fractional portion of a security therein with an amount of cash equal to the value of such fractional security based on the values used to calculate the Share Termination Unit Price.
Share Termination Unit Price:	The value of property contained in one Share Termination Delivery Unit on the date such Share Termination Delivery Units are delivered as Share Termination Delivery Property, as determined by the Calculation Agent in its commercially reasonable discretion and notified by the Calculation Agent to Dealer at the time of notification of the Payment Obligation.
Share Termination Delivery Unit:	In the case of a Termination Event, Event of Default, Delisting, Tender Offer or Additional Disruption Event, one Share or, in the case of an Insolvency, Nationalization or Merger Event, one Share or a unit consisting of the number or amount of each type of property received by a holder of one Share (without consideration of any requirement to pay cash or other consideration in lieu of fractional amounts of any securities) in such Insolvency, Nationalization or Merger Event, as applicable. If such Insolvency, Nationalization or Merger Event involves a choice of consideration to be received by holders, such holder shall be deemed to have elected to receive the consideration specified by Dealer in its sole discretion.
Failure to Deliver:	Applicable
Other applicable provisions:	If Share Termination Alternative is applicable, the provisions of Sections 9.8, 9.9 and 9.11 (except 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 arising as a result of the fact that Counterparty is the issuer of the Shares or any portion of the Share Termination Delivery Units) of the Equity Definitions will be applicable as if “Physical Settlement” applied to the Transaction, except that all references to “Shares” shall be read as references to “Share Termination Delivery Units.”

(q) **Office.**

- (a) The Office of Counterparty for the Transaction is: Inapplicable, Counterparty is not a Multibranch Party.
- (b) The Office of Dealer for the Transaction is: London

(r) **Notice.** For purposes of the Agreement (unless otherwise specified in the Agreement), the addresses for notice to the parties shall be:

(i) to Counterparty:

NIO Inc.  
Building 20, No. 56 AnTuo Road, Jiading District  
Shanghai, 201804  
People's Republic of China  
Attention: Louis T. Hsieh, Chief Financial Officer  
Telephone No.: +86 (21) 6908 3306  
Facsimile No.: +86 (21) 3913 0192

with a copy to:

Nick Wang  
VP of Finance  
Telephone No.: +86 (21) 6908-2002  
Email: Nick.Wang@nio.com

with a copy to:

Fang Liu  
General Counsel  
Telephone No.: +86 (21) 6908-2277  
Email: Fang.Liu@nio.com

with a copy to:

Sabrina Shi  
Senior Corporate Counsel  
Telephone No.: +86 (21) 6908-3391  
Email: Danting.Shi@nio.com

(ii) to Dealer:

JPMorgan Chase Bank, National Association  
EDG Marketing Support  
Email: edg\_notices@jpmorgan.com  
edg.us.flow.corporates.mo@jpmorgan.com  
Facsimile No: 1-866-886-4506

With a copy to:

Attention: Santosh Sreenivasan  
Title: Managing Director, Head of Equity-Linked Capital Markets, Americas  
Telephone No: 1-212-622-5604  
Facsimile No: 1-212-622-6037

- (s) **Calculation Agent.** Dealer provided that, following the occurrence and during the continuance of an Event of Default under Section 5(a)(vii) of the Agreement with respect to which Dealer is the Defaulting Party, Counterparty shall have the right to designate a nationally recognized independent equity derivatives 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 adjustment, determination or calculation by the Calculation Agent hereunder, the Calculation Agent will, upon written request from Counterparty, promptly (but in any event within five Scheduled Trading Days) provide to Counterparty by email a report (in a commonly used file format for the storage and manipulation of financial data) displaying in reasonable detail the basis for such adjustment, determination or calculation (including any assumptions used in making such adjustment, determination or calculation), it being understood that in no event will the Calculation Agent be obligated to share with Counterparty any proprietary or confidential data or information or any proprietary or confidential models used by it in making such adjustment, determination or calculation or any information that is subject to an obligation not to disclose such information. All calculations and determinations by the Calculation Agent shall be made in good faith and in a commercially reasonable manner.

- (t) **WAIVER OF JURY TRIAL.** EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION OR PROCEEDING RELATING TO THE TRANSACTION. EACH PARTY (I) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF SUCH A SUIT, ACTION OR PROCEEDING, SEEK TO ENFORCE THE FOREGOING WAIVER AND (II) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HAVE BEEN INDUCED TO ENTER INTO THE TRANSACTION, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS PROVIDED HEREIN.
- (u) **Tax Disclosure.** Effective from the date of commencement of discussions concerning the Transaction, Counterparty and each of its employees, representatives, or other agents may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the transaction and all materials of any kind (including opinions or other tax analyses) that are provided to Counterparty relating to such tax treatment and tax structure.
- (v) **Service of Process.** Counterparty irrevocably appoints Law Debenture Corporate Services Inc. as its authorized agent upon which process may be served in any suit, action or proceeding relating to the Transaction, and agrees that service of process in any manner permitted by applicable law upon such agent shall be deemed in every respect effective service of process in any manner permitted by applicable law upon Counterparty in any such suit, action or proceeding. Counterparty further agrees to take any and all action as may be necessary to maintain such designation and appointment of such agent in full force and effect for a period of five and a half years from the date of this Confirmation. If for any reason such agent shall cease to be such agent for service of process, Counterparty shall forthwith appoint a new agent of recognized standing for service of process in the State of New York and deliver to Dealer a copy of the new agent's acceptance of that appointment within 10 days. Nothing herein shall affect the right of Dealer to serve process in any other manner permitted by law or to commence legal proceedings or otherwise proceed against Counterparty in any other court of competent jurisdiction.

- (w) **U.S. Tax Forms.** Without limiting the generality of the foregoing, Counterparty will provide a U.S. Tax Form W-8BEN-E upon the execution of this Confirmation, promptly upon learning that any such tax form previously provided by it has become obsolete or incorrect and promptly upon reasonable demand by Dealer.
- (x) **Taxes, Foreign Account Tax Compliance Act and HIRE Act.** Counterparty is classified as a corporation for the U.S. federal income tax purposes. No income received or to be received under the Agreement will be effectively connected with the conduct of a trade or business by Counterparty in the United States. Counterparty is a “non-U.S. branch of a foreign person” as that term is used in Section 1.1441-4(a)(3)(ii) of the United States Treasury Regulations (the “**Regulations**”), and it is a “foreign person” as that term is used in Section 1.6041-4(a)(4) of the Regulations. The term “Indemnifiable Tax” as defined in Section 14 of the Agreement shall not include any U.S. federal withholding tax imposed or collected pursuant to Sections 1471 through 1474 of the U.S. Internal Revenue Code of 1986, as amended (the “**Code**”), any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b) of the Code, or any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code (a “**FATCA Withholding Tax**”). For the avoidance of doubt, a FATCA Withholding Tax is a Tax the deduction or withholding of which is required by applicable law for the purposes of Section 2(d) of the Agreement. The parties agree that the definitions and provisions contained in the ISDA 2015 Section 871(m) Protocol, as published by the International Swaps and Derivatives Association, Inc. and as may be amended, supplemented, replaced or superseded from time to time (the “**871(m) Protocol**”) shall apply to the Agreement as if the parties had adhered to the 871(m) Protocol as of the Effective Date. If there is any inconsistency between this provision and a provision in any other agreement executed between the parties, this provision shall prevail unless such other agreement expressly overrides the provisions of the 871(m) Protocol. Each of Dealer and Counterparty shall provide to the other party tax forms and documents required to be delivered pursuant to Sections 1471(b) or Section 1472(b)(1) of the Code promptly upon request by the other party and any other tax forms and documents they are legally able to provide that are reasonably requested by the other party.
- (y) **Role of Agent.** Each party agrees and acknowledges that (i) J.P. Morgan Securities LLC, an affiliate of Dealer (“**JPMS**”), has acted solely as agent and not as principal with respect to the Transaction and (ii) JPMS has no obligation or liability, by way of guaranty, endorsement or otherwise, in any manner in respect of the Transaction (including, if applicable, in respect of the settlement thereof). Each party agrees it will look solely to the other party (or any guarantor in respect thereof) for performance of such other party’s obligations under the Transaction. JPMS is authorized to act as agent for Dealer.
- (z) **QFC Stay Provisions.** The parties acknowledge and agree that (i) to the extent that prior to the date hereof both parties have adhered to the 2018 ISDA U.S. Resolution Stay Protocol (the “**Protocol**”), the terms of the Protocol are incorporated into and form a part of the Agreement, and for such purposes the Agreement shall be deemed a Protocol Covered Agreement, the J.P. Morgan entity that is a party to the Agreement (“**J.P. Morgan**”) shall be deemed a Regulated Entity and the other entity that is a party to the Agreement (“**Counterparty**”) shall be deemed an Adhering Party; (ii) to the extent that prior to the date hereof the parties have executed a separate agreement the effect of which is to amend the qualified financial contracts between them to conform with the requirements of the QFC Stay Rules (the “**Bilateral Agreement**”), the terms of the Bilateral Agreement are incorporated into and form a part of the Agreement, and for such purposes the Agreement shall be deemed a Covered Agreement, J.P. Morgan shall be deemed a Covered Entity and Counterparty shall be deemed a Counterparty Entity; or (iii) if clause (i) and clause (ii) do not apply, the terms of Section 1 and Section 2 and the related defined terms (together, the “**Bilateral Terms**”) of the form of bilateral template entitled “Full-Length Omnibus (for use between U.S. G-SIBs and Corporate Groups)” published by ISDA on November 2, 2018 (currently available on the 2018 ISDA U.S. Resolution Stay Protocol page at [www.isda.org](http://www.isda.org) and, a copy of which is available upon request), the effect of which is to amend the qualified financial contracts between the parties thereto to conform with the requirements of the QFC Stay Rules, are hereby incorporated into and form a part of the Agreement, and for such purposes the Agreement shall be deemed a “Covered Agreement,” J.P. Morgan shall be deemed a “Covered Entity” and Counterparty shall be deemed a “Counterparty Entity.” In the event that, after the date of the Agreement, both parties hereto become adhering parties to the Protocol, the terms of the Protocol will replace the terms of this paragraph. In the event of any inconsistencies between the Agreement and the terms of the Protocol, the Bilateral Agreement or the Bilateral Terms (each, the “**QFC Stay Terms**”), as applicable, the QFC Stay Terms will govern. Terms used in this paragraph without definition shall have the meanings assigned to them under the QFC Stay Rules. For purposes of this paragraph, references to “the Agreement” 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 J.P. Morgan replaced by references to the covered affiliate support provider. “**QFC Stay Rules**” means 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 FDIC 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.

Please confirm that the foregoing correctly sets forth the terms of our agreement by executing this Confirmation and returning it to Dealer.

Yours sincerely,

**J.P. MORGAN SECURITIES LLC, as  
an agent for JPMorgan Chase Bank,  
National Association**

By: /s/ Authorized Signatory

Name:

Title:

[Signature Page to Zero-Strike Call]

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Agreed and Accepted,

**NIO Inc.**

By: /s/ Authorized Signatory

Name:

Title:

[Signature Page to Zero-Strike Call]

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**Goldman Sachs International | Peterborough Court | 133 Fleet Street | London EC4A 2BB | Tel: 020-7774-1000 | Telex: 887902 | Cable: GOLDSACHS LONDON | Registered in England No. 2263951 | Registered Office as Above | Authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority**

January 30, 2019

NIO Inc. (“**Counterparty**”)  
Building 20, No. 56 AnTuo Road, Jiading District  
Shanghai, 201804  
People’s Republic of China  
Attention: Louis T. Hsieh, Chief Financial Officer  
Telephone No.: +86 (21) 6908 3306  
Facsimile No.: +86 (21) 3913 0192

#### **Call Transaction**

The purpose of this letter agreement (this “**Confirmation**”) is to confirm the terms and conditions of the call option transaction entered into between Goldman Sachs International (“**Dealer**”) and Counterparty as of the Trade Date specified below (the “**Transaction**”). This Confirmation constitutes a “Confirmation” as referred to in the ISDA Master Agreement specified below. This Confirmation shall replace any previous agreements and serve as the final documentation for the Transaction.

The definitions and provisions contained in the 2002 ISDA Equity Derivatives Definitions (the “**Equity Definitions**”), as published by the International Swaps and Derivatives Association, Inc. (“**ISDA**”) are incorporated into this Confirmation. The Transaction constitutes a Share Option Transaction for purposes of the Equity Definitions. In the event of any inconsistency between the Equity Definitions and this Confirmation, this Confirmation will govern. For the avoidance of doubt, references herein to sections of the Purchase Agreement (the “**Purchase Agreement**”), to be dated on or around January 30, 2019, among Counterparty and Credit Suisse Securities (USA) LLC, Goldman Sachs (Asia) L.L.C., J.P. Morgan Securities LLC and Morgan Stanley & Co. LLC (the “**Initial Purchasers**”) are based on the draft of the Purchase Agreement most recently reviewed by the parties at the time of execution of this Confirmation. Certain defined terms used herein are based on terms that are defined in the Offering Memorandum dated January 30, 2019 (the “**Offering Memorandum**”) relating to the 4.50% Convertible Senior Notes due 2024 (as originally issued by Counterparty, the “**Convertible Notes**” and each USD 1,000 principal amount of Convertible Notes, a “**Convertible Note**”) issued by Counterparty in an aggregate initial principal amount of USD650,000,000 (as increased by up to an aggregate principal amount of USD100,000,000 if and to the extent that the Initial Purchasers (as defined herein) exercise their option to purchase additional Convertible Notes pursuant to the Purchase Agreement (as defined herein)) pursuant to an Indenture.

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

1. This Confirmation evidences a complete and binding agreement between Dealer and Counterparty as to the terms of the Transaction to which this Confirmation relates. This Confirmation shall supplement, form a part of, and be subject to an agreement in the form of the 2002 ISDA Master Agreement (the “**Agreement**”) as if Dealer and Counterparty had executed an agreement in such form (but without any Schedule except for (a) the election of the laws of the State of New York as the governing law (without reference to choice of law doctrine) and (b) the agreement of the parties hereto that, following the payment of the Premium and the delivery to Dealer of the opinions of counsel as required pursuant to Section 9(a), the condition precedent in Section 2(a)(iii) of the Agreement shall not apply to a payment or delivery owing by Dealer to Counterparty (it being understood that such condition precedent will continue to apply and this clause (b) will have no effect with respect to a Potential Event of Default, Event of Default and/or Early Termination Date arising under, or with respect to, Section 5(a)(ii) or 5(a)(iv) of the Agreement)) on the Trade Date. In the event of any inconsistency between provisions of the Agreement and this Confirmation, this Confirmation will prevail for the purpose of the Transaction to which this Confirmation relates. The parties hereby agree that no transaction other than the Transaction to which this Confirmation relates shall be governed by the Agreement.



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

**General Terms:**

Trade Date:	January 30, 2019
Option Style:	European
Option Type:	Call
Seller:	Dealer
Buyer:	Counterparty
Shares:	The American Depository Shares of Counterparty issued or deemed issued under the Deposit Agreement (as defined below) (Exchange symbol: "NIO"), each of which represents as if the date hereof one Underlying Shares
Underlying Shares:	Initially, Class A ordinary shares, nominal value USD 0.00025 per Underlying Share, of Counterparty and any and all other securities, property and cash that are the subject of the Deposit Agreement (as defined below).
Underlying Shares Issuer:	Counterparty
Number of Options:	6,702,413. For the avoidance of doubt, the Number of Options shall be reduced by the number of any Options settled pursuant to Early Settlement (as defined below) or exercised by Counterparty. In no event will the Number of Options be less than zero.
Option Entitlement:	One. For the avoidance of doubt, the Option Entitlement shall be subject to adjustment from time to time, as described under "Method of Adjustment" below.
Number of Shares:	As of any date, the product of the Number of Options and the Option Entitlement.
Strike Price:	USD 0.00
Premium:	USD 50,000,000.98
Premium Per Option:	The amount equal to the Premium <i>divided by</i> the Number of Options.
Premium Payment Date:	February 4, 2019.
Exchange(s):	New York Stock Exchange, or any successor to such exchange or quotation system.
Related Exchange(s):	All Exchanges

Market Disruption Event: The definition of “Market Disruption Event” in Section 6.3(a) of the Equity Definitions is hereby amended (A) 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 Averaging Date” after the word “material,” in the third line thereof, and (B) by replacing the words “or (iii) an Early Closure.” therein with “(iii) an Early Closure, or (iv) a Regulatory Disruption.”

Section 6.3(d) of the Equity Definitions is hereby amended by deleting the remainder of the provision following the term “Scheduled Closing Time” in the fourth line thereof.

Regulatory Disruption: Any event that Dealer, in its reasonable discretion and in good faith, based on the advice of counsel, determines makes it appropriate with regard to any legal, regulatory or self-regulatory requirements or related policies and procedures for Dealer, that are generally applicable in similar situations and applied in a non-discriminatory manner, to refrain from or decrease any market activity in connection with the Transaction. Dealer shall notify Counterparty as soon as reasonably practicable that a Regulatory Disruption has occurred and the Averaging Dates affected by it.

Disrupted Day: The definition of “Disrupted Day” in Section 6.4 of the Equity Definitions shall be amended by adding the following sentence after the first sentence: “A Scheduled Trading Day on which a Related Exchange fails to open during its regular trading session will not be a Disrupted Day if the Calculation Agent determines, in its commercially reasonable discretion, that such failure will not have a material adverse impact on Dealer’s ability to unwind any related hedging transactions related to the Transaction.”

Non-Disrupted Day: An Exchange Business Day that is not a Disrupted Day.

**Procedure for Exercise:**

Expiration Time: The Valuation Time  
Expiration Date: The 40<sup>th</sup> Non-Disrupted Day following the Note Maturity Date  
Securities Maturity Date: February 1, 2024  
Automatic Exercise: Applicable

**Valuation:**

Valuation Time:	At the close of trading on the Exchange, without regard to extended or after hours trading.
Valuation Date:	The Expiration Date, subject to "Early Settlement" below.
Averaging Dates:	The 40 consecutive Non-Disrupted Days commencing on, and including, the Note Maturity Date, subject to "Early Settlement" below.
Averaging Date Disruption:	Modified Postponement; <i>provided</i> that, notwithstanding anything to the contrary in the Equity Definitions and in addition to the provisions of Section 6.7(c)(iii) of the Equity Definitions, if any Averaging Date is a Disrupted Day, the Calculation Agent may, in its commercially reasonable discretion, assign additional dates to be Averaging Dates and/or make adjustments to the number of Options to which each Averaging Date relates (including increasing such number or reducing such number to zero with respect to one or more Averaging Dates).

**Settlement Terms:**

Settlement Currency:	USD
Settlement Method Election:	Not applicable.
Restricted Certificated Shares:	Notwithstanding anything to the contrary in the Equity Definitions or this Confirmation, in satisfaction of any Share delivery obligation it may have under the Transaction, Dealer may, in whole or in part, deliver Shares in certificated form representing the Number of Shares to be Delivered to Counterparty in lieu of delivery through the Clearance System.
Physical Settlement:	Applicable. Except in the case of any Early Settlement, a relevant portion of the Transaction shall expire on each Averaging Date with respect to a number of Options equal to the Number of Averaging Date Options for such Averaging Date. On the Physical Settlement Delivery Date for such Physical Settlement, Dealer shall deliver to Counterparty the sum of the Number of Averaging Date Options for each Averaging Date <i>multiplied by</i> the Option Entitlement as of each such Averaging Date for all Averaging Dates, and will pay to Counterparty the Fractional Share Amount, if any.
Physical Settlement Delivery Date:	The date that is one Settlement Cycle immediately following the Valuation Date.
Other Applicable Provisions in Respect of Physical Settlement:	The representations and agreements 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 or under the Deposit Agreement (as defined below) that exist as a result of the fact that Counterparty is the issuer of the Underlying Shares.

**Share Adjustments:**

- Method of Adjustment: Calculation Agent Adjustment. For the avoidance of doubt, in the case of any dividend or distribution of the type described in Sections 11.2(e)(i) or 11.2(e)(ii)(A) of the Equity Definitions, the Calculation Agent shall make a proportional adjustment to the Number of Shares to reflect such dividend or distribution.
- Extraordinary Dividend: Any dividend or distribution on the Shares or the Underlying Shares with an ex-dividend date occurring during the period from, and including, the Trade Date to, and including, the Expiration Date (other than 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).

**Extraordinary Events:**

- New Shares: In the definition of New Shares in Section 12.1(i) of the Equity Definitions, the text in clause (i) shall be deleted in its entirety and replaced with “publicly quoted, traded or listed on any of the New York Stock Exchange, the NASDAQ Global Select Market or the NASDAQ Global Market (or their respective successors)”.
- Consequences of Merger Events:
- (a) Share-for-Share Modified Calculation Agent Adjustment
  - (b) Share-for-Other Modified Calculation Agent Adjustment or Cancellation and Payment (Calculation Agent Determination) at the commercially reasonable election of Dealer.
  - (c) Share-for-Combined Modified Calculation Agent Adjustment or Component Adjustment at the commercially reasonable election of Dealer.
- Tender Offer: Applicable
- Consequences of Tender Offers:
- (a) Share-for-Share Modified Calculation Agent Adjustment
  - (b) Share-for-Other Modified Calculation Agent Adjustment
  - (c) Share-for-Combined Modified Calculation Agent Adjustment

Modified Calculation Agent Adjustment: If, with respect to a Merger Event or a Tender Offer, (i) the consideration for the Shares or Underlying Shares, as applicable, includes (or, at the option of a holder of Shares, or Underlying Shares, as applicable, may include) shares of an entity or person that is not (1) a corporation or an entity that is treated as a corporation for U.S. federal income tax purposes or (2) organized under the laws of the Cayman Islands or (ii) the Counterparty to the Transaction following such Merger Event or Tender Offer will not be a corporation or an entity that is treated as a corporation for U.S. federal income tax purposes organized under the laws of the Cayman Islands, and/or will not be the Underlying Shares Issuer then, in any case, Cancellation and Payment (Calculation Agent Determination) may apply at Dealer's commercially reasonable election.

Composition of Combined Consideration: Not Applicable

Nationalization, Insolvency or Delisting: Cancellation and Payment (Calculation Agent Determination).

The definition of "Delisting" in Section 12.6 of the Equity Definitions shall be deleted in its entirety and replaced with the following: "Delisting" means that the Exchange announces that pursuant to the rules of such Exchange, the Shares cease (or will cease) to be listed, traded or publicly quoted on the Exchange for any reason (other than a Merger Event or Tender Offer) and 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 thereafter be deemed to be the Exchange.

Section 12.1 of the Equity Definitions is hereby amended by deleting subsection (v) thereof in its entirety and replacing it with "(v) in the case of an Insolvency, the date of (A) the institution of a proceeding or presentation of a petition or the passing of a resolution (or the convening of a meeting to pass a resolution or the proposing of a written resolution) (in each case the occurrence of which shall be deemed its announcement) that leads to an Insolvency within the meaning of subsection (A) of the definition thereof, (B) the first public announcement of the institution of a proceeding or presentation of a petition or passing of a resolution (or other analogous procedure in any jurisdiction) that leads to the Insolvency or (C) the occurrence of any of the events specified in Section 5(a)(vii)(1) through (9) of the ISDA Master Agreement with respect to that Issuer".

Section 12.6(a)(ii) of the Equity Definitions is hereby amended by (1) inserting “(A)” after “means” in the first line thereof and replacing “(A)” and “(B)” in the third and fourth lines thereof with “(1)” and “(2)” respectively, (2) deleting from the fourth line thereof the word “or” after the word “official” and inserting a comma therefor, (3) inserting at the end of renumbered subsection (2) thereof the following wording, “or, under the laws of the Cayman Islands, any other jurisdiction or otherwise, any other impediment to or restriction on the transfer of any Share arises or becomes applicable including, without limitation, where (x) any transfer of a Share or alteration of the status of the members of the Issuer would be void unless a court of the Cayman Islands or any other jurisdiction orders otherwise or (y) any transfer of a Share not being a transfer with the sanction of a liquidator, and any alteration in the status of the Issuer’s members, would be void” and (4) deleting the semi-colon at the end of renumbered subsection (2) thereof and inserting the following words therefor “or (B) at Dealer’s option, the occurrence of any of the events specified in Section 5(a)(vii)(1) through (9) of the ISDA Master Agreement with respect to that Issuer.”

**Additional Disruption Events:**

Change in Law:

Applicable; *provided* that Section 12.9(a)(ii) of the Equity Definitions is hereby amended by (i) replacing the phrase “the interpretation” in the third line thereof with the phrase “, or public announcement of, the formal or informal interpretation”, (ii) replacing the word “Shares” where it appears in clause (X) thereof with the words “Hedge Position” and (iii) replacing the parenthetical beginning after the word “regulation” in the second line thereof with the words “(including, for the avoidance of doubt and without limitation, (x) any tax law or (y) adoption, effectiveness or promulgation of new regulations authorized or mandated by existing statute)”, and *provided further* that any determination as to whether (A) the adoption of or any change in any applicable law or regulation (including, for the avoidance of doubt and without limitation, (x) any tax law or (y) adoption, effectiveness or promulgation of new regulations authorized or mandated by existing statute) or (B) the promulgation of or any change in the interpretation by any court, tribunal or regulatory authority with competent jurisdiction of any applicable law or regulation (including any action taken by a taxing authority), in each case, constitutes a “Change in Law” shall be made without regard to Section 739 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 or any similar legal certainty provision in any legislation enacted, or rule or regulation promulgated, on or after the Trade Date.

Failure to Deliver:

Applicable

Insolvency Filing:	Applicable
	Section 12.9(b)(i) of the Equity Definitions is hereby amended by adding the following sentence at the end: "If neither party elects to terminate the Transaction, the Calculation Agent may in its sole discretion decide to apply adjustments to the terms of the Transaction upon the occurrence of such an event pursuant to Calculation Agent Adjustment (as if such event were a Tender Offer). For the avoidance of doubt, such adjustments shall be made in a commercially reasonable manner."
Hedging Disruption:	Applicable
Increased Cost of Hedging:	Applicable
Loss of Stock Borrow:	Not Applicable
Increased Cost of Stock Borrow:	Not Applicable
Hedging Party:	Dealer shall be the Hedging Party for all applicable events
Determining Party:	For all applicable Extraordinary Events, Dealer; <i>provided</i> that when making any determination or calculation as "Determining Party," Dealer shall make such determinations or calculations in good faith and in a commercially reasonable manner.
	Following any determination or calculation by Determining Party hereunder, the Determining Party will, upon written request from Counterparty, promptly (but in any event within five Scheduled Trading Days) provide to Counterparty a report (in a commonly used file format for the storage and manipulation of financial data) displaying in reasonable detail the basis for such determination or calculation (including any assumptions used in making such determination or calculation), it being understood that in no event will the Determining Party be obligated to share with Counterparty any proprietary or confidential data or information or any proprietary or confidential models used by it in making such determination or calculation or any information that is subject to an obligation not to disclose such information.
Hedging Adjustments:	For the avoidance of doubt, whenever the Calculation Agent is called upon to make an adjustment pursuant to the terms of this Confirmation or the Equity Definitions to take into account the effect of an event, the Calculation Agent shall make such adjustment in a commercially reasonable manner by reference to the effect of such event on Dealer, assuming that Dealer maintains a commercially reasonable Hedge Position.

**Representations:**

Non-Reliance:	Applicable
Agreements and Acknowledgments Regarding Hedging Activities:	Applicable
Additional Acknowledgments:	Applicable

**3. Additional Representations and Warranties of Counterparty:**

Each of the representations and warranties of Counterparty set forth in Section 2 of the Purchase Agreement are true and correct and are hereby deemed to be repeated to Dealer as if set forth herein. In lieu of the representations set forth in Section 3(a) of the Agreement, Counterparty represents and warrants to Dealer on the date hereof and as of the Premium Payment Date that:

- (a) Counterparty (i) is duly incorporated and validly existing as an exempted company with limited liability under the laws of the Cayman Islands and is in good standing under such laws, and (ii) has all necessary corporate power and authority to execute, deliver and perform its obligations and exercise its rights in respect of the Transaction; such execution, delivery, performance and exercise have been duly authorized by all necessary corporate action on Counterparty's part; and this Confirmation has been duly and validly executed and delivered by Counterparty and constitutes its valid and binding obligation, enforceable against Counterparty in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity) and except that rights to indemnification and contribution hereunder may be limited by federal or state securities laws or public policy relating thereto.
- (b) (i) It is not entering into the Transaction on behalf of or for the accounts of any other person or entity, and will not transfer or assign its obligations under the Transaction or any portion of such obligations to any other person or entity except in compliance with applicable laws and the terms of the Transaction; (ii) it understands that the 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 (iii) it has consulted with its legal advisor(s) and has reached its own conclusions about the Transaction, and any legal, regulatory, tax, accounting or economic consequences arising from the Transaction.
- (c) Neither Dealer nor any of its affiliates has advised it with respect to any legal, regulatory, tax, accounting or economic consequences arising from the Transaction, and neither Dealer nor any of its affiliates is acting as agent, or advisor for Counterparty in connection with the Transaction.
- (d) Neither the execution and delivery of this Confirmation nor the incurrence or performance of obligations nor the exercise of rights of Counterparty hereunder will conflict with or result in a breach of the memorandum and articles of association or by-laws (or any equivalent documents) of Counterparty, or any applicable law or regulation, or any order, writ, injunction or decree of any court or governmental authority or agency, or any agreement or instrument to which Counterparty or any of its subsidiaries is a party or by which Counterparty or any of its subsidiaries is bound or to which Counterparty or any of its subsidiaries is subject, or constitute a default under, or result in the creation of any lien under, any such agreement or instrument.
- (e) No consent, approval, authorization, or order of, or filing with, any governmental agency or body or any court is required in connection with the execution, delivery or performance by Counterparty of this Confirmation, except such as have been obtained or made and such as may be required under the Securities Act or state securities laws.



- (f) It has not entered into any obligation that would contractually limit it from effecting Physical Settlement (including in connection with an Early Settlement) under the Transaction.
- (g) The Transaction has been duly approved and authorized by Counterparty's board of directors after due consideration by the board of directors of the matters, and after having reached the conclusions referred to in paragraph (b) above and, prior to the Trade Date Counterparty shall deliver to Dealer a resolution of Counterparty's board of directors authorizing the Transaction and such other certificate or certificates, as Dealer shall reasonably request. For the avoidance of doubt, each representation, warranty and certification made by Counterparty in such certificate shall be deemed a representation and warranty made by Counterparty in this paragraph (g).
- (h) It is not entering into the Transaction to create actual or apparent trading activity in the Shares or Underlying Shares (or any security convertible into or exchangeable for Shares or Underlying Shares), or to manipulate the price of the Shares or Underlying Shares (or any security convertible into or exchangeable for Shares or Underlying Shares).
- (i) Counterparty is not and, after consummation of the transactions contemplated hereby, will not be required to register as an "investment company" as such term is defined in the Investment Company Act of 1940, as amended.
- (j) Counterparty is an "eligible contract participant" (as such term is defined in Section 1a(18) of the Commodity Exchange Act, as amended, other than a person that is an eligible contract participant under Section 1a(18)(C) of the Commodity Exchange Act).
- (k) Counterparty is not, on the date hereof and on each day pursuant to the terms hereof on which this representation is repeated or deemed repeated, aware of any material non-public information with respect to Counterparty, the Underlying Shares Issuer (if other than Counterparty), the Underlying Shares or the Shares.
- (l) On and immediately after the Trade Date and the Premium Payment Date, and on each day pursuant to the terms hereof on which this representation is required to be repeated or deemed repeated, (A) the assets of Counterparty at their fair valuation exceed the liabilities of Counterparty, including contingent liabilities, (B) the capital of Counterparty is adequate to conduct the business of Counterparty, (C) Counterparty has the ability to pay its debts and obligations as such debts mature and does not intend to, or does not believe that it will, incur debt beyond its ability to pay as such debts mature, (D) Counterparty is not, and will not be, "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**")), (E) Counterparty would be able to purchase 100,536,150 Shares and the Underlying Shares represented by such number of Shares in compliance with the laws of the jurisdiction of Counterparty's incorporation or organization, and (F) for the purposes of Cayman Islands law, Counterparty is able to pay its debts.
- (m) To the knowledge of Counterparty, no state or local (including any non-U.S. jurisdiction's) law, rule, regulation or regulatory order applicable to the Shares and/or Underlying 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 and/or Underlying Shares (except for filings of Form 13F, Schedule 13D or Schedule 13G under the Exchange Act); *provided* that Counterparty makes no representation or warranty regarding any such requirement that is applicable generally to the ownership of equity securities by Dealer or any of its affiliates solely as a result of it or any of such affiliates being a financial institution or broker-dealer.
- (n) Counterparty is not on the Trade Date engaged in a distribution, as such term is used in Regulation M ("**Regulation M**") under the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), of any securities of Counterparty other than a distribution meeting the requirements of the exception set forth in Rule 102(b)(7) of Regulation M.

- (o) Counterparty (A) is capable of evaluating investment risks independently, both in general and with regard to all transactions and investment strategies involving a security or securities; (B) will exercise independent judgment in evaluating the recommendations of any broker-dealer or its associated persons, unless it has otherwise notified the broker-dealer in writing; (C) has total assets of at least USD 50 million; and (D) is acting for its own account, and it has made its own independent decisions to enter into the Transaction and as to whether the Transaction is appropriate or proper for it (including as to any legal, regulatory, tax, accounting or economic consequences arising from the Transaction) based upon its own judgment and upon advice from such advisers as it has deemed necessary (including legal, financial and accounting advisors).
- (p) Counterparty acknowledges that the offer and sale of the Transaction to it is intended to be exempt from registration under the Securities Act of 1933, as amended (the “**Securities Act**”), by virtue of Section 4(a)(2) thereof. Accordingly, Counterparty represents and warrants to Dealer that (i) it has the financial ability to bear the economic risk of its investment in the Transaction and is able to bear a total loss of its investment, (ii) it is an “accredited investor” as that term is defined in Regulation D as promulgated under the Securities Act, (iii) it is entering into the Transaction for its own account without a view to the distribution or resale thereof and (iv) the assignment, transfer or other disposition of the Transaction has not been and will not be registered under the Securities Act and is restricted under this Confirmation, the Securities Act and state securities laws.
- (q) It has the corporate power and authority and all necessary consents to effect Physical Settlement of the Transaction as contemplated by the Agreement.
- (r) Counterparty’s board of directors (the “**Board**”) has concluded that (A) the Transaction is suitable for Counterparty, for its commercial benefit and in its best interests, in light of its own investment objectives, financial condition and expertise and (B) the Transaction has been duly approved and authorized by the Board after due consideration by the Board of the foregoing matters and those referred to in sub-paragraph (b) (iii) above.

#### **4. Additional Mutual Representations and Warranties:**

In addition to the representations set forth in the Agreement, each of Dealer and Counterparty further represents and warrants to the other party that as of the Trade Date that it is an “eligible contract participant” as the term is defined in the U.S. Commodity Exchange Act, as amended.

#### **5. Additional Covenants and Acknowledgements:**

- (a) Counterparty shall deliver to Dealer (A) an opinion of U.S. counsel and (B) an opinion of Cayman counsel, each dated as of the Premium Payment Date, with respect to, among other things, the matters set forth in Sections 3(a), (d) and (e) of this Confirmation, it being understood that such opinions of counsel shall be limited to the federal laws of the United States and the laws of the State of New York (in the case of clause (A) above) and the laws Cayman Islands (in the case of clause (B) above) and may contain customary limitations, exceptions and qualifications for transactions of the same type as the Transaction. Delivery of such opinions to Dealer shall be a condition precedent for the purpose of Section 2(a)(iii) of the Agreement with respect to each obligation of Dealer under Section 2(a)(i) of the Agreement; and (C) on or before the Premium Payment Date, a solvency certificate with respect to Counterparty signed by a member of the Board, the chief executive officer or the chief financial officer of the Counterparty certifying the solvency of Counterparty as of and immediately after the Premium Payment Date (after giving effect to Counterparty’s payment of amounts required to be paid by Counterparty on such date under the Transaction and the other transactions described under “Use of Proceeds” in the Offering Memorandum related to the offering of the Convertible Notes), which solvency certificate is reasonably satisfactory to Dealer.
- (b) (i) Counterparty shall not engage in any distribution as such term is used in Regulation M of any securities of Counterparty or otherwise permit the Shares or the Underlying Shares to be subject to a restricted period, as such term is used in Regulation M, in each case, during the period (the “**Restricted Period**”) from, and including, the scheduled first Averaging Date to, and including, the Exchange Business Day immediately succeeding the Valuation Date (determined without regard to any Early Settlement); provided, for the avoidance of doubt, that the foregoing shall not apply with respect to any Early Settlement.

- (ii) In connection with any Early Settlement, Counterparty shall notify Dealer, as soon as practicable, and in any event no later than the Exchange Business Day immediately following the Notice Date with respect to such Early Settlement, of any distribution or restricted period, as such terms are used in Regulation M with respect to any securities of Counterparty that is occurring on the date Counterparty delivers such notice to Dealer or that Counterparty expects at such time may occur on any Averaging Date, Valuation Date or the Exchange Business Day immediately succeeding the Valuation Date relating to such Early Settlement.
- (c) On the Trade Date, and on each day during the Restricted Period, neither Counterparty nor any “affiliated purchaser” (each as defined in Rule 10b-18 under the Exchange Act (“**Rule 10b-18**”)) shall directly or indirectly (including, without limitation, by means of any cash-settled or other derivative instrument) purchase, offer to purchase, place any bid or limit order that would effect a purchase of, or commence any tender offer relating to, any Shares or Underlying Shares (or an equivalent interest, including a unit of beneficial interest in a trust or limited partnership or a depository share) or any security convertible into or exchangeable or exercisable for Shares or Underlying Shares.
- (d) 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 Confirmation or the Agreement, as applicable, arising from a termination event, force majeure, illegality, increased costs, regulatory change or similar event under this Confirmation, the Equity Definitions incorporated herein, or the Agreement (including, but not limited to, rights arising from Change in Law, Hedging Disruption, Increased Cost of Hedging, an Excess Ownership Position, or Illegality (as defined in the Agreement)).

#### **6. Other Provisions:**

- (a) **Agreements and Acknowledgements Regarding Hedging.** Counterparty understands, acknowledges and agrees that: (A) at any time on and prior to the Expiration Date, Dealer and its affiliates may buy or sell Shares or other securities or buy or sell options or futures contracts or enter into swaps or other derivative securities in order to adjust its hedge position with respect to the Transaction; (B) Dealer and its affiliates also may be active in the market for Shares other than in connection with hedging activities in relation to the Transaction; (C) Dealer shall make its own determination as to whether, when or in what manner any hedging or market activities in securities of Counterparty shall be conducted and shall do so in a manner that it deems appropriate to hedge its price and market risk; and (D) any market activities of Dealer and its affiliates with respect to Shares may affect the market price and volatility of Shares, each in a manner that may be adverse to Counterparty.
- (b) **Transfer.**
- (i) Counterparty shall have the right to transfer or assign all or any of its rights and obligations hereunder with respect to all, or any, of the Options hereunder (such Options, the “**Transfer Options**”) with the prior written consent of Dealer, such consent not to be unreasonably withheld; *provided* that withholding of such consent by Dealer shall not be considered unreasonable if such transfer or assignment does not meet any of the following conditions:

- (A) With respect to any Transfer Options, Counterparty shall not be released from its notice and indemnification obligations pursuant to Section 9(m) of this Confirmation;
  - (B) Such transfer or assignment shall be effected on terms, including any reasonable undertakings by such third party (including, but not limited to, an undertaking with respect to compliance with applicable securities laws in a manner that, in the reasonable judgment of Dealer, will not expose Dealer to material risks under applicable securities laws) and execution of any documentation and delivery of legal opinions with respect to securities laws and other matters by such third party and Counterparty, as are reasonably requested and reasonably satisfactory to Dealer;
  - (C) Under the applicable law effective on the date of such transfer or assignment, (1) Dealer will not, as a result of such transfer or assignment, be required to pay the transferee or assignee on any payment date or delivery date an amount or a number of Shares, as applicable, under Section 2(d)(i)(4) of the Agreement greater than the amount or the number of Shares, as applicable, that Dealer would have been required to pay to Counterparty in the absence of such transfer or assignment and (2) Dealer will not, as a result of such transfer or assignment, receive from the transferee or assignee on any payment date an amount under Section 2(d)(i)(4) of the Agreement that is less than the amount that Dealer would have received from Counterparty in the absence of such transfer or assignment;
  - (D) No Event of Default, Potential Event of Default or Termination Event will occur as a result of such transfer and assignment;
  - (E) Counterparty shall cause the transferee to make such tax representations and to provide such tax documentation as may be reasonably requested by Dealer to permit Dealer to determine that results described in clauses (C) and (D) will not occur upon or after such transfer and assignment, including but not limited to providing tax documentation specified in Section 9(bb) of this Confirmation and making the tax representations specified in Section 9(aa) of this Confirmation on or prior to such transfer and at the other times specified in such Sections; and
  - (F) Counterparty shall be responsible for all reasonable and documented costs and expenses, including reasonable counsel fees, incurred by Dealer in connection with such transfer or assignment.
- (ii) Dealer may, without Counterparty's consent, transfer or assign all or any part of its rights or obligations under the Transaction to any affiliate of Dealer (1) that has a long-term issuer rating that is equal to or better than Dealer's credit rating at the time of such transfer or assignment, or (2) whose obligations hereunder will be guaranteed, pursuant to the terms of a customary guarantee in a form used by Dealer generally for similar transactions, by Dealer or The Goldman Sachs Group, Inc.; *provided* that, in the case of any such transfer or assignment, under the applicable law effective on the date of such transfer or assignment, (I) Counterparty will not, as a result of such transfer or assignment, be required to pay the transferee or assignee on any payment date an amount under Section 2(d)(i)(4) of the Agreement greater than the amount that Counterparty would have been required to pay to Dealer in the absence of such transfer or assignment; (II) Counterparty will not, as a result of such transfer or assignment, receive from the transferee or assignee on any payment or delivery date an amount or a number of Shares, as applicable, under Section 2(d)(i)(4) of the Agreement that is less than the amount or the number of Shares that Counterparty would have received from Dealer in the absence of such transfer or assignment; (III) Dealer shall cause the transferee or assignee to make such tax representations and to provide such tax documentation as may be reasonably requested by Counterparty to permit Counterparty to determine that events described in clauses (I) and (II) of this proviso will not occur upon or after such transfer or assignment; and (IV) no Event of Default, Potential Event of Default or Termination Event will occur as a result of such transfer and assignment.

If at any time at which (A) the Section 13 Percentage exceeds 8.5%, (B) the Option Equity Percentage exceeds 14.5%, or (C) the Share Amount exceeds the Applicable Share Limit (if any applies) (any such condition described in clauses (A), (B) or (C), an “**Excess Ownership Position**”), Dealer is unable after using its commercially reasonable efforts to effect a transfer or assignment of Options to a third party on pricing terms reasonably acceptable to Dealer and within a time period reasonably acceptable to Dealer such that no Excess Ownership Position exists, then Dealer may designate any Exchange Business Day as an Early Termination Date with respect to a portion of the Transaction (the “**Terminated Portion**”), to the extent necessary so that no Excess Ownership Position exists following such partial termination. In the event that Dealer so designates an Early Termination Date with respect to a portion of the Transaction, a payment shall be made pursuant to Section 6 of the Agreement as if (1) an Early Termination Date had been designated in respect of a Transaction having terms identical to the Transaction and a Number of Options equal to the number of Options underlying the Terminated Portion, (2) Counterparty were the sole Affected Party with respect to such partial termination and (3) the Terminated Portion were the sole Affected Transaction. The “**Section 13 Percentage**” as of any day is the fraction, expressed as a percentage, (A) the numerator of which is the number of Underlying Shares that Dealer and any of its affiliates or any other person subject to aggregation with Dealer for purposes of the “beneficial ownership” test under Section 13 of the Exchange Act, or any “group” (within the meaning of Section 13 of the Exchange Act) of which Dealer is or may be deemed to be a part beneficially owns (within the meaning of Section 13 of the Exchange Act), without duplication, on such day (or, to the extent that for any reason the equivalent calculation under Section 16 of the Exchange Act applies with respect to the Shares or Underlying Shares, as applicable, and the rules and regulations thereunder results in a higher number, such higher number) and (B) the denominator of which is the number of Underlying Shares outstanding on such day. The “**Option Equity Percentage**” as of any day is the fraction, expressed as a percentage, (A) the numerator of which is the sum of (1) the product of (x) the Number of Options (y) the Option Entitlement and (z) the number of Underlying Shares represented by one Share and (2) the aggregate number of Underlying Shares underlying any other call option transaction sold by Dealer to Counterparty, and (B) the denominator of which is the number of Underlying Shares outstanding. The “**Share Amount**” as of any day is the number of Underlying Shares that Dealer and any person whose ownership position would be aggregated with that of Dealer (Dealer or any such person, a “**Dealer Person**”) under any law, rule, regulation, regulatory order or organizational documents or contracts of Counterparty that are, in each case, applicable to ownership of Underlying Shares (“**Applicable Restrictions**”), owns, beneficially owns, constructively owns, controls, holds the power to vote or otherwise meets a relevant definition of ownership under any Applicable Restriction, as determined by Dealer in its reasonable discretion. The “**Applicable Share Limit**” means a number of Underlying Shares equal to (A) the minimum number of Underlying Shares that could give rise to reporting or registration obligations (except for any filing requirements on Form 13F, Schedule 13D or Schedule 13G under the Exchange Act, in each case, as in effect on the Trade Date) or other requirements (including obtaining prior approval from any person or entity) of a Dealer Person, or could result in an adverse effect on a Dealer Person, under any Applicable Restriction, as determined by Dealer in good faith and in its commercially reasonable discretion, *minus* (B) 1% of the number of Underlying Shares outstanding.

- (c) **Designation.** Notwithstanding any other provision in this Confirmation to the contrary requiring or allowing Dealer to purchase, sell, receive or deliver any Shares or other securities, or make or receive any payment in cash, to or from Counterparty, Dealer may designate any of its affiliates to purchase, sell, receive or deliver such Shares or other securities, or to make or receive such payment in cash, and otherwise to perform Dealer’s obligations in respect of the Transaction and any such designee may assume such obligations. Dealer shall be discharged of its obligations to Counterparty to the extent of any such performance.

- (d) **No Collateral.** No collateral is required to be posted by Counterparty or Dealer, in respect of the Transaction.
- (e) **Bankruptcy Code Provisions.** Each of Dealer and Counterparty agrees and acknowledges that Dealer is one or more of a “swap participant” and/or “financial participant” within the meaning of Sections 101(53C) and 101(22A) of the Bankruptcy Code. The parties hereto further agree and acknowledge (A) that this Confirmation is (i) a “securities contract,” as such term is defined in Section 741(7) of the Bankruptcy Code, with respect to which each payment and delivery hereunder or in connection herewith is a “settlement payment,” as such term is defined in Section 741(8) of the Bankruptcy Code, and (ii) a “swap agreement,” as such term is defined in Section 101(53B) of the Bankruptcy Code, with respect to which each payment and delivery hereunder or in connection herewith is a “termination value,” “payment amount” or “other transfer obligation” within the meaning of Section 362 of the Bankruptcy Code and a “transfer,” as such term is defined in Section 101(54) of the Bankruptcy Code, and a “payment or transfer of property” within the meaning of Sections 362 and 546 of the Bankruptcy Code, and (B) that Dealer is entitled to the protections afforded by, among other sections, Sections 362(b)(6), 362(b)(17), 362(b)(27), 362(o), 546(e), 546(g), 546(j), 555, 560 and 561 of the Bankruptcy Code.
- (f) **Early Unwind.** In the event the sale of the Underwritten Securities (as defined in the Purchase Agreement) is not consummated with the Initial Purchasers for any reason, or Counterparty fails to deliver to Dealer opinions of counsel as required pursuant to Section 5(a), in each case by 5:00 p.m. (New York City time) on the Premium Payment Date, or such later date as agreed upon by the parties (the Premium Payment Date or such later date the “**Early Unwind Date**”), the Transaction shall automatically terminate (the “**Early Unwind**”), on the Early Unwind Date and (i) the Transaction and all of the respective rights and obligations of Dealer and Counterparty under the Transaction shall be cancelled and terminated and (ii) each party shall be released and discharged by the other party from and agrees not to make any claim against the other party with respect to any obligations or liabilities of the other party arising out of and to be performed in connection with the Transaction either prior to or after the Early Unwind Date. Each of Dealer and Counterparty represents and acknowledges to the other that, upon an Early Unwind, all obligations with respect to the Transaction shall be deemed fully and finally discharged.
- (g) **Amendments to Equity Definitions.**
- a. Section 11.2(e)(vii) of the Equity Definitions is hereby amended by deleting the words “that may have a diluting or concentrative effect on the theoretical value of the relevant Shares” and replacing them with the words “that is the result of a corporate event involving the Underlying Shares Issuer or its securities that has a material economic effect on the Shares and/or the Underlying Shares or options on the Shares and/or the Underlying Shares; *provided* that such event is not based on (a) an observable market, other than the market for the Underlying Shares Issuer’s own stock or (b) an observable index, other than an index calculated and measured solely by reference to the Underlying Shares Issuer’s own operations.”
  - b. Section 12.6(a)(ii) of the Equity Definitions is hereby amended by (1) inserting “(1)” immediately following the word “means” in the first line thereof and (2) inserting immediately prior to the semi-colon at the end of subsection (B) thereof the following words: “or (2) the occurrence of any of the events specified in Section 5(a)(vii)(1) through (9) of the ISDA Master Agreement with respect to that Issuer” *provided* that the period for dismissal, discharge, stay or restraint therein shall be increased from “within 15 days” to “within 30 days.”
  - c. Section 12.9(b)(i) of the Equity Definitions is hereby amended by (1) replacing “either party may elect” with “Dealer may elect” and (2) replacing “notice to the other party” with “notice to Counterparty” in the first sentence of such section.

- d. Section 12.9(b)(vi) of the Equity Definitions is hereby amended by (1) adding the word “or” immediately before subsection “(B)”, (2) deleting the comma at the end of subsection (A), (3) deleting subsection (C) in its entirety, (4) deleting the word “or” immediately preceding subsection (C) and (5) replacing the words “either party” in the last sentence of such Section with “Dealer”.

(h) **Early Settlement.**

- a. Dealer may, from time to time on or after the 30th day following the Trade Date, settle the Transaction early (“**Early Settlement**”), in whole or in part, by delivering a written notice to Counterparty on any Exchange Business Day (the “**Notice Date**”) specifying the portion of the Transaction to be settled early (the “**Early Settled Portion**”).
- b. With respect to any Early Settled Portion, Dealer shall provide notice to Counterparty no later than 3 Scheduled Trading Days following the Notice Date, specifying the Averaging Date(s) (if any), the number of Options that shall expire on each such Averaging Date and the Valuation Date in respect of such Early Settlement, and Dealer will deliver to Counterparty a number of Shares equal to the product of (x) the sum of the number of Options expiring on each such Averaging Date, *multiplied by* (y) the Option Entitlement, and will pay to Counterparty the Fractional Share Amount, if any, on the Physical Settlement Delivery Date relating to the specified Valuation Date with respect to such Physical Early Settled Portion.
- c. Such delivery and any such payment will be made through the relevant Clearance System on the applicable settlement dates; provided that, for the avoidance of doubt, “Restricted Certificated Shares” above shall also apply with respect to Early Settlement.

(i) **Depository Shares Provisions.**

- (i) For the purposes of this Confirmation the following definitions will apply:

“**Depository**” means, in relation to the Shares, Deutsche Bank Trust Company Americas, or any successor thereto from time to time.

“**Deposit Agreement**” means, (i) that certain Deposit Agreement, dated as of September 11, 2018, by and among Underlying Shares Issuer, Depository and the holders and beneficial owners of the Shares and (ii) the other agreements or other instruments constituting the Shares, as from time to time amended or supplemented in accordance with their terms.

“**DS Amendment**” means, where specified as applicable to a definition or provision, that the following changes shall be made to such definition or provision: (a) all references to “Shares” shall be deleted and replaced with the words “Shares and/or the Underlying Shares, as appropriate”; and (b) all references to “Issuer” shall be deleted and replaced with the words “Issuer or Underlying Shares Issuer, as appropriate”.

“**Replacement DSs**” means depository shares or receipts, other than the Shares, over the same Underlying Shares.

- (ii) The following amendments shall be made to the Equity Definitions:

(A) The definition of Potential Adjustment Event in Section 11.2(e) of the Equity Definitions shall be amended as follows:

- (i) the DS Amendment shall be applicable, provided that an event under Section 11.2(e)(i) to (vii) of the Equity Definitions in respect of the Underlying Shares shall not constitute a Potential Adjustment Event unless, in the commercially reasonable opinion of the Calculation Agent, such event has a material effect on the theoretical value of the Shares; and

- (ii)
    - (A) ‘or’ shall be deleted where it appears at the end of subsection (vi);
    - (B) ‘.’ shall be deleted where it appears at the end of subsection (vii) and replaced with ‘;’;
    - (C) the following shall be inserted as subsection (viii): “(viii) the making of any amendment or supplement to the terms of the Deposit Agreement and/or the Shares; or”; and
    - (D) the following shall be inserted as provision (ix): “(ix) any other event as a result of which the Shares represent fewer or more Underlying Shares than, and/or any property or assets in addition to, or as a whole or partial replacement of, in each case, the number of Underlying Shares represented by the Shares prior to such event.”
- (B) In making any adjustment following any Potential Adjustment Event, the Calculation Agent shall have reference to (to the extent necessary or appropriate among other factors) any adjustment made by the Depositary under the Deposit Agreement, any fees and/or expenses of the Depositary and any withholding or deduction of taxes. If the Calculation Agent determines that no adjustment that it could make will produce a commercially reasonable result, it shall notify the parties that the relevant consequence shall be the termination of the relevant Transaction, in which case “Cancellation and Payment (Calculation Agent Determination)” will be deemed to apply and any payment to be made by one party to the other shall be calculated in accordance with Section 12.7 of the Equity Definitions (as amended by this Confirmation).
- (C) If a Potential Adjustment Event occurs under Section 11.2(e)(viii) of the Equity Definitions (as amended by this Confirmation), then the following further amendments shall be deemed to be made to Section 11.2(c) of the Equity Definitions in respect of such Potential Adjustment Event:
  - (i) the words “the Calculation Agent will determine whether such Potential Adjustment Event has a material effect on the theoretical value of the relevant Shares, options on the Shares or the Transaction” shall be deleted and replaced with the words “the Calculation Agent will determine whether such Potential Adjustment Event has a material economic effect on such Transaction”; and
  - (ii) the words “as the Calculation Agent determines appropriate to account for that material effect” shall be deleted and replaced with the words “as the Calculation Agent determines appropriate to account for such economic effect on such Transaction”.
- (D) The definitions of “Merger Event”, “Tender Offer”, “Announcement Date”, “Share-for-Share”, “Share-for-Other” and “Share-for-Combined” in Section 12.1 of the Equity Definitions shall be amended in accordance with the DS Amendment.
- (E) In making any adjustment in respect of a Merger Event, Tender Offer or Announcement Event in relation to the Underlying Shares, the Calculation Agent shall in determining any adjustment pursuant to Modified Calculation Adjustment, have reference to (amongst other factors) any adjustment made by the Depositary under the Deposit Agreement, any fees and/or expenses of the Depositary and any withholding or deduction of taxes, as determined by the Calculation Agent in its commercially reasonable discretion.



- (F) The definitions of Nationalization and Insolvency in Section 12.6 of the Equity Definitions shall be amended in accordance with the DS Amendment.
- (G) The consequence of a Nationalization or Insolvency in respect of the Depositary shall be Cancellation and Payment.
- (H) If a Delisting of the Shares occurs or the Depositary announces that the Deposit Agreement is (or will be) terminated, then:
  - (i) Cancellation and Payment will apply as provided in this Confirmation; and
  - (ii) where Cancellation and Payment applies under (H)(i) above in respect of a termination of the Deposit Agreement, the Equity Definitions shall be interpreted as follows: (i) such termination shall be deemed to be an “Extraordinary Event”; (ii) Cancellation and Payment shall apply as defined in Section 12.6(c)(ii) of the Equity Definitions; and (iii) the definition of “Announcement Date” in Section 12.1(l) of the Equity Definitions shall include the following additional clause (vii) at the end of the first sentence thereof: “(vii) in the case of a termination of the Deposit Agreement, the date of the first public announcement by the Depositary that the Deposit Agreement is (or will be) terminated”.
- (I) If Cancellation and Payment applies under Section 5(h)(ii)(G) or Section 5(h)(ii)(H) of this Confirmation in respect of a Transaction, then the Determining Party shall be Dealer.
- (J) The definition of “Insolvency Filing” in Section 12.9(a)(iv) of the Equity Definitions shall be amended in accordance with the DS Amendment.
- (K) For the avoidance of doubt, where a provision is amended by this Section 5(h) in accordance with the DS Amendment, if the event described in such provision occurs in respect of the Underlying Shares or Underlying Shares Issuer, then the consequence of such event shall be interpreted consistently with the DS Amendment and such event.
- (j) **Right to Extend.** Dealer may postpone or extend, for as long as it is reasonably necessary, any Averaging Date, the Expiration Date, the Physical Settlement Delivery Date or any other date of payment or delivery by Dealer, with respect to some or all of the Options hereunder, if Dealer reasonably determines, in the case of clause (i) below, in its commercially reasonable judgment or, in the case of clause (ii) below, based on advice of counsel, that such action is reasonably necessary or appropriate (i) to preserve Dealer’s commercially reasonable hedging or hedge unwind activity hereunder in light of existing liquidity conditions in the relevant market or (ii) to enable Dealer to effect transactions with respect to Shares and/or Underlying Shares in connection with its commercially reasonable hedging, hedge unwind or settlement activity hereunder in a manner that would, if Dealer were Counterparty or an affiliated purchaser of Counterparty, be in compliance with applicable legal, regulatory or self-regulatory requirements, or with related policies and procedures adopted by Dealer in good faith so long as such policies and procedures are generally applicable in similar situations and applied in a non-discriminatory manner).
- (k) **Staggered Settlement.** If upon advice of counsel with respect to applicable legal and regulatory requirements, including any requirements relating to Dealer’s hedging activities hereunder, Dealer reasonably determines that it would not be practicable or advisable to deliver, or to acquire Shares to deliver, any or all of the Shares to be delivered by Dealer on any Settlement Date for the Transaction, Dealer may, by notice to Counterparty on or prior to any Settlement Date (a “Nominal Settlement Date”), elect to deliver the Shares on two or more dates (each, a “Staggered Settlement Date”) as follows:
  - (i) in such notice, Dealer will specify to Counterparty the related Staggered Settlement Dates (the first of which will be such Nominal Settlement Date and the last of which will be no later than the twentieth (20th) Exchange Business Day following such Nominal Settlement Date) and the number of Shares that it will deliver on each Staggered Settlement Date; and

- (ii) the aggregate number of Shares that Dealer will deliver to Counterparty hereunder on all such Staggered Settlement Dates will equal the number of Shares that Dealer would otherwise be required to deliver on such Nominal Settlement Date.
- (l) **Registration.** Counterparty hereby agrees that if, in the good faith reasonable judgment of Dealer, based on the advice of counsel, the Shares and/or Underlying Shares (“**Hedge Shares**”) acquired by Dealer for the purpose of commercially hedging its obligations pursuant to the Transaction cannot be sold in the public market by Dealer without registration under the Securities Act, Counterparty shall, at its election, either (i) in order to allow Dealer to sell the Hedge Shares in a registered offering, make available to Dealer an effective registration statement under the Securities Act and enter into an agreement, in form and substance reasonably satisfactory to Dealer, substantially in the form of an underwriting agreement customary for a registered secondary offering of a similar size in respect of a similar issuer; *provided, however*, that if Dealer, in its sole reasonable discretion, is not satisfied with access to due diligence materials, the results of its due diligence investigation, or the procedures and documentation for the registered offering referred to above, then clause (ii) or clause (iii) of this paragraph shall apply at the election of Counterparty, (ii) in order to allow Dealer to sell the Hedge Shares in a private placement, use commercially reasonable efforts to enter into a private placement agreement substantially similar to private placement purchase agreements customary for private placements of equity securities of a similar size in respect of a similar issuer, in form and substance satisfactory to Dealer (in which case, the Calculation Agent shall make any adjustments to the terms of the Transaction that are necessary, in its commercially reasonable judgment, to compensate Dealer for any commercially reasonable discount from the public market price of the Shares and/or Underlying Shares incurred on the sale of Hedge Shares in a private placement), or (iii) purchase the Hedge Shares from Dealer at the then-current market price on such Exchange Business Days, and in the amounts and at such time(s), reasonably requested by Dealer.
- (m) **Repurchase Notices.** Counterparty shall, on or prior to the date that is one Scheduled Trading Day following any date on which Counterparty effects any repurchase of Shares and/or Underlying Shares, promptly give Dealer a written notice of such repurchase (a “**Repurchase Notice**”) on such day if following such repurchase, the number of outstanding Underlying Shares as determined on such day is (i) less than 727.2 million (in the case of the first such notice) or (ii) thereafter more than 37.8 million less than the number of Underlying Shares included in the immediately preceding Repurchase Notice; *provided* that Counterparty may provide Dealer advance notice on or prior to any such day including the maximum number of Shares and/or Underlying Shares that may be repurchased under a repurchase program entered into in reliance on Rule 10b5-1(c) and the approximate periods during which such repurchases may occur, to the extent it expects that repurchases effected on such day may result in an obligation to deliver a Repurchase Notice (and in such case, any such advance notice shall be deemed a Repurchase Notice to the maximum extent of repurchases set forth in such advance notice as if Counterparty had executed such repurchases). Counterparty agrees that, if Counterparty ceases to qualify as a “foreign private issuer” as defined in Rule 3b-4 under the Exchange Act or the Shares or Underlying Shares, as applicable, otherwise become subject to the requirements of Section 16 of the Exchange Act, Counterparty will indemnify and hold harmless Dealer and its affiliates and their respective officers, directors, employees, affiliates, advisors, agents and controlling persons (each, an “**Indemnified Person**”) from and against any and all losses (including losses relating to Dealer’s hedging activities as a consequence of becoming, or of the risk of becoming, a Section 16 “insider”, including without limitation, any forbearance from hedging activities or cessation of hedging activities and any losses in connection therewith with respect to the Transaction), claims, damages, judgments, liabilities and reasonable and documented out-of-pocket expenses (including reasonable attorney’s fees of one outside counsel in each relevant jurisdiction), joint or several, which an Indemnified Person may become subject to, in each case, as a result of Counterparty’s failure to provide Dealer with a Repurchase Notice on the day and in the manner specified in this paragraph, and to reimburse, within 30 days, upon written request, each of such Indemnified Persons for any reasonable legal or other out-of-pocket expenses (to the extent supported by invoices or other documentation setting forth in reasonable detail such expenses) incurred in connection with investigating, preparing for, providing testimony or other evidence in connection with or defending any of the foregoing. If any suit, action, proceeding (including any governmental or regulatory investigation), claim or demand shall be brought or asserted against the Indemnified Person as a result of Counterparty’s failure to provide Dealer with a Repurchase Notice in accordance with this paragraph, such Indemnified Person shall promptly notify Counterparty in writing, and Counterparty, upon request of the Indemnified Person, shall retain counsel reasonably satisfactory to the Indemnified Person to represent the Indemnified Person and any others Counterparty may designate in such proceeding and shall pay the reasonable fees and expenses of such counsel related to such proceeding. Counterparty shall not be liable to the extent that the Indemnified Person fails to notify Counterparty within a commercially reasonable period of time after any action is commenced against it in respect of which indemnity may be sought hereunder. In addition, Counterparty shall not have liability for any settlement of any such proceeding contemplated by this paragraph that is effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, Counterparty agrees to indemnify any Indemnified Person from and against any loss or liability by reason of such settlement or judgment. Counterparty shall not, without the prior written consent of the Indemnified Person, effect any settlement of any pending or threatened proceeding contemplated by this paragraph in respect of which any Indemnified Person is or could have been a party and indemnity could have been sought hereunder by such Indemnified Person, unless such settlement includes an unconditional release of such Indemnified Person from all liability on claims that are the subject matter of such proceeding on terms reasonably satisfactory to such Indemnified Person. If the indemnification provided for in this paragraph is unavailable to an Indemnified Person or insufficient in respect of any losses, claims, damages or liabilities referred to therein, then Counterparty hereunder, in lieu of indemnifying such Indemnified Person thereunder, shall contribute to the amount paid or payable by such Indemnified Person as a result of such losses, claims, damages or liabilities. The remedies provided for in this paragraph are not exclusive and shall not limit any rights or remedies which may otherwise be available to any Indemnified Person at law or in equity. The indemnity and contribution agreements contained in this paragraph shall remain operative and in full force and effect regardless of the termination of the Transaction.

- (n) **Additional Notices.** Counterparty shall provide a written notice to Dealer as promptly as practicable upon becoming aware that Counterparty is not or will no longer be a “foreign private issuer,” as such term is defined in Rule 3b-4 under the Exchange Act.
- (o) **Termination Currency.** USD
- (p) **Alternative Calculations and Payment on Early Termination and on Certain Extraordinary Events.** If Dealer shall owe Counterparty any amount pursuant to “Consequences of Merger Events” above or Sections 12.6, 12.7 or 12.9 of the Equity Definitions or pursuant to Section 6(d)(ii) of the Agreement (a “**Payment Obligation**”), Dealer shall satisfy any such Payment Obligation by the Share Termination Alternative (as defined below) except in the event (i) of an Insolvency, a Nationalization, a Merger Event, or a Bankruptcy Event of Default under Section 5(a)(vii) of the Agreement, in each case, in which the consideration or proceeds to be paid to holders of Shares consists solely of cash, (ii) of an Event of Default in which Counterparty is the Defaulting Party or a Termination Event in which Counterparty is the Affected Party or an Extraordinary Event, which Event of Default, Termination Event or Extraordinary Event resulted from an event or events within Counterparty’s control, or (iii) any Event of Default resulting from a breach by Counterparty of its representations contained in paragraph (g) or (l) of the section “Additional Representations and Warranties of Counterparty” as of or immediately after the Trade Date or as of or immediately after the Premium Payment Date; *provided* that Counterparty shall have the right, in its sole discretion, to elect to require Dealer to satisfy any Payment Obligation in cash by giving irrevocable telephonic notice to Dealer, confirmed in writing within one Scheduled Trading Day, no later than 9:30 A.M. New York City time on the relevant Merger Date, Announcement Date, Early Termination Date or date of cancellation or termination in respect of an Extraordinary Event, as applicable (“**Notice of Cash Termination**”) so long as Counterparty repeats the representations set forth in paragraph (g) of the section “Additional Representations and Warranties of Counterparty” as of the date of such election, *provided further* that Dealer shall have the right, in its sole discretion, to elect to satisfy its Payment Obligation by the Share Termination Alternative, notwithstanding Counterparty’s election to require Dealer to satisfy any Payment Obligation in cash. The following provisions shall apply for the Share Termination Alternative on the Scheduled Trading Day immediately following the relevant merger date, Announcement Date, Early Termination Date or date of cancellation or termination in respect of an Extraordinary Event, as applicable:

Share Termination Alternative:	Applicable. Dealer shall deliver to Counterparty the Share Termination Delivery Property on, or as promptly as commercially reasonably practicable thereafter, the date on which the Payment Obligation would otherwise be due pursuant to “Consequences of Merger Events” above, Section 12.7 or 12.9 of the Equity Definitions or Section 6(d)(ii) of the Agreement, as applicable, in satisfaction of the Payment Obligation.
Share Termination Delivery Property:	A number of Share Termination Delivery Units, as calculated by the Calculation Agent, equal to the Payment Obligation divided by the Share Termination Unit Price. The Calculation Agent shall adjust the Share Termination Delivery Property by replacing any fractional portion of a security therein with an amount of cash equal to the value of such fractional security based on the values used to calculate the Share Termination Unit Price.
Share Termination Unit Price:	The value of property contained in one Share Termination Delivery Unit on the date such Share Termination Delivery Units are delivered as Share Termination Delivery Property, as determined by the Calculation Agent in its commercially reasonable discretion and notified by the Calculation Agent to Dealer at the time of notification of the Payment Obligation.
Share Termination Delivery Unit:	In the case of a Termination Event, Event of Default, Delisting, Tender Offer or Additional Disruption Event, one Share or, in the case of an Insolvency, Nationalization or Merger Event, one Share or a unit consisting of the number or amount of each type of property received by a holder of one Share (without consideration of any requirement to pay cash or other consideration in lieu of fractional amounts of any securities) in such Insolvency, Nationalization or Merger Event, as applicable. If such Insolvency, Nationalization or Merger Event involves a choice of consideration to be received by holders, such holder shall be deemed to have elected to receive the consideration specified by Dealer in its sole discretion.
Failure to Deliver:	Applicable
Other applicable provisions:	If Share Termination Alternative is applicable, the provisions of Sections 9.8, 9.9 and 9.11 (except 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 arising as a result of the fact that Counterparty is the issuer of the Shares or any portion of the Share Termination Delivery Units) of the Equity Definitions will be applicable as if “Physical Settlement” applied to the Transaction, except that all references to “Shares” shall be read as references to “Share Termination Delivery Units.”

(q) **Office.**

- (a) The Office of Counterparty for the Transaction is: Inapplicable, Counterparty is not a Multibranch Party.
- (b) The Office of Dealer for the Transaction is: London

(r) **Notice.** For purposes of the Agreement (unless otherwise specified in the Agreement), the addresses for notice to the parties shall be:

(i) to Counterparty:

NIO Inc.  
Building 20, No. 56 AnTuo Road, Jiading District  
Shanghai, 201804  
People's Republic of China  
Attention: Louis T. Hsieh, Chief Financial Officer  
Telephone No.: +86 (21) 6908 3306  
Facsimile No.: +86 (21) 3913 0192

with a copy to:

Nick Wang  
VP of Finance  
Telephone No.: +86 (21) 6908-2002  
Email: Nick.Wang@nio.com

with a copy to:

Fang Liu  
General Counsel  
Telephone No.: +86 (21) 6908-2277  
Email: Fang.Liu@nio.com

with a copy to:

Sabrina Shi  
Senior Corporate Counsel  
Telephone No.: +86 (21) 6908-3391  
Email: Danting.Shi@nio.com

(ii) to Dealer:

Goldman Sachs International  
Peterborough Court  
133 Fleet Street  
London, UK, EC4A 2BB  
Attention: Derivatives Legal

With a copy to:

Goldman, Sachs & Co.  
200 West Street  
New York, NY 10282-2198  
Attention: Beesham Seecharan  
Phone: +1-212-357-6337  
Email: [beesham.seecharan@ny.email.gs.com](mailto:beesham.seecharan@ny.email.gs.com)

Attention: Peter Petraro  
Phone: +1-212-855-9818  
Email: [peter.petraro@ny.email.gs.com](mailto:peter.petraro@ny.email.gs.com)

And email notification to the following address:

[ps-eq-structuring@gs.com](mailto:ps-eq-structuring@gs.com)

- (s) **Calculation Agent.** Dealer provided that, following the occurrence and during the continuance of an Event of Default under Section 5(a)(vii) of the Agreement with respect to which Dealer is the Defaulting Party, Counterparty shall have the right to designate a nationally recognized independent equity derivatives 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 adjustment, determination or calculation by the Calculation Agent hereunder, the Calculation Agent will, upon written request from Counterparty, promptly (but in any event within five Scheduled Trading Days) provide to Counterparty by email a report (in a commonly used file format for the storage and manipulation of financial data) displaying in reasonable detail the basis for such adjustment, determination or calculation (including any assumptions used in making such adjustment, determination or calculation), it being understood that in no event will the Calculation Agent be obligated to share with Counterparty any proprietary or confidential data or information or any proprietary or confidential models used by it in making such adjustment, determination or calculation or any information that is subject to an obligation not to disclose such information. All calculations and determinations by the Calculation Agent shall be made in good faith and in a commercially reasonable manner.

- (t) **WAIVER OF JURY TRIAL.** EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION OR PROCEEDING RELATING TO THE TRANSACTION. EACH PARTY (I) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF SUCH A SUIT, ACTION OR PROCEEDING, SEEK TO ENFORCE THE FOREGOING WAIVER AND (II) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HAVE BEEN INDUCED TO ENTER INTO THE TRANSACTION, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS PROVIDED HEREIN.
- (u) **Tax Disclosure.** Effective from the date of commencement of discussions concerning the Transaction, Counterparty and each of its employees, representatives, or other agents may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the transaction and all materials of any kind (including opinions or other tax analyses) that are provided to Counterparty relating to such tax treatment and tax structure.

- (v) **Service of Process.** Counterparty irrevocably appoints Law Debenture Corporate Services Inc. as its authorized agent upon which process may be served in any suit, action or proceeding relating to the Transaction, and agrees that service of process in any manner permitted by applicable law upon such agent shall be deemed in every respect effective service of process in any manner permitted by applicable law upon Counterparty in any such suit, action or proceeding. Counterparty further agrees to take any and all action as may be necessary to maintain such designation and appointment of such agent in full force and effect for a period of five and a half years from the date of this Confirmation. If for any reason such agent shall cease to be such agent for service of process, Counterparty shall forthwith appoint a new agent of recognized standing for service of process in the State of New York and deliver to Dealer a copy of the new agent's acceptance of that appointment within 10 days. Nothing herein shall affect the right of Dealer to serve process in any other manner permitted by law or to commence legal proceedings or otherwise proceed against Counterparty in any other court of competent jurisdiction.
- (w) **U.S. Tax Forms.** Without limiting the generality of the foregoing, Counterparty will provide a U.S. Tax Form W-8BEN-E upon the execution of this Confirmation, promptly upon learning that any such tax form previously provided by it has become obsolete or incorrect and promptly upon reasonable demand by Dealer.
- (x) **Taxes, Foreign Account Tax Compliance Act and HIRE Act.** Counterparty is classified as a corporation for the U.S. federal income tax purposes. No income received or to be received under the Agreement will be effectively connected with the conduct of a trade or business by Counterparty in the United States. Counterparty is a "non-U.S. branch of a foreign person" as that term is used in Section 1.1441-4(a)(3)(ii) of the United States Treasury Regulations (the "**Regulations**"), and it is a "foreign person" as that term is used in Section 1.6041-4(a)(4) of the Regulations. The term "Indemnifiable Tax" as defined in Section 14 of the Agreement shall not include any U.S. federal withholding tax imposed or collected pursuant to Sections 1471 through 1474 of the U.S. Internal Revenue Code of 1986, as amended (the "**Code**"), any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b) of the Code, or any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code (a "**FATCA Withholding Tax**"). For the avoidance of doubt, a FATCA Withholding Tax is a Tax the deduction or withholding of which is required by applicable law for the purposes of Section 2(d) of the Agreement. The parties agree that the definitions and provisions contained in the ISDA 2015 Section 871(m) Protocol, as published by the International Swaps and Derivatives Association, Inc. and as may be amended, supplemented, replaced or superseded from time to time (the "**871(m) Protocol**") shall apply to the Agreement as if the parties had adhered to the 871(m) Protocol as of the Effective Date. If there is any inconsistency between this provision and a provision in any other agreement executed between the parties, this provision shall prevail unless such other agreement expressly overrides the provisions of the 871(m) Protocol. Each of Dealer and Counterparty shall provide to the other party tax forms and documents required to be delivered pursuant to Sections 1471(b) or Section 1472(b)(1) of the Code promptly upon request by the other party and any other tax forms and documents they are legally able to provide that are reasonably requested by the other party.
- (y) **Reserved.**
- (z) **QFC Stay Provisions.** (i) (A) In the event that Dealer becomes subject to a proceeding under (i) the Federal Deposit Insurance Act and the regulations promulgated thereunder or (ii) Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the regulations promulgated thereunder (a "U.S. Special Resolution Regime") the transfer from Dealer of this Confirmation, and any interest and obligation in or under, and any property securing, this Confirmation, will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if this Confirmation, and any interest and obligation in or under, and any property securing, this Confirmation were governed by the laws of the United States or a state of the United States. (B) In the event that Dealer or an Affiliate becomes subject to a proceeding under a U.S. Special Resolution Regime, any Default Rights (as defined in 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable ("Default Right")) under this Confirmation that may be exercised against Dealer 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 Confirmation were governed by the laws of the United States or a state of the United States. (ii) Notwithstanding anything to the contrary in this Confirmation, the Parties expressly acknowledge and agree that: (A) Counterparty shall not be permitted to exercise any Default Right with respect to this Confirmation or any Affiliate Credit Enhancement that is related, directly or indirectly, to an Affiliate of Dealer becoming subject to receivership, insolvency, liquidation, resolution, or similar proceeding (an "**Insolvency Proceeding**"), except to the extent that the exercise of such Default Right would be permitted under the provisions of 12 C.F.R. 252.84, 12 C.F.R. 47.5 or 12 C.F.R. 382.4, as applicable; and (B) Nothing in this Confirmation shall prohibit the transfer of any Affiliate Credit Enhancement, any interest or obligation in or under such Affiliate Credit Enhancement, or any property securing such Affiliate Credit Enhancement, to a transferee upon or following an Affiliate of Dealer becoming subject to an Insolvency Proceeding, unless the transfer would result in the Counterparty being the beneficiary of such Affiliate Credit Enhancement in violation of any law applicable to the Counterparty.

(iii) If Counterparty has previously adhered to, or subsequently adheres to, the ISDA 2018 U.S. Resolution Stay Protocol as published by the International Swaps and Derivatives Association, Inc. as of July 31, 2018 (the “**ISDA U.S. Protocol**”), the terms of such protocol shall be incorporated into and form a part of this Confirmation and the terms of the ISDA U.S. Protocol shall supersede and replace the terms of this section. For purposes of incorporating the ISDA U.S. Protocol, Dealer shall be deemed to be a Regulated Entity, Counterparty shall be deemed to be an Adhering Party, and this Confirmation shall be deemed to be a Protocol Covered Agreement. Capitalized terms used but not defined in this paragraph shall have the meanings given to them in the ISDA U.S. Protocol.

(iv) Dealer and Counterparty agree that to the extent there are any outstanding “in-scope QFCs,” as defined in 12 C.F.R. § 252.82(d), that are not excluded under 12 C.F.R. § 252.88, between Dealer and Counterparty that do not otherwise comply with the requirements of 12 C.F.R. § 252.2, 252.81–8 (each such agreement, a “Preexisting In-Scope Agreement”), then each such Preexisting In-Scope Agreement is hereby amended to include the foregoing provisions in this Section 9(h), with references to “this Confirmation” being understood to be references to the applicable Preexisting In-Scope Agreement.

For purposes of this section:

“**Affiliate**” is defined in, and shall be interpreted in accordance with, 12 U.S.C. § 1841(k).

“**Credit Enhancement**” means any credit enhancement or credit support arrangement in support of the obligations of Dealer under or with respect to this Confirmation, including any guarantee, collateral arrangement (including any pledge, charge, mortgage or other security interest in collateral or title transfer arrangement), trust or similar arrangement, letter of credit, transfer of margin or any similar arrangement.

(aa) **2013 EMIR Portfolio Reconciliation, Dispute Resolution and Disclosure Protocol.** The parties agree that the Attachment to the 2013 EMIR Portfolio Reconciliation, Dispute Resolution and Disclosure Protocol published by ISDA on July 19, 2013 (“**PDD Protocol**”) apply to the Confirmation as if set out in full herein. 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 Section 6(aa) (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 this Confirmation”, (iii) references to “Protocol Covered Agreement” shall be deemed to be references to this Confirmation (and each “Protocol Covered Agreement” shall be read accordingly), (iv) references to “Implementation Date” shall be deemed to be references to the date of this Confirmation, (v) the words “or the Investment Manager on its behalf,” shall be inserted after the words “Portfolio Data Receiving Entity” in Part I(1)(a)(ii), (vi) (a) the words “, or the Investment Manager on its behalf,” shall be inserted after the words “Portfolio Data Receiving Entity”, and (b) the words “such party” shall be deleted and replaced with the words “Portfolio Data Receiving Party” in Part I(1)(a)(iii), and (vii) the words “, or, in the case of Counterparty, its board of directors,” shall be inserted after the words “senior members of staff of such party or of its Affiliate, adviser or agent” in Part I(4)(c). For the purposes of this Section 6(aa):



1. Dealer is a Portfolio Data Sending Entity and Counterparty is a Portfolio Data Receiving Entity;
2. 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.
3. The Local Business Days for such purposes in relation to Dealer are London, United Kingdom and in relation to Counterparty are London, Hong Kong, and New York;
4. The provisions in this paragraph shall survive the termination of this Transaction.
5. The following are the applicable email addresses.

Portfolio Data:	Dealer: portfolio.reconciliation@gs.com Counterparty: chao.wang10@nio.com
Notice of discrepancy:	Dealer: portfolio.reconciliation@gs.com Counterparty: chao.wang10@nio.com
Dispute Notice:	Dealer: portfolio.reconciliation@gs.com Counterparty: chao.wang10@nio.com

(bb) **NFC Representation Protocol.** (i) 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 Confirmation as if each party were an Adhering Party under the terms of the NFC Representation Protocol. In respect of the Attachment to the Protocol, (A) the definition of “Adherence Letter” shall be deemed to be deleted and references to “Adherence Letter” shall be deemed to be to this Section 6(bb) (and references to “the relevant Adherence Letter” and “its Adherence Letter” shall be read accordingly), (B) references to “adheres to the Protocol” shall be deemed to be “enters into this Confirmation”, (C) references to “Covered Master Agreement” shall be deemed to be references to this Confirmation (and each “Covered Master Agreement” shall be read accordingly), and (D) references to “Implementation Date” shall be deemed to be references to the date of this Confirmation. (ii) Counterparty confirms that it enters into this Confirmation as a party making the NFC Representation (as such term is defined in the NFC Representation Protocol). Counterparty shall promptly notify Dealer of any change to its status as a party making the NFC Representation.

(cc) **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**”):

1. 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
2. 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 such information becoming available to the public or recipients in a jurisdiction which may have a different level of protection for personal data from that of the relevant party’s home jurisdiction.

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 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.

Please confirm that the foregoing correctly sets forth the terms of our agreement by executing this Confirmation and returning it to Dealer.

Yours sincerely,

**GOLDMAN SACHS INTERNATIONAL**

By: /s/ Authorized Signatory  
Name:  
Title:

[Signature Page to Zero-Strike Call]

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Agreed and Accepted,

**NIO Inc.**

By: /s/ Authorized Signatory

Name:

Title:

[Signature Page to Zero-Strike Call]

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Morgan Stanley & Co. LLC  
1585 Broadway, 5th Floor  
New York, NY 10036

January 30, 2019

NIO Inc. (“**Counterparty**”)  
Building 20, No. 56 AnTuo Road, Jiading District  
Shanghai, 201804  
People’s Republic of China  
Attention: Louis T. Hsieh, Chief Financial Officer  
Telephone No.: +86 (21) 6908 3306  
Facsimile No.: +86 (21) 3913 0192

#### Call Transaction

The purpose of this letter agreement (this “**Confirmation**”) is to confirm the terms and conditions of the call option transaction entered into between Morgan Stanley & Co. LLC (“**Dealer**”) and Counterparty as of the Trade Date specified below (the “**Transaction**”). This Confirmation constitutes a “Confirmation” as referred to in the ISDA Master Agreement specified below. This Confirmation shall replace any previous agreements and serve as the final documentation for the Transaction.

The definitions and provisions contained in the 2002 ISDA Equity Derivatives Definitions (the “**Equity Definitions**”), as published by the International Swaps and Derivatives Association, Inc. (“**ISDA**”) are incorporated into this Confirmation. The Transaction constitutes a Share Option Transaction for purposes of the Equity Definitions. In the event of any inconsistency between the Equity Definitions and this Confirmation, this Confirmation will govern. For the avoidance of doubt, references herein to sections of the Purchase Agreement (the “**Purchase Agreement**”), to be dated on or around January 30, 2019, among Counterparty and Credit Suisse Securities (USA) LLC, Goldman Sachs (Asia) L.L.C., J.P. Morgan Securities LLC and Morgan Stanley & Co. LLC (the “**Initial Purchasers**”) are based on the draft of the Purchase Agreement most recently reviewed by the parties at the time of execution of this Confirmation. Certain defined terms used herein are based on terms that are defined in the Offering Memorandum dated January 30, 2019 (the “**Offering Memorandum**”) relating to the 4.50% Convertible Senior Notes due 2024 (as originally issued by Counterparty, the “**Convertible Notes**” and each USD 1,000 principal amount of Convertible Notes, a “**Convertible Note**”) issued by Counterparty in an aggregate initial principal amount of USD650,000,000 (as increased by up to an aggregate principal amount of USD100,000,000 if and to the extent that the Initial Purchasers (as defined herein) exercise their option to purchase additional Convertible Notes pursuant to the Purchase Agreement (as defined herein)) pursuant to an Indenture.

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

1. This Confirmation evidences a complete and binding agreement between Dealer and Counterparty as to the terms of the Transaction to which this Confirmation relates. This Confirmation shall supplement, form a part of, and be subject to an agreement in the form of the 2002 ISDA Master Agreement (the “**Agreement**”) as if Dealer and Counterparty had executed an agreement in such form (but without any Schedule except for (a) the election of the laws of the State of New York as the governing law (without reference to choice of law doctrine) and (b) the agreement of the parties hereto that, following the payment of the Premium and the delivery to Dealer of the opinions of counsel as required pursuant to Section 9(a), the condition precedent in Section 2(a)(iii) of the Agreement shall not apply to a payment or delivery owing by Dealer to Counterparty (it being understood that such condition precedent will continue to apply and this clause (b) will have no effect with respect to a Potential Event of Default, Event of Default and/or Early Termination Date arising under, or with respect to, Section 5(a)(ii) or 5(a)(iv) of the Agreement)) on the Trade Date. In the event of any inconsistency between provisions of the Agreement and this Confirmation, this Confirmation will prevail for the purpose of the Transaction to which this Confirmation relates. The parties hereby agree that no transaction other than the Transaction to which this Confirmation relates shall be governed by the Agreement.

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

**General Terms:**

Trade Date:	January 30, 2019
Option Style:	European
Option Type:	Call
Seller:	Dealer
Buyer:	Counterparty
Shares:	The American Depositary Shares of Counterparty issued or deemed issued under the Deposit Agreement (as defined below) (Exchange symbol: "NIO"), each of which represents as if the date hereof one Underlying Shares
Underlying Shares:	Initially, Class A ordinary shares, nominal value USD 0.00025 per Underlying Share, of Counterparty and any and all other securities, property and cash that are the subject of the Deposit Agreement (as defined below).
Underlying Shares Issuer:	Counterparty
Number of Options:	6,702,412. For the avoidance of doubt, the Number of Options shall be reduced by the number of any Options settled pursuant to Early Settlement (as defined below) or exercised by Counterparty. In no event will the Number of Options be less than zero.
Option Entitlement:	One. For the avoidance of doubt, the Option Entitlement shall be subject to adjustment from time to time, as described under "Method of Adjustment" below.
Number of Shares:	As of any date, the product of the Number of Options and the Option Entitlement.
Strike Price:	USD 0.00
Premium:	USD 49,999,993.52
Premium Per Option:	The amount equal to the Premium <i>divided by</i> the Number of Options.
Premium Payment Date:	February 4, 2019.
Exchange(s):	New York Stock Exchange, or any successor to such exchange or quotation system.
Related Exchange(s):	All Exchanges

Market Disruption Event: The definition of “Market Disruption Event” in Section 6.3(a) of the Equity Definitions is hereby amended (A) 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 Averaging Date” after the word “material,” in the third line thereof, and (B) by replacing the words “or (iii) an Early Closure.” therein with “(iii) an Early Closure, or (iv) a Regulatory Disruption.”

Section 6.3(d) of the Equity Definitions is hereby amended by deleting the remainder of the provision following the term “Scheduled Closing Time” in the fourth line thereof.

Regulatory Disruption: Any event that Dealer, in its reasonable discretion and in good faith, based on the advice of counsel, determines makes it appropriate with regard to any legal, regulatory or self-regulatory requirements or related policies and procedures for Dealer, that are generally applicable in similar situations and applied in a non-discriminatory manner, to refrain from or decrease any market activity in connection with the Transaction. Dealer shall notify Counterparty as soon as reasonably practicable that a Regulatory Disruption has occurred and the Averaging Dates affected by it.

Disrupted Day: The definition of “Disrupted Day” in Section 6.4 of the Equity Definitions shall be amended by adding the following sentence after the first sentence: “A Scheduled Trading Day on which a Related Exchange fails to open during its regular trading session will not be a Disrupted Day if the Calculation Agent determines, in its commercially reasonable discretion, that such failure will not have a material adverse impact on Dealer’s ability to unwind any related hedging transactions related to the Transaction.”

Non-Disrupted Day: An Exchange Business Day that is not a Disrupted Day.

**Procedure for Exercise:**

Expiration Time: The Valuation Time

Expiration Date: The 40th Non-Disrupted Day following the Note Maturity Date

Securities Maturity Date: February 1, 2024

Automatic Exercise: Applicable

**Valuation:**

Valuation Time:	At the close of trading on the Exchange, without regard to extended or after hours trading.
Valuation Date:	The Expiration Date, subject to "Early Settlement" below.
Averaging Dates:	The 40 consecutive Non-Disrupted Days commencing on, and including, the Note Maturity Date, subject to "Early Settlement" below.
Averaging Date Disruption:	Modified Postponement; <i>provided</i> that, notwithstanding anything to the contrary in the Equity Definitions and in addition to the provisions of Section 6.7(c)(iii) of the Equity Definitions, if any Averaging Date is a Disrupted Day, the Calculation Agent may, in its commercially reasonable discretion, assign additional dates to be Averaging Dates and/or make adjustments to the number of Options to which each Averaging Date relates (including increasing such number or reducing such number to zero with respect to one or more Averaging Dates).

**Settlement Terms:**

Settlement Currency:	USD
Settlement Method Election:	Not applicable.
Restricted Certificated Shares:	Notwithstanding anything to the contrary in the Equity Definitions or this Confirmation, in satisfaction of any Share delivery obligation it may have under the Transaction, Dealer may, in whole or in part, deliver Shares in certificated form representing the Number of Shares to be Delivered to Counterparty in lieu of delivery through the Clearance System.
Physical Settlement:	Applicable. Except in the case of any Early Settlement, a relevant portion of the Transaction shall expire on each Averaging Date with respect to a number of Options equal to the Number of Averaging Date Options for such Averaging Date. On the Physical Settlement Delivery Date for such Physical Settlement, Dealer shall deliver to Counterparty the sum of the Number of Averaging Date Options for each Averaging Date <i>multiplied by</i> the Option Entitlement as of each such Averaging Date for all Averaging Dates, and will pay to Counterparty the Fractional Share Amount, if any.
Physical Settlement Delivery Date:	The date that is one Settlement Cycle immediately following the Valuation Date.
Other Applicable Provisions in Respect of Physical Settlement:	The representations and agreements 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 or under the Deposit Agreement (as defined below) that exist as a result of the fact that Counterparty is the issuer of the Underlying Shares.



**Share Adjustments:**

Method of Adjustment: Calculation Agent Adjustment. For the avoidance of doubt, in the case of any dividend or distribution of the type described in Sections 11.2(e)(i) or 11.2(e)(ii)(A) of the Equity Definitions, the Calculation Agent shall make a proportional adjustment to the Number of Shares to reflect such dividend or distribution.

Extraordinary Dividend: Any dividend or distribution on the Shares or the Underlying Shares with an ex-dividend date occurring during the period from, and including, the Trade Date to, and including, the Expiration Date (other than 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).

**Extraordinary Events:**

New Shares: In the definition of New Shares in Section 12.1(i) of the Equity Definitions, the text in clause (i) shall be deleted in its entirety and replaced with “publicly quoted, traded or listed on any of the New York Stock Exchange, the NASDAQ Global Select Market or the NASDAQ Global Market (or their respective successors)”.

Consequences of Merger Events:

- (a) Share-for-Share Modified Calculation Agent Adjustment
- (b) Share-for-Other Modified Calculation Agent Adjustment or Cancellation and Payment (Calculation Agent Determination) at the commercially reasonable election of Dealer.
- (c) Share-for-Combined Modified Calculation Agent Adjustment or Component Adjustment at the commercially reasonable election of Dealer.

Tender Offer: Applicable

Consequences of Tender Offers:

- (a) Share-for-Share Modified Calculation Agent Adjustment
- (b) Share-for-Other Modified Calculation Agent Adjustment
- (c) Share-for-Combined Modified Calculation Agent Adjustment

Modified Calculation Agent Adjustment:

If, with respect to a Merger Event or a Tender Offer, (i) the consideration for the Shares or Underlying Shares, as applicable, includes (or, at the option of a holder of Shares, or Underlying Shares, as applicable, may include) shares of an entity or person that is not (1) a corporation or an entity that is treated as a corporation for U.S. federal income tax purposes or (2) organized under the laws of the Cayman Islands or (ii) the Counterparty to the Transaction following such Merger Event or Tender Offer will not be a corporation or an entity that is treated as a corporation for U.S. federal income tax purposes organized under the laws of the Cayman Islands, and/or will not be the Underlying Shares Issuer then, in any case, Cancellation and Payment (Calculation Agent Determination) may apply at Dealer's commercially reasonable election.

Composition of Combined Consideration:

Not Applicable

Nationalization, Insolvency or Delisting:

Cancellation and Payment (Calculation Agent Determination).

The definition of "Delisting" in Section 12.6 of the Equity Definitions shall be deleted in its entirety and replaced with the following: "Delisting" means that the Exchange announces that pursuant to the rules of such Exchange, the Shares cease (or will cease) to be listed, traded or publicly quoted on the Exchange for any reason (other than a Merger Event or Tender Offer) and 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 thereafter be deemed to be the Exchange.

Section 12.1 of the Equity Definitions is hereby amended by deleting subsection (v) thereof in its entirety and replacing it with "(v) in the case of an Insolvency, the date of (A) the institution of a proceeding or presentation of a petition or the passing of a resolution (or the convening of a meeting to pass a resolution or the proposing of a written resolution) (in each case the occurrence of which shall be deemed its announcement) that leads to an Insolvency within the meaning of subsection (A) of the definition thereof, (B) the first public announcement of the institution of a proceeding or presentation of a petition or passing of a resolution (or other analogous procedure in any jurisdiction) that leads to the Insolvency or (C) the occurrence of any of the events specified in Section 5(a)(vii)(1) through (9) of the ISDA Master Agreement with respect to that Issuer".

Section 12.6(a)(ii) of the Equity Definitions is hereby amended by (1) inserting “(A)” after “means” in the first line thereof and replacing “(A)” and “(B)” in the third and fourth lines thereof with “(1)” and “(2)” respectively, (2) deleting from the fourth line thereof the word “or” after the word “official” and inserting a comma therefor, (3) inserting at the end of renumbered subsection (2) thereof the following wording, “or, under the laws of the Cayman Islands, any other jurisdiction or otherwise, any other impediment to or restriction on the transfer of any Share arises or becomes applicable including, without limitation, where (x) any transfer of a Share or alteration of the status of the members of the Issuer would be void unless a court of the Cayman Islands or any other jurisdiction orders otherwise or (y) any transfer of a Share not being a transfer with the sanction of a liquidator, and any alteration in the status of the Issuer’s members, would be void” and (4) deleting the semi-colon at the end of renumbered subsection (2) thereof and inserting the following words therefor “or (B) at Dealer’s option, the occurrence of any of the events specified in Section 5(a)(vii)(1) through (9) of the ISDA Master Agreement with respect to that Issuer.”

**Additional Disruption Events:**

Change in Law:

Applicable; *provided* that Section 12.9(a)(ii) of the Equity Definitions is hereby amended by (i) replacing the phrase “the interpretation” in the third line thereof with the phrase “, or public announcement of, the formal or informal interpretation”, (ii) replacing the word “Shares” where it appears in clause (X) thereof with the words “Hedge Position” and (iii) replacing the parenthetical beginning after the word “regulation” in the second line thereof with the words “(including, for the avoidance of doubt and without limitation, (x) any tax law or (y) adoption, effectiveness or promulgation of new regulations authorized or mandated by existing statute)”, and *provided further* that any determination as to whether (A) the adoption of or any change in any applicable law or regulation (including, for the avoidance of doubt and without limitation, (x) any tax law or (y) adoption, effectiveness or promulgation of new regulations authorized or mandated by existing statute) or (B) the promulgation of or any change in the interpretation by any court, tribunal or regulatory authority with competent jurisdiction of any applicable law or regulation (including any action taken by a taxing authority), in each case, constitutes a “Change in Law” shall be made without regard to Section 739 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 or any similar legal certainty provision in any legislation enacted, or rule or regulation promulgated, on or after the Trade Date.

Failure to Deliver:

Applicable

Insolvency Filing:	Applicable  Section 12.9(b)(i) of the Equity Definitions is hereby amended by adding the following sentence at the end: "If neither party elects to terminate the Transaction, the Calculation Agent may in its sole discretion decide to apply adjustments to the terms of the Transaction upon the occurrence of such an event pursuant to Calculation Agent Adjustment (as if such event were a Tender Offer). For the avoidance of doubt, such adjustments shall be made in a commercially reasonable manner."
Hedging Disruption:	Applicable
Increased Cost of Hedging:	Applicable
Loss of Stock Borrow:	Not Applicable
Increased Cost of Stock Borrow:	Not Applicable
Hedging Party:	Dealer shall be the Hedging Party for all applicable events
Determining Party:	For all applicable Extraordinary Events, Dealer; <i>provided</i> that when making any determination or calculation as "Determining Party," Dealer shall make such determinations or calculations in good faith and in a commercially reasonable manner.  Following any determination or calculation by Determining Party hereunder, the Determining Party will, upon written request from Counterparty, promptly (but in any event within five Scheduled Trading Days) provide to Counterparty a report (in a commonly used file format for the storage and manipulation of financial data) displaying in reasonable detail the basis for such determination or calculation (including any assumptions used in making such determination or calculation), it being understood that in no event will the Determining Party be obligated to share with Counterparty any proprietary or confidential data or information or any proprietary or confidential models used by it in making such determination or calculation or any information that is subject to an obligation not to disclose such information.
Hedging Adjustments:	For the avoidance of doubt, whenever the Calculation Agent is called upon to make an adjustment pursuant to the terms of this Confirmation or the Equity Definitions to take into account the effect of an event, the Calculation Agent shall make such adjustment in a commercially reasonable manner by reference to the effect of such event on Dealer, assuming that Dealer maintains a commercially reasonable Hedge Position.

**Representations:**

Non-Reliance:	Applicable
Agreements and Acknowledgments Regarding Hedging Activities:	Applicable
Additional Acknowledgments:	Applicable

**3. Additional Representations and Warranties of Counterparty:**

Each of the representations and warranties of Counterparty set forth in Section 2 of the Purchase Agreement are true and correct and are hereby deemed to be repeated to Dealer as if set forth herein. In lieu of the representations set forth in Section 3(a) of the Agreement, Counterparty represents and warrants to Dealer on the date hereof and as of the Premium Payment Date that:

- (a) Counterparty (i) is duly incorporated and validly existing as an exempted company with limited liability under the laws of the Cayman Islands and is in good standing under such laws, and (ii) has all necessary corporate power and authority to execute, deliver and perform its obligations and exercise its rights in respect of the Transaction; such execution, delivery, performance and exercise have been duly authorized by all necessary corporate action on Counterparty's part; and this Confirmation has been duly and validly executed and delivered by Counterparty and constitutes its valid and binding obligation, enforceable against Counterparty in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity) and except that rights to indemnification and contribution hereunder may be limited by federal or state securities laws or public policy relating thereto.
- (b) (i) It is not entering into the Transaction on behalf of or for the accounts of any other person or entity, and will not transfer or assign its obligations under the Transaction or any portion of such obligations to any other person or entity except in compliance with applicable laws and the terms of the Transaction; (ii) it understands that the 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 (iii) it has consulted with its legal advisor(s) and has reached its own conclusions about the Transaction, and any legal, regulatory, tax, accounting or economic consequences arising from the Transaction.
- (c) Neither Dealer nor any of its affiliates has advised it with respect to any legal, regulatory, tax, accounting or economic consequences arising from the Transaction, and neither Dealer nor any of its affiliates is acting as agent, or advisor for Counterparty in connection with the Transaction.
- (d) Neither the execution and delivery of this Confirmation nor the incurrence or performance of obligations nor the exercise of rights of Counterparty hereunder will conflict with or result in a breach of the memorandum and articles of association or by-laws (or any equivalent documents) of Counterparty, or any applicable law or regulation, or any order, writ, injunction or decree of any court or governmental authority or agency, or any agreement or instrument to which Counterparty or any of its subsidiaries is a party or by which Counterparty or any of its subsidiaries is bound or to which Counterparty or any of its subsidiaries is subject, or constitute a default under, or result in the creation of any lien under, any such agreement or instrument.
- (e) No consent, approval, authorization, or order of, or filing with, any governmental agency or body or any court is required in connection with the execution, delivery or performance by Counterparty of this Confirmation, except such as have been obtained or made and such as may be required under the Securities Act or state securities laws.

- (f) It has not entered into any obligation that would contractually limit it from effecting Physical Settlement (including in connection with an Early Settlement) under the Transaction.
- (g) The Transaction has been duly approved and authorized by Counterparty's board of directors after due consideration by the board of directors of the matters, and after having reached the conclusions referred to in paragraph (b) above and, prior to the Trade Date Counterparty shall deliver to Dealer a resolution of Counterparty's board of directors authorizing the Transaction and such other certificate or certificates, as Dealer shall reasonably request. For the avoidance of doubt, each representation, warranty and certification made by Counterparty in such certificate shall be deemed a representation and warranty made by Counterparty in this paragraph (g).
- (h) It is not entering into the Transaction to create actual or apparent trading activity in the Shares or Underlying Shares (or any security convertible into or exchangeable for Shares or Underlying Shares), or to manipulate the price of the Shares or Underlying Shares (or any security convertible into or exchangeable for Shares or Underlying Shares).
- (i) Counterparty is not and, after consummation of the transactions contemplated hereby, will not be required to register as an "investment company" as such term is defined in the Investment Company Act of 1940, as amended.
- (j) Counterparty is an "eligible contract participant" (as such term is defined in Section 1a(18) of the Commodity Exchange Act, as amended, other than a person that is an eligible contract participant under Section 1a(18)(C) of the Commodity Exchange Act).
- (k) Counterparty is not, on the date hereof and on each day pursuant to the terms hereof on which this representation is repeated or deemed repeated, aware of any material non-public information with respect to Counterparty, the Underlying Shares Issuer (if other than Counterparty), the Underlying Shares or the Shares.
- (l) On and immediately after the Trade Date and the Premium Payment Date, and on each day pursuant to the terms hereof on which this representation is required to be repeated or deemed repeated, (A) the assets of Counterparty at their fair valuation exceed the liabilities of Counterparty, including contingent liabilities, (B) the capital of Counterparty is adequate to conduct the business of Counterparty, (C) Counterparty has the ability to pay its debts and obligations as such debts mature and does not intend to, or does not believe that it will, incur debt beyond its ability to pay as such debts mature, (D) Counterparty is not, and will not be, "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**")), (E) Counterparty would be able to purchase 100,536,150 Shares and the Underlying Shares represented by such number of Shares in compliance with the laws of the jurisdiction of Counterparty's incorporation or organization, and (F) for the purposes of Cayman Islands law, Counterparty is able to pay its debts.
- (m) To the knowledge of Counterparty, no state or local (including any non-U.S. jurisdiction's) law, rule, regulation or regulatory order applicable to the Shares and/or Underlying 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 and/or Underlying Shares (except for filings of Form 13F, Schedule 13D or Schedule 13G under the Exchange Act); *provided* that Counterparty makes no representation or warranty regarding any such requirement that is applicable generally to the ownership of equity securities by Dealer or any of its affiliates solely as a result of it or any of such affiliates being a financial institution or broker-dealer.
- (n) Counterparty is not on the Trade Date engaged in a distribution, as such term is used in Regulation M ("**Regulation M**") under the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), of any securities of Counterparty other than a distribution meeting the requirements of the exception set forth in Rule 102(b)(7) of Regulation M.

- (o) Counterparty (A) is capable of evaluating investment risks independently, both in general and with regard to all transactions and investment strategies involving a security or securities; (B) will exercise independent judgment in evaluating the recommendations of any broker-dealer or its associated persons, unless it has otherwise notified the broker-dealer in writing; (C) has total assets of at least USD 50 million; and (D) is acting for its own account, and it has made its own independent decisions to enter into the Transaction and as to whether the Transaction is appropriate or proper for it (including as to any legal, regulatory, tax, accounting or economic consequences arising from the Transaction) based upon its own judgment and upon advice from such advisers as it has deemed necessary (including legal, financial and accounting advisors).
- (p) Counterparty acknowledges that the offer and sale of the Transaction to it is intended to be exempt from registration under the Securities Act of 1933, as amended (the “**Securities Act**”), by virtue of Section 4(a)(2) thereof. Accordingly, Counterparty represents and warrants to Dealer that (i) it has the financial ability to bear the economic risk of its investment in the Transaction and is able to bear a total loss of its investment, (ii) it is an “accredited investor” as that term is defined in Regulation D as promulgated under the Securities Act, (iii) it is entering into the Transaction for its own account without a view to the distribution or resale thereof and (iv) the assignment, transfer or other disposition of the Transaction has not been and will not be registered under the Securities Act and is restricted under this Confirmation, the Securities Act and state securities laws.
- (q) It has the corporate power and authority and all necessary consents to effect Physical Settlement of the Transaction as contemplated by the Agreement.
- (r) Counterparty’s board of directors (the “**Board**”) has concluded that (A) the Transaction is suitable for Counterparty, for its commercial benefit and in its best interests, in light of its own investment objectives, financial condition and expertise and (B) the Transaction has been duly approved and authorized by the Board after due consideration by the Board of the foregoing matters and those referred to in sub-paragraph (b) (iii) above.

#### **4. Additional Mutual Representations and Warranties:**

In addition to the representations set forth in the Agreement, each of Dealer and Counterparty further represents and warrants to the other party that as of the Trade Date that it is an “eligible contract participant” as the term is defined in the U.S. Commodity Exchange Act, as amended.

#### **5. Additional Covenants and Acknowledgements:**

- (a) Counterparty shall deliver to Dealer (A) an opinion of U.S. counsel and (B) an opinion of Cayman counsel, each dated as of the Premium Payment Date, with respect to, among other things, the matters set forth in Sections 3(a), (d) and (e) of this Confirmation, it being understood that such opinions of counsel shall be limited to the federal laws of the United States and the laws of the State of New York (in the case of clause (A) above) and the laws Cayman Islands (in the case of clause (B) above) and may contain customary limitations, exceptions and qualifications for transactions of the same type as the Transaction. Delivery of such opinions to Dealer shall be a condition precedent for the purpose of Section 2(a)(iii) of the Agreement with respect to each obligation of Dealer under Section 2(a)(i) of the Agreement; and (C) on or before the Premium Payment Date, a solvency certificate with respect to Counterparty signed by a member of the Board, the chief executive officer or the chief financial officer of the Counterparty certifying the solvency of Counterparty as of and immediately after the Premium Payment Date (after giving effect to Counterparty’s payment of amounts required to be paid by Counterparty on such date under the Transaction and the other transactions described under “Use of Proceeds” in the Offering Memorandum related to the offering of the Convertible Notes), which solvency certificate is reasonably satisfactory to Dealer.

- (b) (i) Counterparty shall not engage in any distribution as such term is used in Regulation M of any securities of Counterparty or otherwise permit the Shares or the Underlying Shares to be subject to a restricted period, as such term is used in Regulation M, in each case, during the period (the “**Restricted Period**”) from, and including, the scheduled first Averaging Date to, and including, the Exchange Business Day immediately succeeding the Valuation Date (determined without regard to any Early Settlement); provided, for the avoidance of doubt, that the foregoing shall not apply with respect to any Early Settlement.
- (ii) In connection with any Early Settlement, Counterparty shall notify Dealer, as soon as practicable, and in any event no later than the Exchange Business Day immediately following the Notice Date with respect to such Early Settlement, of any distribution or restricted period, as such terms are used in Regulation M with respect to any securities of Counterparty that is occurring on the date Counterparty delivers such notice to Dealer or that Counterparty expects at such time may occur on any Averaging Date, Valuation Date or the Exchange Business Day immediately succeeding the Valuation Date relating to such Early Settlement.
- (c) On the Trade Date, and on each day during the Restricted Period, neither Counterparty nor any “affiliated purchaser” (each as defined in Rule 10b-18 under the Exchange Act (“**Rule 10b-18**”)) shall directly or indirectly (including, without limitation, by means of any cash-settled or other derivative instrument) purchase, offer to purchase, place any bid or limit order that would effect a purchase of, or commence any tender offer relating to, any Shares or Underlying Shares (or an equivalent interest, including a unit of beneficial interest in a trust or limited partnership or a depository share) or any security convertible into or exchangeable or exercisable for Shares or Underlying Shares.
- (d) 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 Confirmation or the Agreement, as applicable, arising from a termination event, force majeure, illegality, increased costs, regulatory change or similar event under this Confirmation, the Equity Definitions incorporated herein, or the Agreement (including, but not limited to, rights arising from Change in Law, Hedging Disruption, Increased Cost of Hedging, an Excess Ownership Position, or Illegality (as defined in the Agreement)).

#### **6. Other Provisions:**

- (a) **Agreements and Acknowledgements Regarding Hedging.** Counterparty understands, acknowledges and agrees that: (A) at any time on and prior to the Expiration Date, Dealer and its affiliates may buy or sell Shares or other securities or buy or sell options or futures contracts or enter into swaps or other derivative securities in order to adjust its hedge position with respect to the Transaction; (B) Dealer and its affiliates also may be active in the market for Shares other than in connection with hedging activities in relation to the Transaction; (C) Dealer shall make its own determination as to whether, when or in what manner any hedging or market activities in securities of Counterparty shall be conducted and shall do so in a manner that it deems appropriate to hedge its price and market risk; and (D) any market activities of Dealer and its affiliates with respect to Shares may affect the market price and volatility of Shares, each in a manner that may be adverse to Counterparty.
- (b) **Transfer.**
- (i) Counterparty shall have the right to transfer or assign all or any of its rights and obligations hereunder with respect to all, or any, of the Options hereunder (such Options, the “**Transfer Options**”) with the prior written consent of Dealer, such consent not to be unreasonably withheld; *provided* that withholding of such consent by Dealer shall not be considered unreasonable if such transfer or assignment does not meet any of the following conditions:



- (A) With respect to any Transfer Options, Counterparty shall not be released from its notice and indemnification obligations pursuant to Section 9(m) of this Confirmation;
  - (B) Such transfer or assignment shall be effected on terms, including any reasonable undertakings by such third party (including, but not limited to, an undertaking with respect to compliance with applicable securities laws in a manner that, in the reasonable judgment of Dealer, will not expose Dealer to material risks under applicable securities laws) and execution of any documentation and delivery of legal opinions with respect to securities laws and other matters by such third party and Counterparty, as are reasonably requested and reasonably satisfactory to Dealer;
  - (C) Under the applicable law effective on the date of such transfer or assignment, (1) Dealer will not, as a result of such transfer or assignment, be required to pay the transferee or assignee on any payment date or delivery date an amount or a number of Shares, as applicable, under Section 2(d)(i)(4) of the Agreement greater than the amount or the number of Shares, as applicable, that Dealer would have been required to pay to Counterparty in the absence of such transfer or assignment and (2) Dealer will not, as a result of such transfer or assignment, receive from the transferee or assignee on any payment date an amount under Section 2(d)(i)(4) of the Agreement that is less than the amount that Dealer would have received from Counterparty in the absence of such transfer or assignment;
  - (D) No Event of Default, Potential Event of Default or Termination Event will occur as a result of such transfer and assignment;
  - (E) Counterparty shall cause the transferee to make such tax representations and to provide such tax documentation as may be reasonably requested by Dealer to permit Dealer to determine that results described in clauses (C) and (D) will not occur upon or after such transfer and assignment, including but not limited to providing tax documentation specified in Section 9(bb) of this Confirmation and making the tax representations specified in Section 9(aa) of this Confirmation on or prior to such transfer and at the other times specified in such Sections; and
  - (F) Counterparty shall be responsible for all reasonable and documented costs and expenses, including reasonable counsel fees, incurred by Dealer in connection with such transfer or assignment.
- (ii) Dealer may, without Counterparty's consent, transfer or assign all or any part of its rights or obligations under the Transaction to any affiliate of Dealer (1) that has a long-term issuer rating that is equal to or better than Dealer's credit rating at the time of such transfer or assignment, or (2) whose obligations hereunder will be guaranteed, pursuant to the terms of a customary guarantee in a form used by Dealer generally for similar transactions, by Dealer or Morgan Stanley; *provided* that, in the case of any such transfer or assignment, under the applicable law effective on the date of such transfer or assignment, (I) Counterparty will not, as a result of such transfer or assignment, be required to pay the transferee or assignee on any payment date an amount under Section 2(d)(i)(4) of the Agreement greater than the amount that Counterparty would have been required to pay to Dealer in the absence of such transfer or assignment; (II) Counterparty will not, as a result of such transfer or assignment, receive from the transferee or assignee on any payment or delivery date an amount or a number of Shares, as applicable, under Section 2(d)(i)(4) of the Agreement that is less than the amount or the number of Shares that Counterparty would have received from Dealer in the absence of such transfer or assignment; (III) Dealer shall cause the transferee or assignee to make such tax representations and to provide such tax documentation as may be reasonably requested by Counterparty to permit Counterparty to determine that events described in clauses (I) and (II) of this proviso will not occur upon or after such transfer or assignment; and (IV) no Event of Default, Potential Event of Default or Termination Event will occur as a result of such transfer and assignment.

If at any time at which (A) the Section 13 Percentage exceeds 8.5%, (B) the Option Equity Percentage exceeds 14.5%, or (C) the Share Amount exceeds the Applicable Share Limit (if any applies) (any such condition described in clauses (A), (B) or (C), an “**Excess Ownership Position**”), Dealer is unable after using its commercially reasonable efforts to effect a transfer or assignment of Options to a third party on pricing terms reasonably acceptable to Dealer and within a time period reasonably acceptable to Dealer such that no Excess Ownership Position exists, then Dealer may designate any Exchange Business Day as an Early Termination Date with respect to a portion of the Transaction (the “**Terminated Portion**”), to the extent necessary so that no Excess Ownership Position exists following such partial termination. In the event that Dealer so designates an Early Termination Date with respect to a portion of the Transaction, a payment shall be made pursuant to Section 6 of the Agreement as if (1) an Early Termination Date had been designated in respect of a Transaction having terms identical to the Transaction and a Number of Options equal to the number of Options underlying the Terminated Portion, (2) Counterparty were the sole Affected Party with respect to such partial termination and (3) the Terminated Portion were the sole Affected Transaction. The “**Section 13 Percentage**” as of any day is the fraction, expressed as a percentage, (A) the numerator of which is the number of Underlying Shares that Dealer and any of its affiliates or any other person subject to aggregation with Dealer for purposes of the “beneficial ownership” test under Section 13 of the Exchange Act, or any “group” (within the meaning of Section 13 of the Exchange Act) of which Dealer is or may be deemed to be a part beneficially owns (within the meaning of Section 13 of the Exchange Act), without duplication, on such day (or, to the extent that for any reason the equivalent calculation under Section 16 of the Exchange Act applies with respect to the Shares or Underlying Shares, as applicable, and the rules and regulations thereunder results in a higher number, such higher number) and (B) the denominator of which is the number of Underlying Shares outstanding on such day. The “**Option Equity Percentage**” as of any day is the fraction, expressed as a percentage, (A) the numerator of which is the sum of (1) the product of (x) the Number of Options (y) the Option Entitlement and (z) the number of Underlying Shares represented by one Share and (2) the aggregate number of Underlying Shares underlying any other call option transaction sold by Dealer to Counterparty, and (B) the denominator of which is the number of Underlying Shares outstanding. The “**Share Amount**” as of any day is the number of Underlying Shares that Dealer and any person whose ownership position would be aggregated with that of Dealer (Dealer or any such person, a “**Dealer Person**”) under any law, rule, regulation, regulatory order or organizational documents or contracts of Counterparty that are, in each case, applicable to ownership of Underlying Shares (“**Applicable Restrictions**”), owns, beneficially owns, constructively owns, controls, holds the power to vote or otherwise meets a relevant definition of ownership under any Applicable Restriction, as determined by Dealer in its reasonable discretion. The “**Applicable Share Limit**” means a number of Underlying Shares equal to (A) the minimum number of Underlying Shares that could give rise to reporting or registration obligations (except for any filing requirements on Form 13F, Schedule 13D or Schedule 13G under the Exchange Act, in each case, as in effect on the Trade Date) or other requirements (including obtaining prior approval from any person or entity) of a Dealer Person, or could result in an adverse effect on a Dealer Person, under any Applicable Restriction, as determined by Dealer in good faith and in its commercially reasonable discretion, *minus* (B) 1% of the number of Underlying Shares outstanding.

- (c) **Designation.** Notwithstanding any other provision in this Confirmation to the contrary requiring or allowing Dealer to purchase, sell, receive or deliver any Shares or other securities, or make or receive any payment in cash, to or from Counterparty, Dealer may designate any of its affiliates to purchase, sell, receive or deliver such Shares or other securities, or to make or receive such payment in cash, and otherwise to perform Dealer’s obligations in respect of the Transaction and any such designee may assume such obligations. Dealer shall be discharged of its obligations to Counterparty to the extent of any such performance.

- (d) **No Collateral.** No collateral is required to be posted by Counterparty or Dealer, in respect of the Transaction.
- (e) **Bankruptcy Code Provisions.** Each of Dealer and Counterparty agrees and acknowledges that Dealer is one or more of a “swap participant” and/or “financial participant” within the meaning of Sections 101(53C) and 101(22A) of the Bankruptcy Code. The parties hereto further agree and acknowledge (A) that this Confirmation is (i) a “securities contract,” as such term is defined in Section 741(7) of the Bankruptcy Code, with respect to which each payment and delivery hereunder or in connection herewith is a “settlement payment,” as such term is defined in Section 741(8) of the Bankruptcy Code, and (ii) a “swap agreement,” as such term is defined in Section 101(53B) of the Bankruptcy Code, with respect to which each payment and delivery hereunder or in connection herewith is a “termination value,” “payment amount” or “other transfer obligation” within the meaning of Section 362 of the Bankruptcy Code and a “transfer,” as such term is defined in Section 101(54) of the Bankruptcy Code, and a “payment or transfer of property” within the meaning of Sections 362 and 546 of the Bankruptcy Code, and (B) that Dealer is entitled to the protections afforded by, among other sections, Sections 362(b)(6), 362(b)(17), 362(b)(27), 362(o), 546(e), 546(g), 546(j), 555, 560 and 561 of the Bankruptcy Code.
- (f) **Early Unwind.** In the event the sale of the Underwritten Securities (as defined in the Purchase Agreement) is not consummated with the Initial Purchasers for any reason, or Counterparty fails to deliver to Dealer opinions of counsel as required pursuant to Section 5(a), in each case by 5:00 p.m. (New York City time) on the Premium Payment Date, or such later date as agreed upon by the parties (the Premium Payment Date or such later date the “**Early Unwind Date**”), the Transaction shall automatically terminate (the “**Early Unwind**”), on the Early Unwind Date and (i) the Transaction and all of the respective rights and obligations of Dealer and Counterparty under the Transaction shall be cancelled and terminated and (ii) each party shall be released and discharged by the other party from and agrees not to make any claim against the other party with respect to any obligations or liabilities of the other party arising out of and to be performed in connection with the Transaction either prior to or after the Early Unwind Date. Each of Dealer and Counterparty represents and acknowledges to the other that, upon an Early Unwind, all obligations with respect to the Transaction shall be deemed fully and finally discharged.
- (g) **Amendments to Equity Definitions.**
- a. Section 11.2(e)(vii) of the Equity Definitions is hereby amended by deleting the words “that may have a diluting or concentrative effect on the theoretical value of the relevant Shares” and replacing them with the words “that is the result of a corporate event involving the Underlying Shares Issuer or its securities that has a material economic effect on the Shares and/or the Underlying Shares or options on the Shares and/or the Underlying Shares; *provided* that such event is not based on (a) an observable market, other than the market for the Underlying Shares Issuer’s own stock or (b) an observable index, other than an index calculated and measured solely by reference to the Underlying Shares Issuer’s own operations.”
  - b. Section 12.6(a)(ii) of the Equity Definitions is hereby amended by (1) inserting “(1)” immediately following the word “means” in the first line thereof and (2) inserting immediately prior to the semi-colon at the end of subsection (B) thereof the following words: “or (2) the occurrence of any of the events specified in Section 5(a)(vii)(1) through (9) of the ISDA Master Agreement with respect to that Issuer” *provided* that the period for dismissal, discharge, stay or restraint therein shall be increased from “within 15 days” to “within 30 days.”
  - c. Section 12.9(b)(i) of the Equity Definitions is hereby amended by (1) replacing “either party may elect” with “Dealer may elect” and (2) replacing “notice to the other party” with “notice to Counterparty” in the first sentence of such section.

- d. Section 12.9(b)(vi) of the Equity Definitions is hereby amended by (1) adding the word “or” immediately before subsection “(B)”, (2) deleting the comma at the end of subsection (A), (3) deleting subsection (C) in its entirety, (4) deleting the word “or” immediately preceding subsection (C) and (5) replacing the words “either party” in the last sentence of such Section with “Dealer”.

(h) **Early Settlement.**

- a. Dealer may, from time to time on or after the 30th day following the Trade Date, settle the Transaction early (“**Early Settlement**”), in whole or in part, by delivering a written notice to Counterparty on any Exchange Business Day (the “**Notice Date**”) specifying the portion of the Transaction to be settled early (the “**Early Settled Portion**”).
- b. With respect to any Early Settled Portion, Dealer shall provide notice to Counterparty no later than 3 Scheduled Trading Days following the Notice Date, specifying the Averaging Date(s) (if any), the number of Options that shall expire on each such Averaging Date and the Valuation Date in respect of such Early Settlement, and Dealer will deliver to Counterparty a number of Shares equal to the product of (x) the sum of the number of Options expiring on each such Averaging Date, *multiplied by* (y) the Option Entitlement, and will pay to Counterparty the Fractional Share Amount, if any, on the Physical Settlement Delivery Date relating to the specified Valuation Date with respect to such Physical Early Settled Portion.
- c. Such delivery and any such payment will be made through the relevant Clearance System on the applicable settlement dates; provided that, for the avoidance of doubt, “Restricted Certificated Shares” above shall also apply with respect to Early Settlement.

(i) **Depository Shares Provisions.**

- (i) For the purposes of this Confirmation the following definitions will apply:

“**Depository**” means, in relation to the Shares, Deutsche Bank Trust Company Americas, or any successor thereto from time to time.

“**Deposit Agreement**” means, (i) that certain Deposit Agreement, dated as of September 11, 2018, by and among Underlying Shares Issuer, Depository and the holders and beneficial owners of the Shares and (ii) the other agreements or other instruments constituting the Shares, as from time to time amended or supplemented in accordance with their terms.

“**DS Amendment**” means, where specified as applicable to a definition or provision, that the following changes shall be made to such definition or provision: (a) all references to “Shares” shall be deleted and replaced with the words “Shares and/or the Underlying Shares, as appropriate”; and (b) all references to “Issuer” shall be deleted and replaced with the words “Issuer or Underlying Shares Issuer, as appropriate”.

“**Replacement DSs**” means depository shares or receipts, other than the Shares, over the same Underlying Shares.

- (ii) The following amendments shall be made to the Equity Definitions:

(A) The definition of Potential Adjustment Event in Section 11.2(e) of the Equity Definitions shall be amended as follows:

- (i) the DS Amendment shall be applicable, provided that an event under Section 11.2(e)(i) to (vii) of the Equity Definitions in respect of the Underlying Shares shall not constitute a Potential Adjustment Event unless, in the commercially reasonable opinion of the Calculation Agent, such event has a material effect on the theoretical value of the Shares; and

- (ii) (A) 'or' shall be deleted where it appears at the end of subsection (vi);
  - (B) '.' shall be deleted where it appears at the end of subsection (vii) and replaced with ';';
  - (C) the following shall be inserted as subsection (viii): "(viii) the making of any amendment or supplement to the terms of the Deposit Agreement and/or the Shares; or"; and
  - (D) the following shall be inserted as provision (ix): "(ix) any other event as a result of which the Shares represent fewer or more Underlying Shares than, and/or any property or assets in addition to, or as a whole or partial replacement of, in each case, the number of Underlying Shares represented by the Shares prior to such event."
- (B) In making any adjustment following any Potential Adjustment Event, the Calculation Agent shall have reference to (to the extent necessary or appropriate among other factors) any adjustment made by the Depositary under the Deposit Agreement, any fees and/or expenses of the Depositary and any withholding or deduction of taxes. If the Calculation Agent determines that no adjustment that it could make will produce a commercially reasonable result, it shall notify the parties that the relevant consequence shall be the termination of the relevant Transaction, in which case "Cancellation and Payment (Calculation Agent Determination)" will be deemed to apply and any payment to be made by one party to the other shall be calculated in accordance with Section 12.7 of the Equity Definitions (as amended by this Confirmation).
- (C) If a Potential Adjustment Event occurs under Section 11.2(e)(viii) of the Equity Definitions (as amended by this Confirmation), then the following further amendments shall be deemed to be made to Section 11.2(c) of the Equity Definitions in respect of such Potential Adjustment Event:
- (i) the words "the Calculation Agent will determine whether such Potential Adjustment Event has a material effect on the theoretical value of the relevant Shares, options on the Shares or the Transaction" shall be deleted and replaced with the words "the Calculation Agent will determine whether such Potential Adjustment Event has a material economic effect on such Transaction"; and
  - (ii) the words "as the Calculation Agent determines appropriate to account for that material effect" shall be deleted and replaced with the words "as the Calculation Agent determines appropriate to account for such economic effect on such Transaction".
- (D) The definitions of "Merger Event", "Tender Offer", "Announcement Date", "Share-for-Share", "Share-for-Other" and "Share-for-Combined" in Section 12.1 of the Equity Definitions shall be amended in accordance with the DS Amendment.
- (E) In making any adjustment in respect of a Merger Event, Tender Offer or Announcement Event in relation to the Underlying Shares, the Calculation Agent shall in determining any adjustment pursuant to Modified Calculation Adjustment, have reference to (amongst other factors) any adjustment made by the Depositary under the Deposit Agreement, any fees and/or expenses of the Depositary and any withholding or deduction of taxes, as determined by the Calculation Agent in its commercially reasonable discretion.

- (F) The definitions of Nationalization and Insolvency in Section 12.6 of the Equity Definitions shall be amended in accordance with the DS Amendment.
- (G) The consequence of a Nationalization or Insolvency in respect of the Depositary shall be Cancellation and Payment.
- (H) If a Delisting of the Shares occurs or the Depositary announces that the Deposit Agreement is (or will be) terminated, then:
  - (i) Cancellation and Payment will apply as provided in this Confirmation; and
  - (ii) where Cancellation and Payment applies under (H)(i) above in respect of a termination of the Deposit Agreement, the Equity Definitions shall be interpreted as follows: (i) such termination shall be deemed to be an “Extraordinary Event”; (ii) Cancellation and Payment shall apply as defined in Section 12.6(c)(ii) of the Equity Definitions; and (iii) the definition of “Announcement Date” in Section 12.1(l) of the Equity Definitions shall include the following additional clause (vii) at the end of the first sentence thereof: “(vii) in the case of a termination of the Deposit Agreement, the date of the first public announcement by the Depositary that the Deposit Agreement is (or will be) terminated”.
- (I) If Cancellation and Payment applies under Section 5(h)(ii)(G) or Section 5(h)(ii)(H) of this Confirmation in respect of a Transaction, then the Determining Party shall be Dealer.
- (J) The definition of “Insolvency Filing” in Section 12.9(a)(iv) of the Equity Definitions shall be amended in accordance with the DS Amendment.
- (K) For the avoidance of doubt, where a provision is amended by this Section 5(h) in accordance with the DS Amendment, if the event described in such provision occurs in respect of the Underlying Shares or Underlying Shares Issuer, then the consequence of such event shall be interpreted consistently with the DS Amendment and such event.
- (j) **Right to Extend.** Dealer may postpone or extend, for as long as it is reasonably necessary, any Averaging Date, the Expiration Date, the Physical Settlement Delivery Date or any other date of payment or delivery by Dealer, with respect to some or all of the Options hereunder, if Dealer reasonably determines, in the case of clause (i) below, in its commercially reasonable judgment or, in the case of clause (ii) below, based on advice of counsel, that such action is reasonably necessary or appropriate (i) to preserve Dealer’s commercially reasonable hedging or hedge unwind activity hereunder in light of existing liquidity conditions in the relevant market or (ii) to enable Dealer to effect transactions with respect to Shares and/or Underlying Shares in connection with its commercially reasonable hedging, hedge unwind or settlement activity hereunder in a manner that would, if Dealer were Counterparty or an affiliated purchaser of Counterparty, be in compliance with applicable legal, regulatory or self-regulatory requirements, or with related policies and procedures adopted by Dealer in good faith so long as such policies and procedures are generally applicable in similar situations and applied in a non-discriminatory manner).
- (k) **Staggered Settlement.** If upon advice of counsel with respect to applicable legal and regulatory requirements, including any requirements relating to Dealer’s hedging activities hereunder, Dealer reasonably determines that it would not be practicable or advisable to deliver, or to acquire Shares to deliver, any or all of the Shares to be delivered by Dealer on any Settlement Date for the Transaction, Dealer may, by notice to Counterparty on or prior to any Settlement Date (a “Nominal Settlement Date”), elect to deliver the Shares on two or more dates (each, a “Staggered Settlement Date”) as follows:
  - (i) in such notice, Dealer will specify to Counterparty the related Staggered Settlement Dates (the first of which will be such Nominal Settlement Date and the last of which will be no later than the twentieth (20th) Exchange Business Day following such Nominal Settlement Date) and the number of Shares that it will deliver on each Staggered Settlement Date; and

- (ii) the aggregate number of Shares that Dealer will deliver to Counterparty hereunder on all such Staggered Settlement Dates will equal the number of Shares that Dealer would otherwise be required to deliver on such Nominal Settlement Date.
- (l) **Registration.** Counterparty hereby agrees that if, in the good faith reasonable judgment of Dealer, based on the advice of counsel, the Shares and/or Underlying Shares (“**Hedge Shares**”) acquired by Dealer for the purpose of commercially reasonably hedging its obligations pursuant to the Transaction cannot be sold in the public market by Dealer without registration under the Securities Act, Counterparty shall, at its election, either (i) in order to allow Dealer to sell the Hedge Shares in a registered offering, make available to Dealer an effective registration statement under the Securities Act and enter into an agreement, in form and substance reasonably satisfactory to Dealer, substantially in the form of an underwriting agreement customary for a registered secondary offering of a similar size in respect of a similar issuer; *provided, however*, that if Dealer, in its sole reasonable discretion, is not satisfied with access to due diligence materials, the results of its due diligence investigation, or the procedures and documentation for the registered offering referred to above, then clause (ii) or clause (iii) of this paragraph shall apply at the election of Counterparty, (ii) in order to allow Dealer to sell the Hedge Shares in a private placement, use commercially reasonable efforts to enter into a private placement agreement substantially similar to private placement purchase agreements customary for private placements of equity securities of a similar size in respect of a similar issuer, in form and substance satisfactory to Dealer (in which case, the Calculation Agent shall make any adjustments to the terms of the Transaction that are necessary, in its commercially reasonable judgment, to compensate Dealer for any commercially reasonable discount from the public market price of the Shares and/or Underlying Shares incurred on the sale of Hedge Shares in a private placement), or (iii) purchase the Hedge Shares from Dealer at the then-current market price on such Exchange Business Days, and in the amounts and at such time(s), reasonably requested by Dealer.

- (m) **Repurchase Notices.** Counterparty shall, on or prior to the date that is one Scheduled Trading Day following any date on which Counterparty effects any repurchase of Shares and/or Underlying Shares, promptly give Dealer a written notice of such repurchase (a “**Repurchase Notice**”) on such day if following such repurchase, the number of outstanding Underlying Shares as determined on such day is (i) less than 727.2 million (in the case of the first such notice) or (ii) thereafter more than 37.8 million less than the number of Underlying Shares included in the immediately preceding Repurchase Notice; *provided* that Counterparty may provide Dealer advance notice on or prior to any such day including the maximum number of Shares and/or Underlying Shares that may be repurchased under a repurchase program entered into in reliance on Rule 10b5-1(c) and the approximate periods during which such repurchases may occur, to the extent it expects that repurchases effected on such day may result in an obligation to deliver a Repurchase Notice (and in such case, any such advance notice shall be deemed a Repurchase Notice to the maximum extent of repurchases set forth in such advance notice as if Counterparty had executed such repurchases). Counterparty agrees that, if Counterparty ceases to qualify as a “foreign private issuer” as defined in Rule 3b-4 under the Exchange Act or the Shares or Underlying Shares, as applicable, otherwise become subject to the requirements of Section 16 of the Exchange Act, Counterparty will indemnify and hold harmless Dealer and its affiliates and their respective officers, directors, employees, affiliates, advisors, agents and controlling persons (each, an “**Indemnified Person**”) from and against any and all losses (including losses relating to Dealer’s hedging activities as a consequence of becoming, or of the risk of becoming, a Section 16 “insider”, including without limitation, any forbearance from hedging activities or cessation of hedging activities and any losses in connection therewith with respect to the Transaction), claims, damages, judgments, liabilities and reasonable and documented out-of-pocket expenses (including reasonable attorney’s fees of one outside counsel in each relevant jurisdiction), joint or several, which an Indemnified Person may become subject to, in each case, as a result of Counterparty’s failure to provide Dealer with a Repurchase Notice on the day and in the manner specified in this paragraph, and to reimburse, within 30 days, upon written request, each of such Indemnified Persons for any reasonable legal or other out-of-pocket expenses (to the extent supported by invoices or other documentation setting forth in reasonable detail such expenses) incurred in connection with investigating, preparing for, providing testimony or other evidence in connection with or defending any of the foregoing. If any suit, action, proceeding (including any governmental or regulatory investigation), claim or demand shall be brought or asserted against the Indemnified Person as a result of Counterparty’s failure to provide Dealer with a Repurchase Notice in accordance with this paragraph, such Indemnified Person shall promptly notify Counterparty in writing, and Counterparty, upon request of the Indemnified Person, shall retain counsel reasonably satisfactory to the Indemnified Person to represent the Indemnified Person and any others Counterparty may designate in such proceeding and shall pay the reasonable fees and expenses of such counsel related to such proceeding. Counterparty shall not be liable to the extent that the Indemnified Person fails to notify Counterparty within a commercially reasonable period of time after any action is commenced against it in respect of which indemnity may be sought hereunder. In addition, Counterparty shall not have liability for any settlement of any such proceeding contemplated by this paragraph that is effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, Counterparty agrees to indemnify any Indemnified Person from and against any loss or liability by reason of such settlement or judgment. Counterparty shall not, without the prior written consent of the Indemnified Person, effect any settlement of any pending or threatened proceeding contemplated by this paragraph in respect of which any Indemnified Person is or could have been a party and indemnity could have been sought hereunder by such Indemnified Person, unless such settlement includes an unconditional release of such Indemnified Person from all liability on claims that are the subject matter of such proceeding on terms reasonably satisfactory to such Indemnified Person. If the indemnification provided for in this paragraph is unavailable to an Indemnified Person or insufficient in respect of any losses, claims, damages or liabilities referred to therein, then Counterparty hereunder, in lieu of indemnifying such Indemnified Person thereunder, shall contribute to the amount paid or payable by such Indemnified Person as a result of such losses, claims, damages or liabilities. The remedies provided for in this paragraph are not exclusive and shall not limit any rights or remedies which may otherwise be available to any Indemnified Person at law or in equity. The indemnity and contribution agreements contained in this paragraph shall remain operative and in full force and effect regardless of the termination of the Transaction.
- (n) **Additional Notices.** Counterparty shall provide a written notice to Dealer as promptly as practicable upon becoming aware that Counterparty is not or will no longer be a “foreign private issuer,” as such term is defined in Rule 3b-4 under the Exchange Act.
- (o) **Termination Currency.** USD
- (p) **Alternative Calculations and Payment on Early Termination and on Certain Extraordinary Events.** If Dealer shall owe Counterparty any amount pursuant to “Consequences of Merger Events” above or Sections 12.6, 12.7 or 12.9 of the Equity Definitions or pursuant to Section 6(d)(ii) of the Agreement (a “**Payment Obligation**”), Dealer shall satisfy any such Payment Obligation by the Share Termination Alternative (as defined below) except in the event (i) of an Insolvency, a Nationalization, a Merger Event, or a Bankruptcy Event of Default under Section 5(a)(vii) of the Agreement, in each case, in which the consideration or proceeds to be paid to holders of Shares consists solely of cash, (ii) of an Event of Default in which Counterparty is the Defaulting Party or a Termination Event in which Counterparty is the Affected Party or an Extraordinary Event, which Event of Default, Termination Event or Extraordinary Event resulted from an event or events within Counterparty’s control, or (iii) any Event of Default resulting from a breach by Counterparty of its representations contained in paragraph (g) or (l) of the section “Additional Representations and Warranties of Counterparty” as of or immediately after the Trade Date or as of or immediately after the Premium Payment Date; *provided* that Counterparty shall have the right, in its sole discretion, to elect to require Dealer to satisfy any Payment Obligation in cash by giving irrevocable telephonic notice to Dealer, confirmed in writing within one Scheduled Trading Day, no later than 9:30 A.M. New York City time on the relevant Merger Date, Announcement Date, Early Termination Date or date of cancellation or termination in respect of an Extraordinary Event, as applicable (“**Notice of Cash Termination**”) so long as Counterparty repeats the representations set forth in paragraph (g) of the section “Additional Representations and Warranties of Counterparty” as of the date of such election, *provided further* that Dealer shall have the right, in its sole discretion, to elect to satisfy its Payment Obligation by the Share Termination Alternative, notwithstanding Counterparty’s election to require Dealer to satisfy any Payment Obligation in cash. The following provisions shall apply for the Share Termination Alternative on the Scheduled Trading Day immediately following the relevant merger date, Announcement Date, Early Termination Date or date of cancellation or termination in respect of an Extraordinary Event, as applicable:



Share Termination Alternative:	Applicable. Dealer shall deliver to Counterparty the Share Termination Delivery Property on, or as promptly as commercially reasonably practicable thereafter, the date on which the Payment Obligation would otherwise be due pursuant to “Consequences of Merger Events” above, Section 12.7 or 12.9 of the Equity Definitions or Section 6(d)(ii) of the Agreement, as applicable, in satisfaction of the Payment Obligation.
Share Termination Delivery Property:	A number of Share Termination Delivery Units, as calculated by the Calculation Agent, equal to the Payment Obligation divided by the Share Termination Unit Price. The Calculation Agent shall adjust the Share Termination Delivery Property by replacing any fractional portion of a security therein with an amount of cash equal to the value of such fractional security based on the values used to calculate the Share Termination Unit Price.
Share Termination Unit Price:	The value of property contained in one Share Termination Delivery Unit on the date such Share Termination Delivery Units are delivered as Share Termination Delivery Property, as determined by the Calculation Agent in its commercially reasonable discretion and notified by the Calculation Agent to Dealer at the time of notification of the Payment Obligation.
Share Termination Delivery Unit:	In the case of a Termination Event, Event of Default, Delisting, Tender Offer or Additional Disruption Event, one Share or, in the case of an Insolvency, Nationalization or Merger Event, one Share or a unit consisting of the number or amount of each type of property received by a holder of one Share (without consideration of any requirement to pay cash or other consideration in lieu of fractional amounts of any securities) in such Insolvency, Nationalization or Merger Event, as applicable. If such Insolvency, Nationalization or Merger Event involves a choice of consideration to be received by holders, such holder shall be deemed to have elected to receive the consideration specified by Dealer in its sole discretion.
Failure to Deliver:	Applicable
Other applicable provisions:	If Share Termination Alternative is applicable, the provisions of Sections 9.8, 9.9 and 9.11 (except 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 arising as a result of the fact that Counterparty is the issuer of the Shares or any portion of the Share Termination Delivery Units) of the Equity Definitions will be applicable as if “Physical Settlement” applied to the Transaction, except that all references to “Shares” shall be read as references to “Share Termination Delivery Units.”

(q) **Office.**

(a) The Office of Counterparty for the Transaction is: Inapplicable, Counterparty is not a Multibranch Party.

(b) The Office of Dealer for the Transaction is: Morgan Stanley & Co. LLC, 1221 Avenue of the Americas , New York, NY 10020

(r) **Notice.** For purposes of the Agreement (unless otherwise specified in the Agreement), the addresses for notice to the parties shall be:

(i) to Counterparty:

NIO Inc.  
Building 20, No. 56 AnTuo Road, Jiading District  
Shanghai, 201804  
People's Republic of China  
Attention: Louis T. Hsieh, Chief Financial Officer  
Telephone No.: +86 (21) 6908 3306  
Facsimile No.: +86 (21) 3913 0192

with a copy to:

Nick Wang  
VP of Finance  
Telephone No.: +86 (21) 6908-2002  
Email: Nick.Wang@nio.com

with a copy to:

Fang Liu  
General Counsel  
Telephone No.: +86 (21) 6908-2277  
Email: Fang.Liu@nio.com

with a copy to:

Sabrina Shi  
Senior Corporate Counsel  
Telephone No.: +86 (21) 6908-3391  
Email: Danting.Shi@nio.com

(ii) to Dealer:

Morgan Stanley & Co. LLC  
1585 Broadway, 5<sup>th</sup> Floor  
New York, NY 10036  
Attn: Global Capital Markets  
Telephone: +1 212 761-9363  
Facsimile: +1 212 404-9481  
Email: nycd-notices@morganstanley.com

With a copy to: Morgan Stanley & Co. LLC  
1221 Avenue of the Americas, 34<sup>th</sup> Floor  
New York, NY 10020  
Attn: Global Capital Markets  
Telephone: +1 212 761-9363  
Facsimile: +1 212 404-9481  
Email: nycd-notices@morganstanley.com

With a copy to: Steven.Seltzer1@morganstanley.com; David.Oakes@morganstanley.com; and Saurabh.Dinakar@morganstanley.com

- (s) **Calculation Agent.** Dealer provided that, following the occurrence and during the continuance of an Event of Default under Section 5(a)(vii) of the Agreement with respect to which Dealer is the Defaulting Party, Counterparty shall have the right to designate a nationally recognized independent equity derivatives 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 adjustment, determination or calculation by the Calculation Agent hereunder, the Calculation Agent will, upon written request from Counterparty, promptly (but in any event within five Scheduled Trading Days) provide to Counterparty by email a report (in a commonly used file format for the storage and manipulation of financial data) displaying in reasonable detail the basis for such adjustment, determination or calculation (including any assumptions used in making such adjustment, determination or calculation), it being understood that in no event will the Calculation Agent be obligated to share with Counterparty any proprietary or confidential data or information or any proprietary or confidential models used by it in making such adjustment, determination or calculation or any information that is subject to an obligation not to disclose such information. All calculations and determinations by the Calculation Agent shall be made in good faith and in a commercially reasonable manner.

- (t) **WAIVER OF JURY TRIAL.** EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION OR PROCEEDING RELATING TO THE TRANSACTION. EACH PARTY (I) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF SUCH A SUIT, ACTION OR PROCEEDING, SEEK TO ENFORCE THE FOREGOING WAIVER AND (II) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HAVE BEEN INDUCED TO ENTER INTO THE TRANSACTION, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS PROVIDED HEREIN.
- (u) **Tax Disclosure.** Effective from the date of commencement of discussions concerning the Transaction, Counterparty and each of its employees, representatives, or other agents may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the transaction and all materials of any kind (including opinions or other tax analyses) that are provided to Counterparty relating to such tax treatment and tax structure.
- (v) **Service of Process.** Counterparty irrevocably appoints Law Debenture Corporate Services Inc. as its authorized agent upon which process may be served in any suit, action or proceeding relating to the Transaction, and agrees that service of process in any manner permitted by applicable law upon such agent shall be deemed in every respect effective service of process in any manner permitted by applicable law upon Counterparty in any such suit, action or proceeding. Counterparty further agrees to take any and all action as may be necessary to maintain such designation and appointment of such agent in full force and effect for a period of five and a half years from the date of this Confirmation. If for any reason such agent shall cease to be such agent for service of process, Counterparty shall forthwith appoint a new agent of recognized standing for service of process in the State of New York and deliver to Dealer a copy of the new agent's acceptance of that appointment within 10 days. Nothing herein shall affect the right of Dealer to serve process in any other manner permitted by law or to commence legal proceedings or otherwise proceed against Counterparty in any other court of competent jurisdiction.

- (w) **U.S. Tax Forms.** Without limiting the generality of the foregoing, Counterparty will provide a U.S. Tax Form W-8BEN-E upon the execution of this Confirmation, promptly upon learning that any such tax form previously provided by it has become obsolete or incorrect and promptly upon reasonable demand by Dealer.
- (x) **Taxes, Foreign Account Tax Compliance Act and HIRE Act.** Counterparty is classified as a corporation for the U.S. federal income tax purposes. No income received or to be received under the Agreement will be effectively connected with the conduct of a trade or business by Counterparty in the United States. Counterparty is a “non-U.S. branch of a foreign person” as that term is used in Section 1.1441-4(a)(3)(ii) of the United States Treasury Regulations (the “**Regulations**”), and it is a “foreign person” as that term is used in Section 1.6041-4(a)(4) of the Regulations. The term “Indemnifiable Tax” as defined in Section 14 of the Agreement shall not include any U.S. federal withholding tax imposed or collected pursuant to Sections 1471 through 1474 of the U.S. Internal Revenue Code of 1986, as amended (the “**Code**”), any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b) of the Code, or any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code (a “**FATCA Withholding Tax**”). For the avoidance of doubt, a FATCA Withholding Tax is a Tax the deduction or withholding of which is required by applicable law for the purposes of Section 2(d) of the Agreement. The parties agree that the definitions and provisions contained in the ISDA 2015 Section 871(m) Protocol, as published by the International Swaps and Derivatives Association, Inc. and as may be amended, supplemented, replaced or superseded from time to time (the “**871(m) Protocol**”) shall apply to the Agreement as if the parties had adhered to the 871(m) Protocol as of the Effective Date. If there is any inconsistency between this provision and a provision in any other agreement executed between the parties, this provision shall prevail unless such other agreement expressly overrides the provisions of the 871(m) Protocol. Each of Dealer and Counterparty shall provide to the other party tax forms and documents required to be delivered pursuant to Sections 1471(b) or Section 1472(b)(1) of the Code promptly upon request by the other party and any other tax forms and documents they are legally able to provide that are reasonably requested by the other party.
- (y) **[Reserved].**
- (z) **QFC Stay Provisions.** The parties agree that (i) to the extent that prior to the date hereof both parties have adhered to the 2018 ISDA U.S. Resolution Stay Protocol (the “**Protocol**”), the terms of the Protocol are incorporated into and form a part of this Confirmation, and for such purposes this 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; (ii) to the extent that prior to the date hereof the parties have executed a separate agreement the effect of which is to amend the qualified financial contracts between them to conform with the requirements of the QFC Stay Rules (the “**Bilateral Agreement**”), the terms of the Bilateral Agreement are incorporated into and form a part of this Confirmation and each party shall be deemed to have the status of “Covered Entity” or “Counterparty Entity” (or other similar term) as applicable to it under the Bilateral Agreement; or (iii) if clause (i) and clause (ii) do not apply, the terms of Section 1 and Section 2 and the related defined terms (together, the “**Bilateral Terms**”) of the form of bilateral template entitled “Full-Length Omnibus (for use between U.S. G-SIBs and Corporate Groups)” published by ISDA on November 2, 2018 (currently available on the 2018 ISDA U.S. Resolution Stay Protocol page at [www.isda.org](http://www.isda.org) and, a copy of which is available upon request), the effect of which is to amend the qualified financial contracts between the parties thereto to conform with the requirements of the QFC Stay Rules, are hereby incorporated into and form a part of this Confirmation, and for such purposes this Confirmation shall be deemed a “Covered Agreement,” Dealer shall be deemed a “Covered Entity” and Counterparty shall be deemed a “Counterparty Entity.” In the event that, after the date of this Confirmation, both parties hereto become adhering parties to the Protocol, the terms of the Protocol will replace the terms of this section. In the event of any inconsistencies between this Confirmation and the terms of the Protocol, the Bilateral Agreement or the Bilateral Terms (each, the “**QFC Stay Terms**”), as applicable, the QFC Stay Terms will govern. Terms used in this paragraph without definition shall have the meanings assigned to them under the QFC Stay Rules. For purposes of this paragraph, references to “this 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”** means 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 FDIC 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.

Please confirm that the foregoing correctly sets forth the terms of our agreement by executing this Confirmation and returning it to Dealer.

Yours sincerely,

**MORGAN STANLEY & CO. LLC**

By: /s/ Authorized Signatory  
Name:  
Title:

[Signature Page to Zero-Strike Call]

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Agreed and Accepted,

**NIO Inc.**

By: /s/ Authorized Signatory

Name:

Title:

[Signature Page to Zero-Strike Call]

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Credit Suisse Capital LLC  
c/o Credit Suisse Securities (USA) LLC  
Eleven Madison Avenue  
New York, NY 10010

January 30, 2019

NIO Inc. (“**Counterparty**”)  
Building 20, No. 56 AnTuo Road, Jiading District  
Shanghai, 201804  
People’s Republic of China  
Attention: Louis T. Hsieh, Chief Financial Officer  
Telephone No.: +86 (21) 6908 3306  
Facsimile No.: +86 (21) 3913 0192

#### Call Transaction

The purpose of this letter agreement (this “**Confirmation**”) is to confirm the terms and conditions of the call option transaction entered into between Credit Suisse Capital LLC (“**Dealer**”) and Counterparty as of the Trade Date specified below (the “**Transaction**”). This Confirmation constitutes a “Confirmation” as referred to in the ISDA Master Agreement specified below. This Confirmation shall replace any previous agreements and serve as the final documentation for the Transaction.

The definitions and provisions contained in the 2002 ISDA Equity Derivatives Definitions (the “**Equity Definitions**”), as published by the International Swaps and Derivatives Association, Inc. (“**ISDA**”) are incorporated into this Confirmation. The Transaction constitutes a Share Option Transaction for purposes of the Equity Definitions. In the event of any inconsistency between the Equity Definitions and this Confirmation, this Confirmation will govern. For the avoidance of doubt, references herein to sections of the Purchase Agreement (the “**Purchase Agreement**”), to be dated on or around January 30, 2019, among Counterparty and Credit Suisse Securities (USA) LLC, Goldman Sachs (Asia) L.L.C., J.P. Morgan Securities LLC and Morgan Stanley & Co. LLC (the “**Initial Purchasers**”) are based on the draft of the Purchase Agreement most recently reviewed by the parties at the time of execution of this Confirmation. Certain defined terms used herein are based on terms that are defined in the Offering Memorandum dated January 30, 2019 (the “**Offering Memorandum**”) relating to the 4.50% Convertible Senior Notes due 2024 (as originally issued by Counterparty, the “**Convertible Notes**” and each USD 1,000 principal amount of Convertible Notes, a “**Convertible Note**”) issued by Counterparty in an aggregate initial principal amount of USD650,000,000 (as increased by up to an aggregate principal amount of USD100,000,000 if and to the extent that the Initial Purchasers (as defined herein) exercise their option to purchase additional Convertible Notes pursuant to the Purchase Agreement (as defined herein)) pursuant to an Indenture.

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

1. This Confirmation evidences a complete and binding agreement between Dealer and Counterparty as to the terms of the Transaction to which this Confirmation relates. This Confirmation shall supplement, form a part of, and be subject to an agreement in the form of the 2002 ISDA Master Agreement (the “**Agreement**”) as if Dealer and Counterparty had executed an agreement in such form (but without any Schedule except for (a) the election of the laws of the State of New York as the governing law (without reference to choice of law doctrine) and (b) the agreement of the parties hereto that, following the payment of the Premium and the delivery to Dealer of the opinions of counsel as required pursuant to Section 9(a), the condition precedent in Section 2(a)(iii) of the Agreement shall not apply to a payment or delivery owing by Dealer to Counterparty (it being understood that such condition precedent will continue to apply and this clause (b) will have no effect with respect to a Potential Event of Default, Event of Default and/or Early Termination Date arising under, or with respect to, Section 5(a)(ii) or 5(a)(iv) of the Agreement)) on the Trade Date. In the event of any inconsistency between provisions of the Agreement and this Confirmation, this Confirmation will prevail for the purpose of the Transaction to which this Confirmation relates. The parties hereby agree that no transaction other than the Transaction to which this Confirmation relates shall be governed by the Agreement.



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

**General Terms:**

Trade Date:	January 30, 2019
Option Style:	European
Option Type:	Call
Seller:	Dealer
Buyer:	Counterparty
Shares:	The American Depositary Shares of Counterparty issued or deemed issued under the Deposit Agreement (as defined below) (Exchange symbol: "NIO"), each of which represents as if the date hereof one Underlying Shares
Underlying Shares:	Initially, Class A ordinary shares, nominal value USD 0.00025 per Underlying Share, of Counterparty and any and all other securities, property and cash that are the subject of the Deposit Agreement (as defined below).
Underlying Shares Issuer:	Counterparty
Number of Options:	6,702,413. For the avoidance of doubt, the Number of Options shall be reduced by the number of any Options settled pursuant to Early Settlement (as defined below) or exercised by Counterparty. In no event will the Number of Options be less than zero.
Option Entitlement:	One. For the avoidance of doubt, the Option Entitlement shall be subject to adjustment from time to time, as described under "Method of Adjustment" below.
Number of Shares:	As of any date, the product of the Number of Options and the Option Entitlement.
Strike Price:	USD 0.00
Premium:	USD 50,000,000.
Premium Per Option:	The amount equal to the Premium <i>divided by</i> the Number of Options.
Premium Payment Date:	February 4, 2019.
Exchange(s):	New York Stock Exchange, or any successor to such exchange or quotation system.
Related Exchange(s):	All Exchanges

Market Disruption Event: The definition of “Market Disruption Event” in Section 6.3(a) of the Equity Definitions is hereby amended (A) 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 Averaging Date” after the word “material,” in the third line thereof, and (B) by replacing the words “or (iii) an Early Closure.” therein with “(iii) an Early Closure, or (iv) a Regulatory Disruption.” Section 6.3(d) of the Equity Definitions is hereby amended by deleting the remainder of the provision following the term “Scheduled Closing Time” in the fourth line thereof.

Regulatory Disruption: Any event that Dealer, in its reasonable discretion and in good faith, based on the advice of counsel, determines makes it appropriate with regard to any legal, regulatory or self-regulatory requirements or related policies and procedures for Dealer, that are generally applicable in similar situations and applied in a non-discriminatory manner, to refrain from or decrease any market activity in connection with the Transaction. Dealer shall notify Counterparty as soon as reasonably practicable that a Regulatory Disruption has occurred and the Averaging Dates affected by it.

Disrupted Day: The definition of “Disrupted Day” in Section 6.4 of the Equity Definitions shall be amended by adding the following sentence after the first sentence: “A Scheduled Trading Day on which a Related Exchange fails to open during its regular trading session will not be a Disrupted Day if the Calculation Agent determines, in its commercially reasonable discretion, that such failure will not have a material adverse impact on Dealer’s ability to unwind any related hedging transactions related to the Transaction.”.

Non-Disrupted Day: An Exchange Business Day that is not a Disrupted Day.

**Procedure for Exercise:**

Expiration Time: The Valuation Time

Expiration Date: The 4<sup>th</sup> Non-Disrupted Day following the Note Maturity Date

Securities Maturity Date: February 1, 2024

Automatic Exercise: Applicable

**Valuation:**

Valuation Time: At the close of trading on the Exchange, without regard to extended or after hours trading.

Valuation Date: The Expiration Date, subject to “Early Settlement” below.

Averaging Dates: The 40 consecutive Non-Disrupted Days commencing on, and including, the Note Maturity Date, subject to “Early Settlement” below.

Averaging Date Disruption: Modified Postponement; *provided* that, notwithstanding anything to the contrary in the Equity Definitions and in addition to the provisions of Section 6.7(c)(iii) of the Equity Definitions, if any Averaging Date is a Disrupted Day, the Calculation Agent may, in its commercially reasonable discretion, assign additional dates to be Averaging Dates and/or make adjustments to the number of Options to which each Averaging Date relates (including increasing such number or reducing such number to zero with respect to one or more Averaging Dates).

**Settlement Terms:**

Settlement Currency: USD

Settlement Method Election: Not applicable.

Restricted Certificated Shares: Notwithstanding anything to the contrary in the Equity Definitions or this Confirmation, in satisfaction of any Share delivery obligation it may have under the Transaction, Dealer may, in whole or in part, deliver Shares in certificated form representing the Number of Shares to be Delivered to Counterparty in lieu of delivery through the Clearance System.

Physical Settlement: Applicable. Except in the case of any Early Settlement, a relevant portion of the Transaction shall expire on each Averaging Date with respect to a number of Options equal to the Number of Averaging Date Options for such Averaging Date. On the Physical Settlement Delivery Date for such Physical Settlement, Dealer shall deliver to Counterparty the sum of the Number of Averaging Date Options for each Averaging Date *multiplied by* the Option Entitlement as of each such Averaging Date for all Averaging Dates, and will pay to Counterparty the Fractional Share Amount, if any.

Physical Settlement Delivery Date: The date that is one Settlement Cycle immediately following the Valuation Date.

Other Applicable Provisions in Respect of Physical Settlement: The representations and agreements 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 or under the Deposit Agreement (as defined below) that exist as a result of the fact that Counterparty is the issuer of the Underlying Shares.

**Share Adjustments:**

Method of Adjustment: Calculation Agent Adjustment. For the avoidance of doubt, in the case of any dividend or distribution of the type described in Sections 11.2(e)(i) or 11.2(e)(ii)(A) of the Equity Definitions, the Calculation Agent shall make a proportional adjustment to the Number of Shares to reflect such dividend or distribution.

Extraordinary Dividend: Any dividend or distribution on the Shares or the Underlying Shares with an ex-dividend date occurring during the period from, and including, the Trade Date to, and including, the Expiration Date (other than 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).

**Extraordinary Events:**

New Shares: In the definition of New Shares in Section 12.1(i) of the Equity Definitions, the text in clause (i) shall be deleted in its entirety and replaced with “publicly quoted, traded or listed on any of the New York Stock Exchange, the NASDAQ Global Select Market or the NASDAQ Global Market (or their respective successors)”.

Consequences of Merger Events:

- (a) Share-for-Share Modified Calculation Agent Adjustment
- (b) Share-for-Other Modified Calculation Agent Adjustment or Cancellation and Payment (Calculation Agent Determination) at the commercially reasonable election of Dealer.
- (c) Share-for-Combined Modified Calculation Agent Adjustment or Component Adjustment at the commercially reasonable election of Dealer.

Tender Offer: Applicable

Consequences of Tender Offers:

- (a) Share-for-Share Modified Calculation Agent Adjustment
- (b) Share-for-Other Modified Calculation Agent Adjustment
- (c) Share-for-Combined Modified Calculation Agent Adjustment

Modified Calculation Agent Adjustment: If, with respect to a Merger Event or a Tender Offer, (i) the consideration for the Shares or Underlying Shares, as applicable, includes (or, at the option of a holder of Shares, or Underlying Shares, as applicable, may include) shares of an entity or person that is not (1) a corporation or an entity that is treated as a corporation for U.S. federal income tax purposes or (2) organized under the laws of the Cayman Islands or (ii) the Counterparty to the Transaction following such Merger Event or Tender Offer will not be a corporation or an entity that is treated as a corporation for U.S. federal income tax purposes organized under the laws of the Cayman Islands, and/or will not be the Underlying Shares Issuer then, in any case, Cancellation and Payment (Calculation Agent Determination) may apply at Dealer's commercially reasonable election.

Composition of Combined Consideration: Not Applicable

Nationalization, Insolvency or Delisting: Cancellation and Payment (Calculation Agent Determination).  
The definition of "Delisting" in Section 12.6 of the Equity Definitions shall be deleted in its entirety and replaced with the following: "Delisting" means that the Exchange announces that pursuant to the rules of such Exchange, the Shares cease (or will cease) to be listed, traded or publicly quoted on the Exchange for any reason (other than a Merger Event or Tender Offer) and 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 thereafter be deemed to be the Exchange.

Section 12.1 of the Equity Definitions is hereby amended by deleting subsection (v) thereof in its entirety and replacing it with "(v) in the case of an Insolvency, the date of (A) the institution of a proceeding or presentation of a petition or the passing of a resolution (or the convening of a meeting to pass a resolution or the proposing of a written resolution) (in each case the occurrence of which shall be deemed its announcement) that leads to an Insolvency within the meaning of subsection (A) of the definition thereof, (B) the first public announcement of the institution of a proceeding or presentation of a petition or passing of a resolution (or other analogous procedure in any jurisdiction) that leads to the Insolvency or (C) the occurrence of any of the events specified in Section 5(a)(vii)(1) through (9) of the ISDA Master Agreement with respect to that Issuer".

Section 12.6(a)(i) of the Equity Definitions is hereby amended by (1) inserting “(A)” after “means” in the first line thereof and replacing “(A)” and “(B)” in the third and fourth lines thereof with “(1)” and “(2)” respectively, (2) deleting from the fourth line thereof the word “or” after the word “official” and inserting a comma therefor, (3) inserting at the end of renumbered subsection (2) thereof the following wording, “or, under the laws of the Cayman Islands, any other jurisdiction or otherwise, any other impediment to or restriction on the transfer of any Share arises or becomes applicable including, without limitation, where (x) any transfer of a Share or alteration of the status of the members of the Issuer would be void unless a court of the Cayman Islands or any other jurisdiction orders otherwise or (y) any transfer of a Share not being a transfer with the sanction of a liquidator, and any alteration in the status of the Issuer’s members, would be void” and (4) deleting the semi-colon at the end of renumbered subsection (2) thereof and inserting the following words therefor “or (B) at Dealer’s option, the occurrence of any of the events specified in Section 5(a)(vii)(1) through (9) of the ISDA Master Agreement with respect to that Issuer.”

**Additional Disruption Events:**

Change in Law:

Applicable; *provided* that Section 12.9(a)(ii) of the Equity Definitions is hereby amended by (i) replacing the phrase “the interpretation” in the third line thereof with the phrase “, or public announcement of, the formal or informal interpretation”, (ii) replacing the word “Shares” where it appears in clause (X) thereof with the words “Hedge Position” and (iii) replacing the parenthetical beginning after the word “regulation” in the second line thereof with the words “(including, for the avoidance of doubt and without limitation, (x) any tax law or (y) adoption, effectiveness or promulgation of new regulations authorized or mandated by existing statute)”, and *provided further* that any determination as to whether (A) the adoption of or any change in any applicable law or regulation (including, for the avoidance of doubt and without limitation, (x) any tax law or (y) adoption, effectiveness or promulgation of new regulations authorized or mandated by existing statute) or (B) the promulgation of or any change in the interpretation by any court, tribunal or regulatory authority with competent jurisdiction of any applicable law or regulation (including any action taken by a taxing authority), in each case, constitutes a “Change in Law” shall be made without regard to Section 739 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 or any similar legal certainty provision in any legislation enacted, or rule or regulation promulgated, on or after the Trade Date.

Failure to Deliver:

Applicable

Insolvency Filing:	Applicable
	Section 12.9(b)(i) of the Equity Definitions is hereby amended by adding the following sentence at the end: "If neither party elects to terminate the Transaction, the Calculation Agent may in its sole discretion decide to apply adjustments to the terms of the Transaction upon the occurrence of such an event pursuant to Calculation Agent Adjustment (as if such event were a Tender Offer). For the avoidance of doubt, such adjustments shall be made in a commercially reasonable manner."
Hedging Disruption:	Applicable
Increased Cost of Hedging:	Applicable
Loss of Stock Borrow:	Not Applicable
Increased Cost of Stock Borrow:	Not Applicable
Hedging Party:	Dealer shall be the Hedging Party for all applicable events
Determining Party:	For all applicable Extraordinary Events, Dealer; <i>provided</i> that when making any determination or calculation as "Determining Party," Dealer shall make such determinations or calculations in good faith and in a commercially reasonable manner.
	Following any determination or calculation by Determining Party hereunder, the Determining Party will, upon written request from Counterparty, promptly (but in any event within five Scheduled Trading Days) provide to Counterparty a report (in a commonly used file format for the storage and manipulation of financial data) displaying in reasonable detail the basis for such determination or calculation (including any assumptions used in making such determination or calculation), it being understood that in no event will the Determining Party be obligated to share with Counterparty any proprietary or confidential data or information or any proprietary or confidential models used by it in making such determination or calculation or any information that is subject to an obligation not to disclose such information.
Hedging Adjustments:	For the avoidance of doubt, whenever the Calculation Agent is called upon to make an adjustment pursuant to the terms of this Confirmation or the Equity Definitions to take into account the effect of an event, the Calculation Agent shall make such adjustment in a commercially reasonable manner by reference to the effect of such event on Dealer, assuming that Dealer maintains a commercially reasonable Hedge Position.

**Representations:**

Non-Reliance: Applicable

Agreements and Acknowledgments Regarding Hedging Activities: Applicable

Additional Acknowledgments: Applicable

**3. Additional Representations and Warranties of Counterparty:**

Each of the representations and warranties of Counterparty set forth in Section 2 of the Purchase Agreement are true and correct and are hereby deemed to be repeated to Dealer as if set forth herein. In lieu of the representations set forth in Section 3(a) of the Agreement, Counterparty represents and warrants to Dealer on the date hereof and as of the Premium Payment Date that:

- (a) Counterparty (i) is duly incorporated and validly existing as an exempted company with limited liability under the laws of the Cayman Islands and is in good standing under such laws, and (ii) has all necessary corporate power and authority to execute, deliver and perform its obligations and exercise its rights in respect of the Transaction; such execution, delivery, performance and exercise have been duly authorized by all necessary corporate action on Counterparty's part; and this Confirmation has been duly and validly executed and delivered by Counterparty and constitutes its valid and binding obligation, enforceable against Counterparty in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity) and except that rights to indemnification and contribution hereunder may be limited by federal or state securities laws or public policy relating thereto.
- (b) (i) It is not entering into the Transaction on behalf of or for the accounts of any other person or entity, and will not transfer or assign its obligations under the Transaction or any portion of such obligations to any other person or entity except in compliance with applicable laws and the terms of the Transaction; (ii) it understands that the 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 (iii) it has consulted with its legal advisor(s) and has reached its own conclusions about the Transaction, and any legal, regulatory, tax, accounting or economic consequences arising from the Transaction.
- (c) Neither Dealer nor any of its affiliates has advised it with respect to any legal, regulatory, tax, accounting or economic consequences arising from the Transaction, and neither Dealer nor any of its affiliates is acting as agent, or advisor for Counterparty in connection with the Transaction.
- (d) Neither the execution and delivery of this Confirmation nor the incurrence or performance of obligations nor the exercise of rights of Counterparty hereunder will conflict with or result in a breach of the memorandum and articles of association or by-laws (or any equivalent documents) of Counterparty, or any applicable law or regulation, or any order, writ, injunction or decree of any court or governmental authority or agency, or any agreement or instrument to which Counterparty or any of its subsidiaries is a party or by which Counterparty or any of its subsidiaries is bound or to which Counterparty or any of its subsidiaries is subject, or constitute a default under, or result in the creation of any lien under, any such agreement or instrument.
- (e) No consent, approval, authorization, or order of, or filing with, any governmental agency or body or any court is required in connection with the execution, delivery or performance by Counterparty of this Confirmation, except such as have been obtained or made and such as may be required under the Securities Act or state securities laws.



- (f) It has not entered into any obligation that would contractually limit it from effecting Physical Settlement (including in connection with an Early Settlement) under the Transaction.
- (g) The Transaction has been duly approved and authorized by Counterparty's board of directors after due consideration by the board of directors of the matters, and after having reached the conclusions referred to in paragraph (b) above and, prior to the Trade Date Counterparty shall deliver to Dealer a resolution of Counterparty's board of directors authorizing the Transaction and such other certificate or certificates, as Dealer shall reasonably request. For the avoidance of doubt, each representation, warranty and certification made by Counterparty in such certificate shall be deemed a representation and warranty made by Counterparty in this paragraph (g).
- (h) It is not entering into the Transaction to create actual or apparent trading activity in the Shares or Underlying Shares (or any security convertible into or exchangeable for Shares or Underlying Shares), or to manipulate the price of the Shares or Underlying Shares (or any security convertible into or exchangeable for Shares or Underlying Shares).
- (i) Counterparty is not and, after consummation of the transactions contemplated hereby, will not be required to register as an "investment company" as such term is defined in the Investment Company Act of 1940, as amended.
- (j) Counterparty is an "eligible contract participant" (as such term is defined in Section 1a(18) of the Commodity Exchange Act, as amended, other than a person that is an eligible contract participant under Section 1a(18)(C) of the Commodity Exchange Act).
- (k) Counterparty is not, on the date hereof and on each day pursuant to the terms hereof on which this representation is repeated or deemed repeated, aware of any material non-public information with respect to Counterparty, the Underlying Shares Issuer (if other than Counterparty), the Underlying Shares or the Shares.
- (l) On and immediately after the Trade Date and the Premium Payment Date, and on each day pursuant to the terms hereof on which this representation is required to be repeated or deemed repeated, (A) the assets of Counterparty at their fair valuation exceed the liabilities of Counterparty, including contingent liabilities, (B) the capital of Counterparty is adequate to conduct the business of Counterparty, (C) Counterparty has the ability to pay its debts and obligations as such debts mature and does not intend to, or does not believe that it will, incur debt beyond its ability to pay as such debts mature, (D) Counterparty is not, and will not be, "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**")), (E) Counterparty would be able to purchase 100,536,150 Shares and the Underlying Shares represented by such number of Shares in compliance with the laws of the jurisdiction of Counterparty's incorporation or organization, and (F) for the purposes of Cayman Islands law, Counterparty is able to pay its debts.
- (m) To the knowledge of Counterparty, no state or local (including any non-U.S. jurisdiction's) law, rule, regulation or regulatory order applicable to the Shares and/or Underlying 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 and/or Underlying Shares (except for filings of Form 13F, Schedule 13D or Schedule 13G under the Exchange Act); *provided* that Counterparty makes no representation or warranty regarding any such requirement that is applicable generally to the ownership of equity securities by Dealer or any of its affiliates solely as a result of it or any of such affiliates being a financial institution or broker-dealer.
- (n) Counterparty is not on the Trade Date engaged in a distribution, as such term is used in Regulation M ("**Regulation M**") under the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), of any securities of Counterparty other than a distribution meeting the requirements of the exception set forth in Rule 102(b)(7) of Regulation M.

- (o) Counterparty (A) is capable of evaluating investment risks independently, both in general and with regard to all transactions and investment strategies involving a security or securities; (B) will exercise independent judgment in evaluating the recommendations of any broker-dealer or its associated persons, unless it has otherwise notified the broker-dealer in writing; (C) has total assets of at least USD 50 million; and (D) is acting for its own account, and it has made its own independent decisions to enter into the Transaction and as to whether the Transaction is appropriate or proper for it (including as to any legal, regulatory, tax, accounting or economic consequences arising from the Transaction) based upon its own judgment and upon advice from such advisers as it has deemed necessary (including legal, financial and accounting advisors).
- (p) Counterparty acknowledges that the offer and sale of the Transaction to it is intended to be exempt from registration under the Securities Act of 1933, as amended (the “**Securities Act**”), by virtue of Section 4(a)(2) thereof. Accordingly, Counterparty represents and warrants to Dealer that (i) it has the financial ability to bear the economic risk of its investment in the Transaction and is able to bear a total loss of its investment, (ii) it is an “accredited investor” as that term is defined in Regulation D as promulgated under the Securities Act, (iii) it is entering into the Transaction for its own account without a view to the distribution or resale thereof and (iv) the assignment, transfer or other disposition of the Transaction has not been and will not be registered under the Securities Act and is restricted under this Confirmation, the Securities Act and state securities laws.
- (q) It has the corporate power and authority and all necessary consents to effect Physical Settlement of the Transaction as contemplated by the Agreement.
- (r) Counterparty’s board of directors (the “**Board**”) has concluded that (A) the Transaction is suitable for Counterparty, for its commercial benefit and in its best interests, in light of its own investment objectives, financial condition and expertise and (B) the Transaction has been duly approved and authorized by the Board after due consideration by the Board of the foregoing matters and those referred to in sub-paragraph (b)(iii) above.

#### **4. Additional Mutual Representations and Warranties:**

In addition to the representations set forth in the Agreement, each of Dealer and Counterparty further represents and warrants to the other party that as of the Trade Date that it is an “eligible contract participant” as the term is defined in the U.S. Commodity Exchange Act, as amended.

#### **5. Additional Covenants and Acknowledgements:**

- (a) Counterparty shall deliver to Dealer (A) an opinion of U.S. counsel and (B) an opinion of Cayman counsel, each dated as of the Premium Payment Date, with respect to, among other things, the matters set forth in Sections 3(a), (d) and (e) of this Confirmation, it being understood that such opinions of counsel shall be limited to the federal laws of the United States and the laws of the State of New York (in the case of clause (A) above) and the laws Cayman Islands (in the case of clause (B) above) and may contain customary limitations, exceptions and qualifications for transactions of the same type as the Transaction. Delivery of such opinions to Dealer shall be a condition precedent for the purpose of Section 2(a)(iii) of the Agreement with respect to each obligation of Dealer under Section 2(a)(i) of the Agreement; and (C) on or before the Premium Payment Date, a solvency certificate with respect to Counterparty signed by a member of the Board, the chief executive officer or the chief financial officer of the Counterparty certifying the solvency of Counterparty as of and immediately after the Premium Payment Date (after giving effect to Counterparty’s payment of amounts required to be paid by Counterparty on such date under the Transaction and the other transactions described under “Use of Proceeds” in the Offering Memorandum related to the offering of the Convertible Notes), which solvency certificate is reasonably satisfactory to Dealer.

- (b) (i) Counterparty shall not engage in any distribution as such term is used in Regulation M of any securities of Counterparty or otherwise permit the Shares or the Underlying Shares to be subject to a restricted period, as such term is used in Regulation M, in each case, during the period (the “**Restricted Period**”) from, and including, the scheduled first Averaging Date to, and including, the Exchange Business Day immediately succeeding the Valuation Date (determined without regard to any Early Settlement); provided, for the avoidance of doubt, that the foregoing shall not apply with respect to any Early Settlement.
- (ii) In connection with any Early Settlement, Counterparty shall notify Dealer, as soon as practicable, and in any event no later than the Exchange Business Day immediately following the Notice Date with respect to such Early Settlement, of any distribution or restricted period, as such terms are used in Regulation M with respect to any securities of Counterparty that is occurring on the date Counterparty delivers such notice to Dealer or that Counterparty expects at such time may occur on any Averaging Date, Valuation Date or the Exchange Business Day immediately succeeding the Valuation Date relating to such Early Settlement.
- (c) On the Trade Date, and on each day during the Restricted Period, neither Counterparty nor any “affiliated purchaser” (each as defined in Rule 10b-18 under the Exchange Act (“**Rule 10b-18**”)) shall directly or indirectly (including, without limitation, by means of any cash-settled or other derivative instrument) purchase, offer to purchase, place any bid or limit order that would effect a purchase of, or commence any tender offer relating to, any Shares or Underlying Shares (or an equivalent interest, including a unit of beneficial interest in a trust or limited partnership or a depository share) or any security convertible into or exchangeable or exercisable for Shares or Underlying Shares.
- (d) 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 Confirmation or the Agreement, as applicable, arising from a termination event, force majeure, illegality, increased costs, regulatory change or similar event under this Confirmation, the Equity Definitions incorporated herein, or the Agreement (including, but not limited to, rights arising from Change in Law, Hedging Disruption, Increased Cost of Hedging, an Excess Ownership Position, or Illegality (as defined in the Agreement)).

#### **6. Other Provisions:**

- (a) **Agreements and Acknowledgements Regarding Hedging.** Counterparty understands, acknowledges and agrees that: (A) at any time on and prior to the Expiration Date, Dealer and its affiliates may buy or sell Shares or other securities or buy or sell options or futures contracts or enter into swaps or other derivative securities in order to adjust its hedge position with respect to the Transaction; (B) Dealer and its affiliates also may be active in the market for Shares other than in connection with hedging activities in relation to the Transaction; (C) Dealer shall make its own determination as to whether, when or in what manner any hedging or market activities in securities of Counterparty shall be conducted and shall do so in a manner that it deems appropriate to hedge its price and market risk; and (D) any market activities of Dealer and its affiliates with respect to Shares may affect the market price and volatility of Shares, each in a manner that may be adverse to Counterparty.

(b) **Transfer.**

- (i) Counterparty shall have the right to transfer or assign all or any of its rights and obligations hereunder with respect to all, or any, of the Options hereunder (such Options, the “**Transfer Options**”) with the prior written consent of Dealer, such consent not to be unreasonably withheld; *provided* that withholding of such consent by Dealer shall not be considered unreasonable if such transfer or assignment does not meet any of the following conditions:
- (A) With respect to any Transfer Options, Counterparty shall not be released from its notice and indemnification obligations pursuant to Section 9(m) of this Confirmation;
  - (B) Such transfer or assignment shall be effected on terms, including any reasonable undertakings by such third party (including, but not limited to, an undertaking with respect to compliance with applicable securities laws in a manner that, in the reasonable judgment of Dealer, will not expose Dealer to material risks under applicable securities laws) and execution of any documentation and delivery of legal opinions with respect to securities laws and other matters by such third party and Counterparty, as are reasonably requested and reasonably satisfactory to Dealer;
  - (C) Under the applicable law effective on the date of such transfer or assignment, (1) Dealer will not, as a result of such transfer or assignment, be required to pay the transferee or assignee on any payment date or delivery date an amount or a number of Shares, as applicable, under Section 2(d)(i)(4) of the Agreement greater than the amount or the number of Shares, as applicable, that Dealer would have been required to pay to Counterparty in the absence of such transfer or assignment and (2) Dealer will not, as a result of such transfer or assignment, receive from the transferee or assignee on any payment date an amount under Section 2(d)(i)(4) of the Agreement that is less than the amount that Dealer would have received from Counterparty in the absence of such transfer or assignment;
  - (D) No Event of Default, Potential Event of Default or Termination Event will occur as a result of such transfer and assignment;
  - (E) Counterparty shall cause the transferee to make such tax representations and to provide such tax documentation as may be reasonably requested by Dealer to permit Dealer to determine that results described in clauses (C) and (D) will not occur upon or after such transfer and assignment, including but not limited to providing tax documentation specified in Section 9(bb) of this Confirmation and making the tax representations specified in Section 9(aa) of this Confirmation on or prior to such transfer and at the other times specified in such Sections; and
  - (F) Counterparty shall be responsible for all reasonable and documented costs and expenses, including reasonable counsel fees, incurred by Dealer in connection with such transfer or assignment.
- (ii) Dealer may, without Counterparty’s consent, transfer or assign all or any part of its rights or obligations under the Transaction to any affiliate of Dealer (1) that has a long-term issuer rating that is equal to or better than Dealer’s credit rating at the time of such transfer or assignment, or (2) whose obligations hereunder will be guaranteed, pursuant to the terms of a customary guarantee in a form used by Dealer generally for similar transactions, by Dealer; *provided* that, in the case of any such transfer or assignment, under the applicable law effective on the date of such transfer or assignment, (I) Counterparty will not, as a result of such transfer or assignment, be required to pay the transferee or assignee on any payment date an amount under Section 2(d)(i)(4) of the Agreement greater than the amount that Counterparty would have been required to pay to Dealer in the absence of such transfer or assignment; (II) Counterparty will not, as a result of such transfer or assignment, receive from the transferee or assignee on any payment or delivery date an amount or a number of Shares, as applicable, under Section 2(d)(i)(4) of the Agreement that is less than the amount or the number of Shares that Counterparty would have received from Dealer in the absence of such transfer or assignment; (III) Dealer shall cause the transferee or assignee to make such tax representations and to provide such tax documentation as may be reasonably requested by Counterparty to permit Counterparty to determine that events described in clauses (I) and (II) of this proviso will not occur upon or after such transfer or assignment; and (IV) no Event of Default, Potential Event of Default or Termination Event will occur as a result of such transfer and assignment.

If at any time at which (A) the Section 13 Percentage exceeds 8.5%, (B) the Option Equity Percentage exceeds 14.5%, or (C) the Share Amount exceeds the Applicable Share Limit (if any applies) (any such condition described in clauses (A), (B) or (C), an “**Excess Ownership Position**”), Dealer is unable after using its commercially reasonable efforts to effect a transfer or assignment of Options to a third party on pricing terms reasonably acceptable to Dealer and within a time period reasonably acceptable to Dealer such that no Excess Ownership Position exists, then Dealer may designate any Exchange Business Day as an Early Termination Date with respect to a portion of the Transaction (the “**Terminated Portion**”), to the extent necessary so that no Excess Ownership Position exists following such partial termination. In the event that Dealer so designates an Early Termination Date with respect to a portion of the Transaction, a payment shall be made pursuant to Section 6 of the Agreement as if (1) an Early Termination Date had been designated in respect of a Transaction having terms identical to the Transaction and a Number of Options equal to the number of Options underlying the Terminated Portion, (2) Counterparty were the sole Affected Party with respect to such partial termination and (3) the Terminated Portion were the sole Affected Transaction. The “**Section 13 Percentage**” as of any day is the fraction, expressed as a percentage, (A) the numerator of which is the number of Underlying Shares that Dealer and any of its affiliates or any other person subject to aggregation with Dealer for purposes of the “beneficial ownership” test under Section 13 of the Exchange Act, or any “group” (within the meaning of Section 13 of the Exchange Act) of which Dealer is or may be deemed to be a part beneficially owns (within the meaning of Section 13 of the Exchange Act), without duplication, on such day (or, to the extent that for any reason the equivalent calculation under Section 16 of the Exchange Act applies with respect to the Shares or Underlying Shares, as applicable, and the rules and regulations thereunder results in a higher number, such higher number) and (B) the denominator of which is the number of Underlying Shares outstanding on such day. The “**Option Equity Percentage**” as of any day is the fraction, expressed as a percentage, (A) the numerator of which is the sum of (1) the product of (x) the Number of Options (y) the Option Entitlement and (z) the number of Underlying Shares represented by one Share and (2) the aggregate number of Underlying Shares underlying any other call option transaction sold by Dealer to Counterparty, and (B) the denominator of which is the number of Underlying Shares outstanding. The “**Share Amount**” as of any day is the number of Underlying Shares that Dealer and any person whose ownership position would be aggregated with that of Dealer (Dealer or any such person, a “**Dealer Person**”) under any law, rule, regulation, regulatory order or organizational documents or contracts of Counterparty that are, in each case, applicable to ownership of Underlying Shares (“**Applicable Restrictions**”), owns, beneficially owns, constructively owns, controls, holds the power to vote or otherwise meets a relevant definition of ownership under any Applicable Restriction, as determined by Dealer in its reasonable discretion. The “**Applicable Share Limit**” means a number of Underlying Shares equal to (A) the minimum number of Underlying Shares that could give rise to reporting or registration obligations (except for any filing requirements on Form 13F, Schedule 13D or Schedule 13G under the Exchange Act, in each case, as in effect on the Trade Date) or other requirements (including obtaining prior approval from any person or entity) of a Dealer Person, or could result in an adverse effect on a Dealer Person, under any Applicable Restriction, as determined by Dealer in good faith and in its commercially reasonable discretion, *minus* (B) 1% of the number of Underlying Shares outstanding.

- (c) **Designation.** Notwithstanding any other provision in this Confirmation to the contrary requiring or allowing Dealer to purchase, sell, receive or deliver any Shares or other securities, or make or receive any payment in cash, to or from Counterparty, Dealer may designate any of its affiliates to purchase, sell, receive or deliver such Shares or other securities, or to make or receive such payment in cash, and otherwise to perform Dealer’s obligations in respect of the Transaction and any such designee may assume such obligations. Dealer shall be discharged of its obligations to Counterparty to the extent of any such performance.

- (d) **No Collateral.** No collateral is required to be posted by Counterparty or Dealer, in respect of the Transaction.
- (e) **Bankruptcy Code Provisions.** Each of Dealer and Counterparty agrees and acknowledges that Dealer is one or more of a “swap participant” and/or “financial participant” within the meaning of Sections 101(53C) and 101(22A) of the Bankruptcy Code. The parties hereto further agree and acknowledge (A) that this Confirmation is (i) a “securities contract,” as such term is defined in Section 741(7) of the Bankruptcy Code, with respect to which each payment and delivery hereunder or in connection herewith is a “settlement payment,” as such term is defined in Section 741(8) of the Bankruptcy Code, and (ii) a “swap agreement,” as such term is defined in Section 101(53B) of the Bankruptcy Code, with respect to which each payment and delivery hereunder or in connection herewith is a “termination value,” “payment amount” or “other transfer obligation” within the meaning of Section 362 of the Bankruptcy Code and a “transfer,” as such term is defined in Section 101(54) of the Bankruptcy Code, and a “payment or transfer of property” within the meaning of Sections 362 and 546 of the Bankruptcy Code, and (B) that Dealer is entitled to the protections afforded by, among other sections, Sections 362(b)(6), 362(b)(17), 362(b)(27), 362(o), 546(e), 546(g), 546(j), 555, 560 and 561 of the Bankruptcy Code.
- (f) **Early Unwind.** In the event the sale of the Underwritten Securities (as defined in the Purchase Agreement) is not consummated with the Initial Purchasers for any reason, or Counterparty fails to deliver to Dealer opinions of counsel as required pursuant to Section 5(a), in each case by 5:00 p.m. (New York City time) on the Premium Payment Date, or such later date as agreed upon by the parties (the Premium Payment Date or such later date the “**Early Unwind Date**”), the Transaction shall automatically terminate (the “**Early Unwind**”), on the Early Unwind Date and (i) the Transaction and all of the respective rights and obligations of Dealer and Counterparty under the Transaction shall be cancelled and terminated and (ii) each party shall be released and discharged by the other party from and agrees not to make any claim against the other party with respect to any obligations or liabilities of the other party arising out of and to be performed in connection with the Transaction either prior to or after the Early Unwind Date. Each of Dealer and Counterparty represents and acknowledges to the other that, upon an Early Unwind, all obligations with respect to the Transaction shall be deemed fully and finally discharged.
- (g) **Amendments to Equity Definitions.**
- a. Section 11.2(e)(vii) of the Equity Definitions is hereby amended by deleting the words “that may have a diluting or concentrative effect on the theoretical value of the relevant Shares” and replacing them with the words “that is the result of a corporate event involving the Underlying Shares Issuer or its securities that has a material economic effect on the Shares and/or the Underlying Shares or options on the Shares and/or the Underlying Shares; *provided* that such event is not based on (a) an observable market, other than the market for the Underlying Shares Issuer’s own stock or (b) an observable index, other than an index calculated and measured solely by reference to the Underlying Shares Issuer’s own operations.”
  - b. Section 12.6(a)(ii) of the Equity Definitions is hereby amended by (1) inserting “(1)” immediately following the word “means” in the first line thereof and (2) inserting immediately prior to the semi-colon at the end of subsection (B) thereof the following words: “or (2) the occurrence of any of the events specified in Section 5(a)(vii)(1) through (9) of the ISDA Master Agreement with respect to that Issuer” *provided* that the period for dismissal, discharge, stay or restraint therein shall be increased from “within 15 days” to “within 30 days.”
  - c. Section 12.9(b)(i) of the Equity Definitions is hereby amended by (1) replacing “either party may elect” with “Dealer may elect” and (2) replacing “notice to the other party” with “notice to Counterparty” in the first sentence of such section.

- d. Section 12.9(b)(vi) of the Equity Definitions is hereby amended by (1) adding the word “or” immediately before subsection “(B)”, (2) deleting the comma at the end of subsection (A), (3) deleting subsection (C) in its entirety, (4) deleting the word “or” immediately preceding subsection (C) and (5) replacing the words “either party” in the last sentence of such Section with “Dealer”.

(h) **Early Settlement.**

- a. Dealer may, from time to time on or after the 30th day following the Trade Date, settle the Transaction early (“**Early Settlement**”), in whole or in part, by delivering a written notice to Counterparty on any Exchange Business Day (the “**Notice Date**”) specifying the portion of the Transaction to be settled early (the “**Early Settled Portion**”).
- b. With respect to any Early Settled Portion, Dealer shall provide notice to Counterparty no later than 3 Scheduled Trading Days following the Notice Date, specifying the Averaging Date(s) (if any), the number of Options that shall expire on each such Averaging Date and the Valuation Date in respect of such Early Settlement, and Dealer will deliver to Counterparty a number of Shares equal to the product of (x) the sum of the number of Options expiring on each such Averaging Date, *multiplied by* (y) the Option Entitlement, and will pay to Counterparty the Fractional Share Amount, if any, on the Physical Settlement Delivery Date relating to the specified Valuation Date with respect to such Physical Early Settled Portion.
- c. Such delivery and any such payment will be made through the relevant Clearance System on the applicable settlement dates; provided that, for the avoidance of doubt, “Restricted Certificated Shares” above shall also apply with respect to Early Settlement.

(i) **Depository Shares Provisions.**

(i) For the purposes of this Confirmation the following definitions will apply:

“**Depository**” means, in relation to the Shares, Deutsche Bank Trust Company Americas, or any successor thereto from time to time.

“**Deposit Agreement**” means, (i) that certain Deposit Agreement, dated as of September 11, 2018, by and among Underlying Shares Issuer, Depository and the holders and beneficial owners of the Shares and (ii) the other agreements or other instruments constituting the Shares, as from time to time amended or supplemented in accordance with their terms.

“**DS Amendment**” means, where specified as applicable to a definition or provision, that the following changes shall be made to such definition or provision: (a) all references to “Shares” shall be deleted and replaced with the words “Shares and/or the Underlying Shares, as appropriate”; and (b) all references to “Issuer” shall be deleted and replaced with the words “Issuer or Underlying Shares Issuer, as appropriate”.

“**Replacement DSs**” means depository shares or receipts, other than the Shares, over the same Underlying Shares.

- (ii) The following amendments shall be made to the Equity Definitions:
- (A) The definition of Potential Adjustment Event in Section 11.2(e) of the Equity Definitions shall be amended as follows:
- (i) the DS Amendment shall be applicable, provided that an event under Section 11.2(e)(i) to (vii) of the Equity Definitions in respect of the Underlying Shares shall not constitute a Potential Adjustment Event unless, in the commercially reasonable opinion of the Calculation Agent, such event has a material effect on the theoretical value of the Shares; and
  - (ii) (A) 'or' shall be deleted where it appears at the end of subsection (vi);  
(B) '.' shall be deleted where it appears at the end of subsection (vii) and replaced with ',';  
(C) the following shall be inserted as subsection (viii): "(viii) the making of any amendment or supplement to the terms of the Deposit Agreement and/or the Shares; or"; and  
(D) the following shall be inserted as provision (ix): "(ix) any other event as a result of which the Shares represent fewer or more Underlying Shares than, and/or any property or assets in addition to, or as a whole or partial replacement of, in each case, the number of Underlying Shares represented by the Shares prior to such event."
- (B) In making any adjustment following any Potential Adjustment Event, the Calculation Agent shall have reference to (to the extent necessary or appropriate among other factors) any adjustment made by the Depositary under the Deposit Agreement, any fees and/or expenses of the Depositary and any withholding or deduction of taxes. If the Calculation Agent determines that no adjustment that it could make will produce a commercially reasonable result, it shall notify the parties that the relevant consequence shall be the termination of the relevant Transaction, in which case "Cancellation and Payment (Calculation Agent Determination)" will be deemed to apply and any payment to be made by one party to the other shall be calculated in accordance with Section 12.7 of the Equity Definitions (as amended by this Confirmation).
- (C) If a Potential Adjustment Event occurs under Section 11.2(e)(viii) of the Equity Definitions (as amended by this Confirmation), then the following further amendments shall be deemed to be made to Section 11.2(e) of the Equity Definitions in respect of such Potential Adjustment Event:
- (i) the words "the Calculation Agent will determine whether such Potential Adjustment Event has a material effect on the theoretical value of the relevant Shares, options on the Shares or the Transaction" shall be deleted and replaced with the words "the Calculation Agent will determine whether such Potential Adjustment Event has a material economic effect on such Transaction"; and
  - (ii) the words "as the Calculation Agent determines appropriate to account for that material effect" shall be deleted and replaced with the words "as the Calculation Agent determines appropriate to account for such economic effect on such Transaction".
- (D) The definitions of "Merger Event", "Tender Offer", "Announcement Date", "Share-for-Share", "Share-for-Other" and "Share-for-Combined" in Section 12.1 of the Equity Definitions shall be amended in accordance with the DS Amendment.
- (E) In making any adjustment in respect of a Merger Event, Tender Offer or Announcement Event in relation to the Underlying Shares, the Calculation Agent shall in determining any adjustment pursuant to Modified Calculation Adjustment, have reference to (amongst other factors) any adjustment made by the Depositary under the Deposit Agreement, any fees and/or expenses of the Depositary and any withholding or deduction of taxes, as determined by the Calculation Agent in its commercially reasonable discretion.



- (F) The definitions of Nationalization and Insolvency in Section 12.6 of the Equity Definitions shall be amended in accordance with the DS Amendment.
- (G) The consequence of a Nationalization or Insolvency in respect of the Depositary shall be Cancellation and Payment.
- (H) If a Delisting of the Shares occurs or the Depositary announces that the Deposit Agreement is (or will be) terminated, then:
  - (i) Cancellation and Payment will apply as provided in this Confirmation; and
  - (ii) where Cancellation and Payment applies under (H)(i) above in respect of a termination of the Deposit Agreement, the Equity Definitions shall be interpreted as follows: (i) such termination shall be deemed to be an “Extraordinary Event”; (ii) Cancellation and Payment shall apply as defined in Section 12.6(c)(ii) of the Equity Definitions; and (iii) the definition of “Announcement Date” in Section 12.1(l) of the Equity Definitions shall include the following additional clause (vii) at the end of the first sentence thereof: “(vii) in the case of a termination of the Deposit Agreement, the date of the first public announcement by the Depositary that the Deposit Agreement is (or will be) terminated”.
- (I) If Cancellation and Payment applies under Section 5(h)(ii)(G) or Section 5(h)(ii)(H) of this Confirmation in respect of a Transaction, then the Determining Party shall be Dealer.
- (J) The definition of “Insolvency Filing” in Section 12.9(a)(iv) of the Equity Definitions shall be amended in accordance with the DS Amendment.
- (K) For the avoidance of doubt, where a provision is amended by this Section 5(h) in accordance with the DS Amendment, if the event described in such provision occurs in respect of the Underlying Shares or Underlying Shares Issuer, then the consequence of such event shall be interpreted consistently with the DS Amendment and such event.
- (j) **Right to Extend.** Dealer may postpone or extend, for as long as it is reasonably necessary, any Averaging Date, the Expiration Date, the Physical Settlement Delivery Date or any other date of payment or delivery by Dealer, with respect to some or all of the Options hereunder, if Dealer reasonably determines, in the case of clause (i) below, in its commercially reasonable judgment or, in the case of clause (ii) below, based on advice of counsel, that such action is reasonably necessary or appropriate (i) to preserve Dealer’s commercially reasonable hedging or hedge unwind activity hereunder in light of existing liquidity conditions in the relevant market or (ii) to enable Dealer to effect transactions with respect to Shares and/or Underlying Shares in connection with its commercially reasonable hedging, hedge unwind or settlement activity hereunder in a manner that would, if Dealer were Counterparty or an affiliated purchaser of Counterparty, be in compliance with applicable legal, regulatory or self-regulatory requirements, or with related policies and procedures adopted by Dealer in good faith so long as such policies and procedures are generally applicable in similar situations and applied in a non-discriminatory manner).
- (k) **Staggered Settlement.** If upon advice of counsel with respect to applicable legal and regulatory requirements, including any requirements relating to Dealer’s hedging activities hereunder, Dealer reasonably determines that it would not be practicable or advisable to deliver, or to acquire Shares to deliver, any or all of the Shares to be delivered by Dealer on any Settlement Date for the Transaction, Dealer may, by notice to Counterparty on or prior to any Settlement Date (a “Nominal Settlement Date”), elect to deliver the Shares on two or more dates (each, a “Staggered Settlement Date”) as follows:
  - (i) in such notice, Dealer will specify to Counterparty the related Staggered Settlement Dates (the first of which will be such Nominal Settlement Date and the last of which will be no later than the twentieth (20th) Exchange Business Day following such Nominal Settlement Date) and the number of Shares that it will deliver on each Staggered Settlement Date; and

- (ii) the aggregate number of Shares that Dealer will deliver to Counterparty hereunder on all such Staggered Settlement Dates will equal the number of Shares that Dealer would otherwise be required to deliver on such Nominal Settlement Date.
- (l) **Registration.** Counterparty hereby agrees that if, in the good faith reasonable judgment of Dealer, based on the advice of counsel, the Shares and/or Underlying Shares (“**Hedge Shares**”) acquired by Dealer for the purpose of commercially reasonably hedging its obligations pursuant to the Transaction cannot be sold in the public market by Dealer without registration under the Securities Act, Counterparty shall, at its election, either (i) in order to allow Dealer to sell the Hedge Shares in a registered offering, make available to Dealer an effective registration statement under the Securities Act and enter into an agreement, in form and substance reasonably satisfactory to Dealer, substantially in the form of an underwriting agreement customary for a registered secondary offering of a similar size in respect of a similar issuer; *provided, however*, that if Dealer, in its sole reasonable discretion, is not satisfied with access to due diligence materials, the results of its due diligence investigation, or the procedures and documentation for the registered offering referred to above, then clause (ii) or clause (iii) of this paragraph shall apply at the election of Counterparty, (ii) in order to allow Dealer to sell the Hedge Shares in a private placement, use commercially reasonable efforts to enter into a private placement agreement substantially similar to private placement purchase agreements customary for private placements of equity securities of a similar size in respect of a similar issuer, in form and substance satisfactory to Dealer (in which case, the Calculation Agent shall make any adjustments to the terms of the Transaction that are necessary, in its commercially reasonable judgment, to compensate Dealer for any commercially reasonable discount from the public market price of the Shares and/or Underlying Shares incurred on the sale of Hedge Shares in a private placement), or (iii) purchase the Hedge Shares from Dealer at the then-current market price on such Exchange Business Days, and in the amounts and at such time(s), reasonably requested by Dealer.
- (m) **Repurchase Notices.** Counterparty shall, on or prior to the date that is one Scheduled Trading Day following any date on which Counterparty effects any repurchase of Shares and/or Underlying Shares, promptly give Dealer a written notice of such repurchase (a “**Repurchase Notice**”) on such day if following such repurchase, the number of outstanding Underlying Shares as determined on such day is (i) less than 727.2 million (in the case of the first such notice) or (ii) thereafter more than 37.8 million less than the number of Underlying Shares included in the immediately preceding Repurchase Notice; *provided* that Counterparty may provide Dealer advance notice on or prior to any such day including the maximum number of Shares and/or Underlying Shares that may be repurchased under a repurchase program entered into in reliance on Rule 10b5-1(c) and the approximate periods during which such repurchases may occur, to the extent it expects that repurchases effected on such day may result in an obligation to deliver a Repurchase Notice (and in such case, any such advance notice shall be deemed a Repurchase Notice to the maximum extent of repurchases set forth in such advance notice as if Counterparty had executed such repurchases). Counterparty agrees that, if Counterparty ceases to qualify as a “foreign private issuer” as defined in Rule 3b-4 under the Exchange Act or the Shares or Underlying Shares, as applicable, otherwise become subject to the requirements of Section 16 of the Exchange Act, Counterparty will indemnify and hold harmless Dealer and its affiliates and their respective officers, directors, employees, affiliates, advisors, agents and controlling persons (each, an “**Indemnified Person**”) from and against any and all losses (including losses relating to Dealer’s hedging activities as a consequence of becoming, or of the risk of becoming, a Section 16 “insider”, including without limitation, any forbearance from hedging activities or cessation of hedging activities and any losses in connection therewith with respect to the Transaction), claims, damages, judgments, liabilities and reasonable and documented out-of-pocket expenses (including reasonable attorney’s fees of one outside counsel in each relevant jurisdiction), joint or several, which an Indemnified Person may become subject to, in each case, as a result of Counterparty’s failure to provide Dealer with a Repurchase Notice on the day and in the manner specified in this paragraph, and to reimburse, within 30 days, upon written request, each of such Indemnified Persons for any reasonable legal or other out-of-pocket expenses (to the extent supported by invoices or other documentation setting forth in reasonable detail such expenses) incurred in connection with investigating, preparing for, providing testimony or other evidence in connection with or defending any of the foregoing. If any suit, action, proceeding (including any governmental or regulatory investigation), claim or demand shall be brought or asserted against the Indemnified Person as a result of Counterparty’s failure to provide Dealer with a Repurchase Notice in accordance with this paragraph, such Indemnified Person shall promptly notify Counterparty in writing, and Counterparty, upon request of the Indemnified Person, shall retain counsel reasonably satisfactory to the Indemnified Person to represent the Indemnified Person and any others Counterparty may designate in such proceeding and shall pay the reasonable fees and expenses of such counsel related to such proceeding. Counterparty shall not be liable to the extent that the Indemnified Person fails to notify Counterparty within a commercially reasonable period of time after any action is commenced against it in respect of which indemnity may be sought hereunder. In addition, Counterparty shall not have liability for any settlement of any such proceeding contemplated by this paragraph that is effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, Counterparty agrees to indemnify any Indemnified Person from and against any loss or liability by reason of such settlement or judgment. Counterparty shall not, without the prior written consent of the Indemnified Person, effect any settlement of any pending or threatened proceeding contemplated by this paragraph in respect of which any Indemnified Person is or could have been a party and indemnity could have been sought hereunder by such Indemnified Person, unless such settlement includes an unconditional release of such Indemnified Person from all liability on claims that are the subject matter of such proceeding on terms reasonably satisfactory to such Indemnified Person. If the indemnification provided for in this paragraph is unavailable to an Indemnified Person or insufficient in respect of any losses, claims, damages or liabilities referred to therein, then Counterparty hereunder, in lieu of indemnifying such Indemnified Person thereunder, shall contribute to the amount paid or payable by such Indemnified Person as a result of such losses, claims, damages or liabilities. The remedies provided for in this paragraph are not exclusive and shall not limit any rights or remedies which may otherwise be available to any Indemnified Person at law or in equity. The indemnity and contribution agreements contained in this paragraph shall remain operative and in full force and effect regardless of the termination of the Transaction.

- (n) **Additional Notices.** Counterparty shall provide a written notice to Dealer as promptly as practicable upon becoming aware that Counterparty is not or will no longer be a “foreign private issuer,” as such term is defined in Rule 3b-4 under the Exchange Act.
- (o) **Termination Currency.** USD
- (p) **Alternative Calculations and Payment on Early Termination and on Certain Extraordinary Events.** If Dealer shall owe Counterparty any amount pursuant to “Consequences of Merger Events” above or Sections 12.6, 12.7 or 12.9 of the Equity Definitions or pursuant to Section 6(d)(ii) of the Agreement (a “**Payment Obligation**”), Dealer shall satisfy any such Payment Obligation by the Share Termination Alternative (as defined below) except in the event (i) of an Insolvency, a Nationalization, a Merger Event, or a Bankruptcy Event of Default under Section 5(a)(vii) of the Agreement, in each case, in which the consideration or proceeds to be paid to holders of Shares consists solely of cash, (ii) of an Event of Default in which Counterparty is the Defaulting Party or a Termination Event in which Counterparty is the Affected Party or an Extraordinary Event, which Event of Default, Termination Event or Extraordinary Event resulted from an event or events within Counterparty’s control, or (iii) any Event of Default resulting from a breach by Counterparty of its representations contained in paragraph (g) or (l) of the section “Additional Representations and Warranties of Counterparty” as of or immediately after the Trade Date or as of or immediately after the Premium Payment Date; *provided* that Counterparty shall have the right, in its sole discretion, to elect to require Dealer to satisfy any Payment Obligation in cash by giving irrevocable telephonic notice to Dealer, confirmed in writing within one Scheduled Trading Day, no later than 9:30 A.M. New York City time on the relevant Merger Date, Announcement Date, Early Termination Date or date of cancellation or termination in respect of an Extraordinary Event, as applicable (“**Notice of Cash Termination**”) so long as Counterparty repeats the representations set forth in paragraph (g) of the section “Additional Representations and Warranties of Counterparty” as of the date of such election, *provided further* that Dealer shall have the right, in its sole discretion, to elect to satisfy its Payment Obligation by the Share Termination Alternative, notwithstanding Counterparty’s election to require Dealer to satisfy any Payment Obligation in cash. The following provisions shall apply for the Share Termination Alternative on the Scheduled Trading Day immediately following the relevant merger date, Announcement Date, Early Termination Date or date of cancellation or termination in respect of an Extraordinary Event, as applicable:

Share Termination Alternative:	Applicable. Dealer shall deliver to Counterparty the Share Termination Delivery Property on, or as promptly as commercially reasonably practicable thereafter, the date on which the Payment Obligation would otherwise be due pursuant to “Consequences of Merger Events” above, Section 12.7 or 12.9 of the Equity Definitions or Section 6(d)(ii) of the Agreement, as applicable, in satisfaction of the Payment Obligation.
Share Termination Delivery Property:	A number of Share Termination Delivery Units, as calculated by the Calculation Agent, equal to the Payment Obligation divided by the Share Termination Unit Price. The Calculation Agent shall adjust the Share Termination Delivery Property by replacing any fractional portion of a security therein with an amount of cash equal to the value of such fractional security based on the values used to calculate the Share Termination Unit Price.
Share Termination Unit Price:	The value of property contained in one Share Termination Delivery Unit on the date such Share Termination Delivery Units are delivered as Share Termination Delivery Property, as determined by the Calculation Agent in its commercially reasonable discretion and notified by the Calculation Agent to Dealer at the time of notification of the Payment Obligation.
Share Termination Delivery Unit:	In the case of a Termination Event, Event of Default, Delisting, Tender Offer or Additional Disruption Event, one Share or, in the case of an Insolvency, Nationalization or Merger Event, one Share or a unit consisting of the number or amount of each type of property received by a holder of one Share (without consideration of any requirement to pay cash or other consideration in lieu of fractional amounts of any securities) in such Insolvency, Nationalization or Merger Event, as applicable. If such Insolvency, Nationalization or Merger Event involves a choice of consideration to be received by holders, such holder shall be deemed to have elected to receive the consideration specified by Dealer in its sole discretion.
Failure to Deliver:	Applicable
Other applicable provisions:	If Share Termination Alternative is applicable, the provisions of Sections 9.8, 9.9 and 9.11 (except 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 arising as a result of the fact that Counterparty is the issuer of the Shares or any portion of the Share Termination Delivery Units) of the Equity Definitions will be applicable as if “Physical Settlement” applied to the Transaction, except that all references to “Shares” shall be read as references to “Share Termination Delivery Units.”

(q) **Office.**

(a) The Office of Counterparty for the Transaction is: Inapplicable, Counterparty is not a Multibranch Party.

(b) The Office of Dealer for the Transaction is: New York

(r) **Notice.** For purposes of the Agreement (unless otherwise specified in the Agreement), the addresses for notice to the parties shall be:

(i) to Counterparty:

NIO Inc.  
Building 20, No. 56 AnTuo Road, Jiading District  
Shanghai, 201804  
People's Republic of China  
Attention: Louis T. Hsieh, Chief Financial Officer  
Telephone No.: +86 (21) 6908 3306  
Facsimile No.: +86 (21) 3913 0192

with a copy to:

Nick Wang  
VP of Finance  
Telephone No.: +86 (21) 6908-2002  
Email: Nick.Wang@nio.com

with a copy to:

Fang Liu  
General Counsel  
Telephone No.: +86 (21) 6908-2277  
Email: Fang.Liu@nio.com

with a copy to:

Sabrina Shi  
Senior Corporate Counsel  
Telephone No.: +86 (21) 6908-3391  
Email: Danting.Shi@nio.com

(ii) to Dealer:

Credit Suisse Capital LLC  
c/o Credit Suisse Securities (USA) LLC  
Eleven Madison Avenue  
New York, NY 10010  
Attention: Tucker Martin  
Telephone: (212) 325-9182  
Facsimile: (212) 743-3661  
Email: tucker.martin@credit-suisse.com

With a copy to:  
Credit Suisse Securities (USA) LLC  
1 Madison Avenue, 9th Floor  
New York, New York 10010  
Attn: Senior Legal Officer  
Telephone: (212) 538-2616  
Facsimile: (212) 325-8036  
Email: stephen.gray@credit-suisse.com

For payments and deliveries:  
Facsimile No.: (212) 325 8175  
Telephone No.: (212) 325 8678 / (212) 325 3213

For all other communications:

Telephone: (212) 538-6040  
Facsimile: (917) 326-8603

- (s) **Calculation Agent.** Dealer provided that, following the occurrence and during the continuance of an Event of Default under Section 5(a)(vii) of the Agreement with respect to which Dealer is the Defaulting Party, Counterparty shall have the right to designate a nationally recognized independent equity derivatives 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 adjustment, determination or calculation by the Calculation Agent hereunder, the Calculation Agent will, upon written request from Counterparty, promptly (but in any event within five Scheduled Trading Days) provide to Counterparty by email a report (in a commonly used file format for the storage and manipulation of financial data) displaying in reasonable detail the basis for such adjustment, determination or calculation (including any assumptions used in making such adjustment, determination or calculation), it being understood that in no event will the Calculation Agent be obligated to share with Counterparty any proprietary or confidential data or information or any proprietary or confidential models used by it in making such adjustment, determination or calculation or any information that is subject to an obligation not to disclose such information. All calculations and determinations by the Calculation Agent shall be made in good faith and in a commercially reasonable manner.

- (t) **WAIVER OF JURY TRIAL.** EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION OR PROCEEDING RELATING TO THE TRANSACTION. EACH PARTY (I) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF SUCH A SUIT, ACTION OR PROCEEDING, SEEK TO ENFORCE THE FOREGOING WAIVER AND (II) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HAVE BEEN INDUCED TO ENTER INTO THE TRANSACTION, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS PROVIDED HEREIN.
- (u) **Tax Disclosure.** Effective from the date of commencement of discussions concerning the Transaction, Counterparty and each of its employees, representatives, or other agents may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the transaction and all materials of any kind (including opinions or other tax analyses) that are provided to Counterparty relating to such tax treatment and tax structure.

- (v) **Service of Process.** Counterparty irrevocably appoints Law Debenture Corporate Services Inc. as its authorized agent upon which process may be served in any suit, action or proceeding relating to the Transaction, and agrees that service of process in any manner permitted by applicable law upon such agent shall be deemed in every respect effective service of process in any manner permitted by applicable law upon Counterparty in any such suit, action or proceeding. Counterparty further agrees to take any and all action as may be necessary to maintain such designation and appointment of such agent in full force and effect for a period of five and a half years from the date of this Confirmation. If for any reason such agent shall cease to be such agent for service of process, Counterparty shall forthwith appoint a new agent of recognized standing for service of process in the State of New York and deliver to Dealer a copy of the new agent's acceptance of that appointment within 10 days. Nothing herein shall affect the right of Dealer to serve process in any other manner permitted by law or to commence legal proceedings or otherwise proceed against Counterparty in any other court of competent jurisdiction.
- (w) **U.S. Tax Forms.** Without limiting the generality of the foregoing, Counterparty will provide a U.S. Tax Form W-8BEN-E upon the execution of this Confirmation, promptly upon learning that any such tax form previously provided by it has become obsolete or incorrect and promptly upon reasonable demand by Dealer.
- (x) **Taxes, Foreign Account Tax Compliance Act and HIRE Act.** Counterparty is classified as a corporation for the U.S. federal income tax purposes. No income received or to be received under the Agreement will be effectively connected with the conduct of a trade or business by Counterparty in the United States. Counterparty is a "non-U.S. branch of a foreign person" as that term is used in Section 1.1441-4(a)(3)(ii) of the United States Treasury Regulations (the "**Regulations**"), and it is a "foreign person" as that term is used in Section 1.6041-4(a)(4) of the Regulations. The term "Indemnifiable Tax" as defined in Section 14 of the Agreement shall not include any U.S. federal withholding tax imposed or collected pursuant to Sections 1471 through 1474 of the U.S. Internal Revenue Code of 1986, as amended (the "**Code**"), any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b) of the Code, or any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code (a "**FATCA Withholding Tax**"). For the avoidance of doubt, a FATCA Withholding Tax is a Tax the deduction or withholding of which is required by applicable law for the purposes of Section 2(d) of the Agreement. The parties agree that the definitions and provisions contained in the ISDA 2015 Section 871(m) Protocol, as published by the International Swaps and Derivatives Association, Inc. and as may be amended, supplemented, replaced or superseded from time to time (the "**871(m) Protocol**") shall apply to the Agreement as if the parties had adhered to the 871(m) Protocol as of the Effective Date. If there is any inconsistency between this provision and a provision in any other agreement executed between the parties, this provision shall prevail unless such other agreement expressly overrides the provisions of the 871(m) Protocol. Each of Dealer and Counterparty shall provide to the other party tax forms and documents required to be delivered pursuant to Sections 1471(b) or Section 1472(b)(1) of the Code promptly upon request by the other party and any other tax forms and documents they are legally able to provide that are reasonably requested by the other party.
- (y) **Role of Agent.** As a broker-dealer registered with the U.S. Securities and Exchange Commission ("SEC"), Credit Suisse Securities (USA) LLC in its capacity as Agent will be responsible for (i) effecting the Transaction, (ii) issuing all required confirmations and statements to Dealer and Counterparty, (iii) maintaining books and records relating to the Transaction as required by Rules 17a-3 and 17a-4 under the Exchange Act and (iv) unless otherwise requested by Counterparty, receiving, delivering, and safeguarding Counterparty's funds and any securities in connection with each Transaction, in compliance with Rule 15c3-3 under the Exchange Act.

Credit Suisse Securities (USA) LLC is acting in connection with the Transaction solely in its capacity as Agent for Dealer and Counterparty pursuant to instructions from Dealer and Counterparty. Credit Suisse Securities (USA) LLC shall have no responsibility or personal liability to Dealer or Counterparty arising from any failure by Dealer or Counterparty to pay or perform any obligations hereunder, or to monitor or enforce compliance by Dealer or Counterparty with any obligation hereunder, including without limitation, any obligations to maintain collateral. Each of Dealer and Counterparty agrees to proceed solely against the other to collect or recover any securities or monies owing to it in connection with or as a result of the Transaction. Credit Suisse Securities (USA) LLC shall otherwise have no liability in respect of the Transaction, except for its gross negligence or willful misconduct in performing its duties as Agent.

Any and all notices, demands, or communications of any kind relating to this Transaction between Dealer and Counterparty shall be transmitted exclusively through Agent at the following address:

Credit Suisse Capital LLC  
c/o Credit Suisse Securities (USA) LLC  
Eleven Madison Avenue  
New York, NY 10010  
Attention: Tucker Martin  
Telephone: (212) 325-9182  
Facsimile: (212) 743-3661  
Email: tucker.martin@credit-suisse.com

With a copy to:

Credit Suisse Securities (USA) LLC  
1 Madison Avenue, 9th Floor  
New York, New York 10010  
Attn: Senior Legal Officer  
Telephone: (212) 538-2616  
Facsimile: (212) 325-8036  
Email: stephen.gray@credit-suisse.com

For payments and deliveries:

Facsimile No.: (212) 325 8175  
Telephone No.: (212) 325 8678 / (212) 325 3213

For all other communications:

Telephone: (212) 538-6040  
Facsimile: (917) 326-8603

The date and time of the Transaction evidenced hereby will be furnished by the Agent to Dealer and Counterparty upon written request.

The Agent will furnish to Counterparty upon written request a statement as to the source and amount of any remuneration received or to be received by the Agent in connection with the Transaction evidenced hereby.

Dealer is not a member of the SIPC (Securities Investor Protection Corporation).

Dealer represents that it is an "OTC derivatives dealer" as such term is defined in the Exchange Act and is an affiliate of a broker-dealer that is registered with and fully-regulated by the SEC, Credit Suisse Securities (USA) LLC.



(z) **QFC Stay Provisions.** To the extent that the QFC Stay Rules are applicable hereto, then the parties agree that (i) to the extent that prior to the date hereof both parties have adhered to the 2018 ISDA U.S. Resolution Stay Protocol (the “**Protocol**”), the terms of the Protocol are incorporated into and form a part of this Confirmation, and for such purposes this 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; (ii) to the extent that prior to the date hereof the parties have executed a separate agreement the effect of which is to amend the qualified financial contracts between them to conform with the requirements of the QFC Stay Rules (the “**Bilateral Agreement**”), the terms of the Bilateral Agreement are incorporated into and form a part of this Confirmation and each party shall be deemed to have the status of “Covered Entity” or “Counterparty Entity” (or other similar term) as applicable to it under the Bilateral Agreement; or (iii) if clause (i) and clause (ii) do not apply, the terms of Section 1 and Section 2 and the related defined terms (together, the “**Bilateral Terms**”) of the form of bilateral template entitled “Full-Length Omnibus (for use between U.S. G-SIBs and Corporate Groups)” published by ISDA on November 2, 2018 (currently available on the 2018 ISDA U.S. Resolution Stay Protocol page at [www.isda.org](http://www.isda.org) and, a copy of which is available upon request), the effect of which is to amend the qualified financial contracts between the parties thereto to conform with the requirements of the QFC Stay Rules, are hereby incorporated into and form a part of this Confirmation, and for such purposes this Confirmation shall be deemed a “Covered Agreement,” Dealer shall be deemed a “Covered Entity” and Counterparty shall be deemed a “Counterparty Entity.” In the event that, after the date of this Confirmation, both parties hereto become adhering parties to the Protocol, the terms of the Protocol will replace the terms of this paragraph. In the event of any inconsistencies between this Confirmation and the terms of the Protocol, the Bilateral Agreement or the Bilateral Terms (each, the “**QFC Stay Terms**”), as applicable, the QFC Stay Terms will govern. Terms used in this paragraph without definition shall have the meanings assigned to them under the QFC Stay Rules. For purposes of this paragraph, references to “this 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**” means 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 FDIC 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.

(aa) **Incorporation of ISDA 2015 Section 871(m) Protocol.** The parties to this Confirmation agree that the amendments set out in the Attachment to the ISDA 2015 Section 871(m) Protocol published by ISDA on November 2, 2015 and available on the ISDA website ([www.isda.org](http://www.isda.org)) shall apply to this Confirmation. The parties further agree that this Confirmation will be deemed to be a Covered Master Agreement and that the Implementation Date shall be the effective date of this Confirmation as amended by the parties for the purposes of such Protocol amendments regardless of the definitions of such terms in the Protocol.

(bb) **Incorporation of ISDA 2012 FATCA Protocol .** The parties to this Confirmation agree that the amendments set out in the Attachment to the ISDA 2012 FATCA Protocol published by ISDA on August 15, 2012 and available on the ISDA website ([www.isda.org](http://www.isda.org)) shall apply to this Confirmation. The parties further agree that this Confirmation will be deemed to be a Covered Master Agreement and that the Implementation Date shall be the effective date of this Confirmation as amended by the parties for the purposes of such Protocol amendments regardless of the definitions of such terms in the Protocol.

Please confirm that the foregoing correctly sets forth the terms of our agreement by executing this Confirmation and returning it to Dealer.

Yours sincerely,

**CREDIT SUISSE CAPITAL LLC**

By: /s/ Authorized Signatory  
Name:  
Title:

By: /s/ Authorized Signatory  
Name:  
Title:

**CREDIT SUISSE SECURITIES  
(USA) LLC, as agent**

By: /s/ Authorized Signatory  
Name:  
Title:

[Signature Page to Zero-Strike Call]

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Agreed and Accepted,

**NIO Inc.**

By: /s/ Authorized Signatory

Name:

Title:

[Signature Page to Zero-Strike Call]

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February 13, 2019

To: **NIO Inc.**  
Building 20, No. 56 AnTuo Road, Jiading District  
Shanghai, 201804  
People's Republic of China  
Attention: Louis T. Hsieh, Chief Financial Officer  
Telephone No.: +86 (21) 6908 3306  
Facsimile No.: +86 (21) 3913 0192

**From:** Credit Suisse Capital LLC  
c/o Credit Suisse Securities (USA) LLC  
Eleven Madison Avenue  
New York, NY 10010

Re: Additional Call Option Transaction

The purpose of this letter agreement (this "**Confirmation**") is to confirm the terms and conditions of the call option transaction entered into between Credit Suisse Capital LLC ("**Dealer**") and NIO Inc. ("**Counterparty**") as of the Trade Date specified below (the "**Transaction**"). This letter agreement constitutes a "Confirmation" as referred to in the ISDA Master Agreement specified below. Each party further agrees that this Confirmation together with the Agreement evidence a complete binding agreement between Counterparty and Dealer as to the subject matter and terms of the Transaction to which this Confirmation relates, and shall supersede all prior or contemporaneous written or oral communications with respect thereto.

The definitions and provisions contained in the 2002 ISDA Equity Derivatives Definitions (the "**Equity Definitions**"), as published by the International Swaps and Derivatives Association, Inc. ("**ISDA**") are incorporated into this Confirmation. In the event of any inconsistency between the Equity Definitions and this Confirmation, this Confirmation shall govern. Certain defined terms used herein are based on terms that are defined in the Offering Memorandum dated January 30, 2019 (the "**Offering Memorandum**") relating to the 4.50% Convertible Senior Notes due 2024 (as originally issued by Counterparty, the "**Convertible Notes**" and each USD 1,000 principal amount of Convertible Notes, a "**Convertible Note**") issued by Counterparty in an aggregate initial principal amount of USD 650,000,000 (as increased by an aggregate principal amount of USD 51,773,000 pursuant to the exercise by the Initial Purchasers (as defined herein) of their option to purchase additional Convertible Notes pursuant to the Purchase Agreement (as defined herein)) pursuant to an Indenture dated February 4, 2019 between Counterparty and The Bank of New York Mellon, as trustee (the "**Indenture**"). In the event of any inconsistency between the terms defined in the Offering Memorandum, the Indenture and this Confirmation, this Confirmation shall govern. The parties acknowledge that this Confirmation is entered into on the date hereof with the understanding that (i) definitions set forth in the Indenture which are also defined herein by reference to the Indenture and (ii) sections of the Indenture that are referred to herein will conform to the descriptions thereof in the Offering Memorandum. If any such definitions in the Indenture or any such sections of the Indenture differ from the descriptions thereof in the Offering Memorandum, the descriptions thereof in the Offering Memorandum will govern for purposes of this Confirmation. The parties further acknowledge that the Indenture section numbers used herein are based on the Indenture as executed. Subject to the foregoing, references to the Indenture herein are references to the Indenture as in effect on the date of its execution, and if the Indenture is amended or supplemented following such date (other than any amendment or supplement (x) pursuant to Section 10.01(i) of the Indenture that, as determined by the Calculation Agent, conforms the Indenture to the description of Convertible Notes in the Offering Memorandum, and (y) pursuant to Section 14.07(a) of the Indenture, subject, in the case of this clause (y), to the second paragraph under "Method of Adjustment" in Section 3), any such amendment or supplement will be disregarded for purposes of this Confirmation (other than as provided in Section 9(i)(iii) below) unless the parties agree otherwise in writing. For the avoidance of doubt, adjustments pursuant to any Dilution Adjustment Provision shall not constitute amendment, modification, supplement, or waiver in respect of any term of the Indenture or the Convertible Notes for any purpose under this paragraph and under Section 9(i)(iii).

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

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1. This Confirmation evidences a complete and binding agreement between Dealer and Counterparty as to the terms of the Transaction to which this Confirmation relates. This Confirmation shall supplement, form a part of, and be subject to an agreement in the form of the 2002 ISDA Master Agreement (the “**Agreement**”) as if Dealer and Counterparty had executed an agreement in such form (but without any Schedule except for (i) the election of the laws of the State of New York as the governing law (without reference to choice of law doctrine) and (ii) the agreement of the parties hereto that, following the payment of the Premium and the delivery to Dealer of the opinions of counsel as required pursuant to Section 9(a), the condition precedent in Section 2(a)(iii) of the Agreement shall not apply to a payment or delivery owing by Dealer to Counterparty (it being understood that such condition precedent will continue to apply and this clause (ii) will have no effect with respect to a Potential Event of Default, Event of Default and/or Early Termination Date arising under, or with respect to, Section 5(a)(ii) or 5(a)(iv) of the Agreement)) on the Trade Date.

In the event of any inconsistency between provisions of the Agreement and this Confirmation, this Confirmation will prevail for the purpose of the Transaction to which this Confirmation relates. The parties hereby agree that no transaction other than the Transaction to which this Confirmation relates shall be governed by the Agreement. If there exists any ISDA Master Agreement between Dealer and Counterparty or any confirmation or other agreement between Dealer and Counterparty pursuant to which an ISDA Master Agreement is deemed to exist between Dealer and Counterparty, then notwithstanding anything to the contrary in such ISDA Master Agreement, such confirmation or agreement or any other agreement to which Dealer and Counterparty are parties, the Transaction shall not be considered a Transaction under, or otherwise governed by, such existing or deemed ISDA Master Agreement.

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

General Terms.

Trade Date:	February 13, 2019
Effective Date:	The Trade Date.
Option Style:	“Modified American”, as described under “Procedures for Exercise” below
Option Type:	Call
Buyer:	Counterparty
Seller:	Dealer
Shares:	The American Depositary Shares of Counterparty issued or deemed issued under the Deposit Agreement (as defined below) (Symbol: “NIO”), each representing as of the date hereof one Underlying Share.
Underlying Shares:	The Class A ordinary shares of Counterparty, nominal value USD \$0.00025 per Underlying Share.
Number of Options:	51,773. For the avoidance of doubt, the Number of Options shall be reduced by any Options exercised by Counterparty. In no event will the Number of Options be less than zero.
Underlying Shares Issuer:	Counterparty
Applicable Percentage:	30%
Option Entitlement:	A number equal to the product of the Applicable Percentage and 105.1359.
Strike Price:	USD 9.5115

Cap Price: USD 14.9200  
Premium: USD 1,814,125.92  
Premium Payment Date: February 15, 2019  
Exchange: The New York Stock Exchange  
Related Exchange(s): All Exchanges  
Excluded Provisions: Section 14.04(h) and Section 14.03 of the Indenture.

Procedures for Exercise.

Expiration Time: The Valuation Time  
Expiration Date: February 1, 2024, subject to earlier exercise.  
Multiple Exercise: Applicable, as described under “Automatic Exercise” below.  
Automatic Exercise: Notwithstanding Section 3.4 of the Equity Definitions, all Options then outstanding as of 5:00 p.m. New York City time on the Expiration Date will be deemed to be automatically exercised; *provided* that, for the avoidance of doubt, no such automatic exercise pursuant to this paragraph will occur if the Relevant Price for each Valid Day during the applicable Settlement Averaging Period is less than or equal to the Strike Price.  
Notwithstanding the foregoing, in no event shall the number of Options that are exercised or deemed exercised hereunder exceed the Number of Options.  
Valuation Time: At the close of trading of the regular trading session on the Exchange; *provided* that if the principal trading session is extended, the Calculation Agent shall determine the Valuation Time in its reasonable discretion.  
Market Disruption Event: Section 6.3(a) of the Equity Definitions is hereby replaced in its entirety by the following:  
“‘Market Disruption Event’ means, in respect of a Share, (i) a failure by the primary United States national or regional securities exchange or market on which the Shares are 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 Valid Day for the Shares 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 Shares or in any options contracts or futures contracts relating to the Shares.”

Settlement Terms.

Settlement Method Election:

Applicable; *provided* that (i) Section 7.1 of the Equity Definitions is hereby amended by deleting the word “Physical” in the sixth line thereof and replacing it with the words “Net Share”; and (ii) as of such notice delivery date, Counterparty shall be deemed to have made the following representations:

(A) Counterparty is not aware of any material non-public information with respect to Counterparty, the Underlying Shares Issuer (if other than Counterparty), the Underlying Shares or the Shares;

(B) Counterparty is electing Cash Settlement in good faith and not as part of a plan or scheme to evade compliance with the U.S. federal securities laws; Counterparty is not electing Cash Settlement to create actual or apparent trading activity in the Shares and/or Underlying Shares (or any security convertible into or exchangeable for the Shares and/or Underlying Shares) or to raise or depress or otherwise manipulate the price of the Shares and/or Underlying Shares (or any security convertible into or exchangeable for the Shares and/or Underlying Shares) or otherwise in violation of the Exchange Act; and Counterparty has not entered into or altered any hedging transaction relating to the Shares or the Underlying Shares corresponding to or offsetting the Transaction;

(C) such election and performance of its obligations under this Confirmation do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets; and

(D) any transaction that Dealer makes with respect to the Shares and/or the Underlying Shares during the period beginning at the time that Counterparty delivers such notice and ending at the close of business on the final day of the Settlement Averaging Period shall be made by Dealer at Dealer’s sole discretion for Dealer’s own account and Counterparty shall not have, and shall not attempt to exercise, any influence over how, when, whether or at what price Dealer effects such transactions, including, without limitation, the prices paid or received by Dealer per Share or Underlying Share pursuant to such transactions, or whether such transactions are made on any securities exchange or privately.

Default Settlement Method:

Net Share Settlement

Settlement Method Election Date:

The third Scheduled Trading Day immediately preceding the first Scheduled Valid Day of the Settlement Averaging Period.

Net Share Settlement:	Dealer will deliver to Counterparty, on the relevant Settlement Date, a number of Shares equal to the Net Shares in respect of any Option exercised or deemed exercised hereunder. In no event will the Net Shares be less than zero.
Net Shares:	<p>In respect of any Option exercised or deemed exercised, a number of Shares equal to the sum of the quotients, for each Valid Day during the Settlement Averaging Period for such Option, of (i) (A) the Daily Option Value for such Valid Day, <i>divided by</i> (B) the Relevant Price on such Valid Day, <i>divided by</i> (ii) the number of Valid Days in the Settlement Averaging Period.</p> <p>Dealer will pay cash in lieu of delivering any fractional Shares to be delivered with respect to any Net Shares valued at the Relevant Price for the last Valid Day of the Settlement Averaging Period.</p>
Cash Settlement:	If Cash Settlement is applicable to any Option exercised or deemed exercised hereunder, in lieu of Section 8.1 of the Equity Definitions, Dealer will pay to Counterparty, on the relevant Settlement Date for each such Option, an amount of cash (the “ <b>Cash Settlement Amount</b> ”) equal to the sum, for each Valid Day during the Settlement Averaging Period for such Option, of (i) the Daily Option Value for such Valid Day, <i>divided by</i> (ii) the number of Valid Days in the Settlement Averaging Period.
Daily Option Value:	For any Valid Day, an amount equal to (i) the Option Entitlement on such Valid Day, <i>multiplied by</i> (ii) (A) the lesser of the Relevant Price on such Valid Day and the Cap Price, <i>less</i> (B) the Strike Price on such Valid Day; <i>provided</i> that if the calculation contained in clause (ii) above results in a negative number, the Daily Option Value for such Valid Day shall be deemed to be zero. In no event will the Daily Option Value be less than zero.
Valid Day:	A day on which (i) there is no Market Disruption Event and (ii) trading in the Shares generally occurs on the Exchange or, if the Shares are not then listed on the Exchange, on the principal other United States national or regional securities exchange on which the Shares are then listed or, if the Shares are not then listed on a United States national or regional securities exchange, on the principal other market on which the Shares are then listed or admitted for trading. If the Shares are not so listed or admitted for trading, “Valid Day” means a Business Day.
Scheduled Valid Day:	A day that is scheduled to be a Valid Day on the principal United States national or regional securities exchange or market on which the Shares are listed or admitted for trading. If the Shares are not so listed or admitted for trading, “Scheduled Valid Day” means a Business Day.



Business Day:	Any day other than a Saturday, a Sunday or a day on which the Federal Reserve Bank of New York is authorized or required by law or executive order to close or be closed.
Relevant Price:	On any Valid Day, the per Share volume-weighted average price as displayed under the heading “Bloomberg VWAP” on Bloomberg page “NIO <equity> AQR” (or its equivalent successor if such page is not available) in respect of the period from the scheduled opening time of the Exchange to the Scheduled Closing Time of the Exchange on such Valid Day (or if such volume-weighted average price is unavailable at such time, the market value of one Share on such Valid Day, as determined by the Calculation Agent using, if practicable, a volume-weighted average method). The Relevant Price will be determined without regard to after-hours trading or any other trading outside of the regular trading session trading hours.
Settlement Averaging Period:	For any Option being exercised hereunder, the 40 consecutive Valid Days commencing on, and including, the 41st Scheduled Valid Day immediately prior to the Expiration Date.
Settlement Date:	For any Option, the second Business Day immediately following the final Valid Day of the Settlement Averaging Period for such Option.
Settlement Currency:	USD
Other Applicable Provisions:	The provisions of Sections 9.1(c), 9.8, 9.9 and 9.11 of the Equity Definitions will be applicable, except that all references in such provisions to “Physically-settled” shall be read as references to “Net Share Settled”. “Net Share Settled” in relation to any Option means that Net Share Settlement is applicable to that Option.
Representation and Agreement:	Notwithstanding anything to the contrary in the Equity Definitions (including, but not limited to, Section 9.11 thereof), the parties acknowledge that (i) any Shares delivered to Counterparty shall be, upon delivery, subject to restrictions and limitations arising from Counterparty’s status as issuer of the Underlying Shares under applicable securities laws, (ii) Dealer may deliver any Shares required to be delivered hereunder in certificated form or restricted book-entry form, in each case, in lieu of delivery through the Clearance System and (iii) any Shares delivered to Counterparty may be “restricted securities” (as defined in Rule 144 under the Securities Act of 1933, as amended (the “ <b>Securities Act</b> ”)).

3. **Additional Terms applicable to the Transaction.**

Adjustments applicable to the Transaction:

Potential Adjustment Events:

Notwithstanding Section 11.2(e) of the Equity Definitions (which Section shall not apply for the purposes of the Transaction, except as provided in Section 9(y) below), a “Potential Adjustment Event” means an occurrence of any event or condition, as set forth in any Dilution Adjustment Provision, that requires an adjustment to be made under the Indenture to the “Conversion Rate” or the composition of a “unit of Reference Property” or to any “Last Reported Sale Price” (each as defined in the Indenture). For the avoidance of doubt, Dealer shall not have any delivery or payment obligation hereunder, and no adjustment shall be made to the terms of the Transaction, on account of (x) any distribution of cash, property or securities by Counterparty to holders of the Convertible Notes (upon conversion or otherwise) or (y) any other transaction in which holders of the Convertible Notes participate, in each case, in lieu of an adjustment under the Indenture of the type referred to in the immediately preceding sentence (including, without limitation, pursuant to the fourth sentence of the first paragraph of Section 14.04(c) of the Indenture or the fourth sentence of Section 14.04(d) of the Indenture).

Method of Adjustment:

Calculation Agent Adjustment, which means that, notwithstanding Section 11.2(c) of the Equity Definitions, (which Section shall not apply for the purposes of the Transaction, except as provided in Section 9(y) below) upon any Potential Adjustment Event, the Calculation Agent shall make an adjustment to any one or more of the Strike Price, Number of Options, Option Entitlement and any other variable relevant to the exercise, settlement or payment for the Transaction corresponding to the adjustment required to be made pursuant to the Indenture.

Notwithstanding the foregoing and “Consequences of Merger Events / Tender Offers” below:

- (i) if the Calculation Agent in good faith disagrees with any adjustment to the Convertible Notes that involves an exercise of discretion by Counterparty or its board of directors (including, without limitation, pursuant to Section 14.05 of the Indenture, Section 14.07 of the Indenture or any supplemental indenture entered into thereunder or in connection with any proportional adjustment or the determination of the fair value of any securities, property, rights or other assets), then in each such case, the Calculation Agent will determine in good faith and in a commercially reasonable manner, the adjustment to be made to any one or more of the Strike Price, Number of Options, Option Entitlement and any other variable relevant to the exercise, settlement or payment for the Transaction in a commercially reasonable manner; *provided* that, notwithstanding the foregoing, if any Potential Adjustment Event occurs during the Settlement Averaging Period but no adjustment was made to any Convertible Note under the Indenture because the relevant Holder (as such term is defined in the Indenture) was deemed to be a record owner of the underlying Shares on the related Conversion Date (as such term is defined in the Indenture), then the Calculation Agent shall make a commercially reasonable adjustment, as determined by it, to the terms hereof in order to account for such Potential Adjustment Event;

- (ii) in connection with any Potential Adjustment Event as a result of an event or condition set forth in Section 14.04(b) of the Indenture or Section 14.04(c) of the Indenture where, in either case, the period for determining “Y” (as such term is used in Section 14.04(b) of the Indenture) or “SP<sub>0</sub>” (as such term is used in Section 14.04(c) of the Indenture), as the case may be, begins before Counterparty has publicly announced the event or condition giving rise to such Potential Adjustment Event, then the Calculation Agent shall have the right to adjust any variable relevant to the exercise, settlement or payment for the Transaction as appropriate to reflect the costs (to account solely for hedging mismatches and market losses) and expenses incurred by Dealer in connection with its hedging activities, with such adjustments made assuming that Dealer maintains commercially reasonable hedge positions, as a result of such event or condition not having been publicly announced prior to the beginning of such period; and
- (iii) if any Potential Adjustment Event is declared and (a) the event or condition giving rise to such Potential Adjustment Event is subsequently amended, modified, cancelled or abandoned, (b) the “Conversion Rate” (as defined in the Indenture) is otherwise not adjusted at the time or in the manner contemplated by the relevant Dilution Adjustment Provision based on such declaration or (c) the “Conversion Rate” (as defined in the Indenture) is adjusted as a result of such Potential Adjustment Event and subsequently re-adjusted (each of clauses (a), (b) and (c), a “**Potential Adjustment Event Change**”) then, in each case, the Calculation Agent shall have the right to adjust any variable relevant to the exercise, settlement or payment for the Transaction as appropriate to reflect the costs (to account solely for hedging mismatches and market losses) and expenses incurred by Dealer in connection with its hedging activities, with such adjustments made assuming that Dealer maintains commercially reasonable hedge positions, as a result of such Potential Adjustment Event Change.

Dilution Adjustment Provisions: Sections 14.04(a), (b), (c), (d) and (e) and Section 14.05 of the Indenture.

Extraordinary Events applicable to the Transaction:

Merger Events: Applicable; *provided* that notwithstanding Section 12.1(b) of the Equity Definitions, a “Merger Event” means the occurrence of any event or condition set forth in the definition of “Merger Event” in Section 14.07 of the Indenture.

Tender Offers: Applicable; *provided* that notwithstanding Section 12.1(d) of the Equity Definitions, a “Tender Offer” means the occurrence of any event or condition set forth in Section 14.04(e) of the Indenture.

Consequences of Merger Events/  
Tender Offers:

Notwithstanding Section 12.2 and Section 12.3 of the Equity Definitions, upon the occurrence of a Merger Event or a Tender Offer, the Calculation Agent shall make a corresponding adjustment in respect of any adjustment under the Indenture to any one or more of the nature of the Shares (in the case of a Merger Event), Strike Price, Number of Options, Option Entitlement and any other variable relevant to the exercise, settlement or payment for the Transaction to the extent that an analogous adjustment is required to be made pursuant to the Indenture in respect of such Merger Event or Tender Offer, subject to the second paragraph under “Method of Adjustment”; *provided, however*, that such adjustment shall be made without regard to any adjustment to the Conversion Rate pursuant to any Excluded Provision; *provided further* that if, with respect to a Merger Event or a Tender Offer, (i) the consideration for the Shares or Underlying Shares, as applicable, includes (or, at the option of a holder of Shares, or Underlying Shares, as applicable, may include) shares of an entity or person that is not (1) a corporation or an entity that is treated as a corporation for U.S. federal income tax purposes or (2) organized under the laws of the Cayman Islands or (ii) the Counterparty to the Transaction following such Merger Event or Tender Offer will not be a corporation or an entity that is treated as a corporation for U.S. federal income tax purposes organized under the laws of the Cayman Islands, and/or will not be the Underlying Shares Issuer then, in any case, Cancellation and Payment (Calculation Agent Determination) may apply at Dealer’s commercially reasonable election; *provided further* that, for the avoidance of doubt, adjustments shall be made pursuant to the provisions set forth above regardless of whether any Merger Event or Tender Offer gives rise to an Early Conversion (as defined below).

Consequences of Announcement Events:

If an Announcement Event occurs, the Calculation Agent shall determine the cumulative economic effect of such Announcement Event (it being understood that the Calculation Agent may take into account any changes to volatility in connection with such Announcement Event within a commercially reasonable (as determined by the Calculation Agent) period of time prior to or after such Announcement Event) on the Transaction on the earliest to occur of (i) the date on which the transaction described in such Announcement Event (as amended) is consummated or otherwise results in a Merger Date or Tender Offer Date, as applicable, (ii) the Valuation Date, or (iii) any earlier date of termination or cancellation with respect to any Option, and if the Calculation Agent determines that such economic effect is material and that making the relevant adjustment would be commercially reasonable, the Calculation Agent shall adjust the Cap Price to reflect such economic effect (but, for the avoidance of doubt, taking into account, and without duplication of, any other adjustment made pursuant to this “Consequences of Announcement Events” provision or pursuant to the provisions opposite the captions “Method of Adjustment”, “Consequences of Merger Events” or “Consequences of Tender Offers” above in respect of the transaction or intention giving rise to such Announcement Event).

Announcement Event:

(i) The public announcement by (x) any entity of any transaction or event that the Calculation Agent determines is reasonably likely to be completed and that, if completed, would constitute a Merger Event or Tender Offer (it being understood that Calculation Agent may make such determination by reference to the impact of such announcement on the market for the Shares and/or Underlying Shares or options relating to the Shares and/or Underlying Shares), (y) Underlying Shares Issuer or any subsidiary thereof of any potential acquisition or disposal by the Underlying Shares Issuer and/or its subsidiaries where the aggregate consideration payable or receivable exceeds 25% of the market capitalization of the Underlying Shares Issuer as of the date of such announcement (a “**Transformative Transaction**”) or (z) Underlying Shares Issuer, any subsidiary of the Underlying Shares Issuer or any Valid Third Party Entity of the intention to enter into a Merger Event or Tender Offer or a Transformative Transaction (in the case of a Valid Third-Party Entity, that the Calculation Agent determines is a bona fide intention, it being understood that the Calculation Agent may make such determination by reference to the impact of such announcement on the market for the Shares and/or Underlying Shares or options relating to the Shares and/or Underlying Shares), (ii) the public announcement by the Underlying Shares Issuer of an intention to solicit or enter into, or to explore strategic alternatives or other similar undertaking that may include, a Merger Event or Tender Offer or a Transformative Transaction or (iii) any subsequent public announcement by any entity of a change to a transaction or intention that is the subject of an announcement of the type described in clause (i) or (ii) of this sentence (including, without limitation, a new announcement, whether or not by the same party, relating to such a transaction or intention or the announcement of a withdrawal from, or the abandonment or discontinuation of, such a transaction or intention), as determined by the Calculation Agent. For the avoidance of doubt, the occurrence of an Announcement Event with respect to any transaction or intention shall not preclude the occurrence of a later Announcement Event with respect to such transaction or intention. For purposes of this definition of “Announcement Event,” (A) “Merger Event” shall mean such term as defined under Section 12.1(b) of the Equity Definitions (but, for the avoidance of doubt, the remainder of the definition of “Merger Event” in Section 12.1(b) of the Equity Definitions following the definition of “Reverse Merger” therein shall be disregarded) and (B) “Tender Offer” shall mean such term as defined under Section 12.1(d) of the Equity Definitions; *provided* that Section 12.1(d) of the Equity Definitions is hereby amended by replacing “10%” with “20%” in the third line thereof.

Valid Third Party Entity:

In respect of any transaction or intention, any third party (i) whose announcement is reasonably determined by the Calculation Agent to have had a material economic effect on the Shares and/or Underlying Shares and/or options on the Shares and/or Underlying Shares and (ii) that is the entity, or an affiliate of the entity, that is, or would be, a party to the relevant transaction or event.

Nationalization, Insolvency or Delisting:

Cancellation and Payment (Calculation Agent Determination); *provided* that, in addition to the provisions of Section 12.6(a)(iii) of the Equity Definitions, it will also constitute a Delisting if the 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 of the New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or their respective successors), such exchange or quotation system shall thereafter be deemed to be the Exchange.

Section 12.1 of the Equity Definitions is hereby amended by deleting subsection (v) thereof in its entirety and replacing it with “(v) in the case of an Insolvency, the date of (A) the institution of a proceeding or presentation of a petition or the passing of a resolution (or the convening of a meeting to pass a resolution or the proposing of a written resolution) (in each case the occurrence of which shall be deemed its announcement) that leads to an Insolvency within the meaning of subsection (A) of the definition thereof, (B) the first public announcement of the institution of a proceeding or presentation of a petition or passing of a resolution (or other analogous procedure in any jurisdiction) that leads to the Insolvency or (C) the occurrence of any of the events specified in Section 5(a)(vii)(1) through (9) of the ISDA Master Agreement with respect to that Issuer”.

Section 12.6(a)(ii) of the Equity Definitions is hereby amended by (1) inserting “(A)” after “means” in the first line thereof and replacing “(A)” and “(B)” in the third and fourth lines thereof with “(1)” and “(2)” respectively, (2) deleting from the fourth line thereof the word “or” after the word “official” and inserting a comma therefor, (3) inserting at the end of renumbered subsection (2) thereof the following wording, “or, under the laws of the Cayman Islands, any other jurisdiction or otherwise, any other impediment to or restriction on the transfer of any Share arises or becomes applicable including, without limitation, where (x) any transfer of a Share or alteration of the status of the members of the Issuer would be void unless a court of the Cayman Islands or any other jurisdiction orders otherwise or (y) any transfer of a Share not being a transfer with the sanction of a liquidator, and any alteration in the status of the Issuer’s members, would be void” and (4) deleting the semi-colon at the end of renumbered subsection (2) thereof and inserting the following words therefor “or (B) at Dealer’s option, the occurrence of any of the events specified in Section 5(a)(vii) (1) through (9) of the ISDA Master Agreement with respect to that Issuer.”

Additional Disruption Events:

Change in Law:

Applicable; *provided* that Section 12.9(a)(ii) of the Equity Definitions is hereby amended by (i) replacing the phrase “the interpretation” in the third line thereof with the phrase “, or public announcement of, the formal or informal interpretation”, (ii) replacing the word “Shares” where it appears in clause (X) thereof with the words “Hedge Position,” (iii) replacing the parenthetical beginning after the word “regulation” in the second line thereof with the words “(including, for the avoidance of doubt and without limitation, (x) any tax law or (y) adoption, effectiveness or promulgation of new regulations authorized or mandated by existing statute)” and (iv) adding the words “*provided* that, in the case of clause (Y) hereof where such determination is based on Dealer’s policies and procedures, such policies and procedures have been adopted by Dealer in good faith and are generally applicable in similar situations and applied in a non-discriminatory manner;” after the semi-colon in the last line thereof.

Failure to Deliver:	Applicable
Hedging Disruption:	Applicable; <i>provided</i> that:  Section 12.9(b)(iii) of the Equity Definitions is hereby amended by inserting in the third line thereof, after the words “to terminate the Transaction”, the words “or a portion of the Transaction affected by such Hedging Disruption”.
Increased Cost of Hedging:	Not Applicable
Hedging Party:	For all applicable Additional Disruption Events, Dealer.
Determining Party:	For all applicable Extraordinary Events, Dealer; <i>provided</i> that when making any determination or calculation as “Determining Party,” Dealer shall make such determinations or calculations in good faith and in a commercially reasonable manner.  Following any determination or calculation by Determining Party hereunder, the Determining Party will, upon written request from Counterparty, promptly (but in any event within five Scheduled Trading Days) provide to Counterparty a report (in a commonly used file format for the storage and manipulation of financial data) displaying in reasonable detail the basis for such determination or calculation (including any assumptions used in making such determination or calculation), it being understood that in no event will the Determining Party be obligated to share with Counterparty any proprietary or confidential data or information or any proprietary or confidential models used by it in making such determination or calculation or any information that is subject to an obligation not to disclose such information.
Non-Reliance:	Applicable
Agreements and Acknowledgments Regarding Hedging Activities:	Applicable
Additional Acknowledgments:	Applicable

4. **Calculation Agent.** Dealer; *provided* that, following the occurrence and during the continuance of an Event of Default under Section 5(a)(vii) of the Agreement with respect to which Dealer is the Defaulting Party, Counterparty shall have the right to designate a nationally recognized independent equity derivatives 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 adjustment, determination or calculation by the Calculation Agent hereunder, the Calculation Agent will, upon written request from Counterparty, promptly (but in any event within five Scheduled Trading Days) provide to Counterparty by email a report (in a commonly used file format for the storage and manipulation of financial data) displaying in reasonable detail the basis for such adjustment, determination or calculation (including any assumptions used in making such adjustment, determination or calculation), it being understood that in no event will the Calculation Agent be obligated to share with Counterparty any proprietary or confidential data or information or any proprietary or confidential models used by it in making such adjustment, determination or calculation or any information that is subject to an obligation not to disclose such information.

All calculations and determinations by the Calculation Agent shall be made in good faith and in a commercially reasonable manner.

**5. Account Details.**

- (a) Account for payments to Counterparty:

To be provided.

Account for delivery of Shares to Counterparty:

To be provided.

- (b) Account for payments to Dealer:

To be provided.

Account for delivery of Shares from Dealer:

To be provided.

**6. Offices.**

- (a) The Office of Counterparty for the Transaction is: Inapplicable, Counterparty is not a Multibranch Party.

- (b) The Office of Dealer for the Transaction is: New York

**7. Notices.**

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

NIO Inc.  
Building 20, No. 56 AnTuo Road, Jiading District  
Shanghai, 201804  
People's Republic of China  
Attention: Louis T. Hsieh, Chief Financial Officer  
Telephone No.: +86 (21) 6908 3306  
Facsimile No.: +86 (21) 3913 0192

with a copy to:

Nick Wang  
VP of Finance  
Telephone No.: +86 (21) 6908-2002  
Email: Nick.Wang@nio.com

with a copy to:

Fang Liu  
General Counsel  
Telephone No.: +86 (21) 6908-2277  
Email: Fang.Liu@nio.com

with a copy to:

Sabrina Shi  
Senior Corporate Counsel  
Telephone No.: +86 (21) 6908-3391  
Email: Danting.Shi@nio.com

(b) Address for notices or communications to Dealer:

Credit Suisse Capital LLC  
c/o Credit Suisse Securities (USA) LLC  
Eleven Madison Avenue  
New York, NY 10010  
Attention: Tucker Martin  
Telephone: (212) 325-9182  
Facsimile: (212) 743-3661  
Email: tucker.martin@credit-suisse.com

With a copy to:  
Credit Suisse Securities (USA) LLC  
1 Madison Avenue, 9th Floor  
New York, New York 10010  
Attn: Senior Legal Officer  
Telephone: (212) 538-2616  
Facsimile: (212) 325-8036  
Email: stephen.gray@credit-suisse.com

For payments and deliveries:  
Facsimile No.: (212) 325 8175  
Telephone No.: (212) 325 8678 / (212) 325 3213

For all other communications:

Telephone: (212) 538-6040  
Facsimile: (917) 326-8603

**8. Representations and Warranties of Counterparty.**

Each of the representations and warranties of Counterparty set forth in Section 2 of the Purchase Agreement (the “**Purchase Agreement**”) dated as of January 30, 2019, between Counterparty and Credit Suisse Securities (USA) LLC, J.P. Morgan Securities LLC, Morgan Stanley & Co. LLC, and Goldman Sachs (Asia) LLC, as representatives of the Initial Purchasers party thereto (the “**Initial Purchasers**”), are true and correct and are hereby deemed to be repeated to Dealer as if set forth herein. Counterparty hereby further represents and warrants to Dealer on the date hereof and on and as of the Premium Payment Date, that:

- (a) Counterparty (i) is duly incorporated and validly existing as an exempted company with limited liability under the laws of the Cayman Islands and is in good standing under such laws, and (ii) has all necessary corporate power and authority to execute, deliver and perform its obligations and exercise its rights in respect of the Transaction; such execution, delivery, performance and exercise have been duly authorized by all necessary corporate action on Counterparty's part; and this Confirmation has been duly and validly executed and delivered by Counterparty and constitutes its valid and binding obligation, enforceable against Counterparty in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity) and except that rights to indemnification and contribution hereunder may be limited by federal or state securities laws or public policy relating thereto.
- (b) Neither the execution and delivery of this Confirmation nor the incurrence or performance of obligations nor the exercise of rights of Counterparty hereunder will conflict with or result in a breach of the memorandum and articles of association or by-laws (or any equivalent documents) of Counterparty, or any applicable law or regulation, or any order, writ, injunction or decree of any court or governmental authority or agency, or any agreement or instrument to which Counterparty or any of its subsidiaries is a party or by which Counterparty or any of its subsidiaries is bound or to which Counterparty or any of its subsidiaries is subject, or constitute a default under, or result in the creation of any lien under, any such agreement or instrument.
- (c) No consent, approval, authorization, or order of, or filing with, any governmental agency or body or any court is required in connection with the execution, delivery or performance by Counterparty of this Confirmation, except such as have been obtained or made and such as may be required under the Securities Act or state securities laws.
- (d) Counterparty is not and, after consummation of the transactions contemplated hereby, will not be required to register as an "investment company" as such term is defined in the Investment Company Act of 1940, as amended.
- (e) Counterparty is an "eligible contract participant" (as such term is defined in Section 1a(18) of the Commodity Exchange Act, as amended, other than a person that is an eligible contract participant under Section 1a(18)(C) of the Commodity Exchange Act).
- (f) Counterparty is not, on the date hereof, aware of any material non-public information with respect to Counterparty, the Underlying Shares Issuer (if other than Counterparty), the Underlying Shares or the Shares.
- (g) To the knowledge of Counterparty, no state or local (including any non-U.S. jurisdiction's) law, rule, regulation or regulatory order applicable to the Shares and/or Underlying 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 and/or Underlying Shares (except for filings of Form 13F, Schedule 13D or Schedule 13G under the Exchange Act); *provided* that Counterparty makes no representation or warranty regarding any such requirement that is applicable generally to the ownership of equity securities by Dealer or any of its affiliates solely as a result of it or any of such affiliates being a financial institution or broker-dealer.
- (h) Counterparty (A) is capable of evaluating investment risks independently, both in general and with regard to all transactions and investment strategies involving a security or securities; (B) will exercise independent judgment in evaluating the recommendations of any broker-dealer or its associated persons, unless it has otherwise notified the broker-dealer in writing; (C) has total assets of at least USD 50 million; and (D) is acting for its own account, and it has made its own independent decisions to enter into the Transaction and as to whether the Transaction is appropriate or proper for it (including as to any legal, regulatory, tax, accounting or economic consequences arising from the Transaction) based upon its own judgment and upon advice from such advisers as it has deemed necessary (including legal, financial and accounting advisors).

- (i) Counterparty as of and immediately after the Trade Date and the Premium Payment Date (x) is not, and shall not be after giving effect to the transactions contemplated hereby, “insolvent” (as such term is defined in Section 101(32) of the Bankruptcy Code, (y) would be able to purchase 100,536,150 Shares and the Underlying Shares represented by such number of Shares in compliance with the laws of the jurisdiction of Counterparty’s incorporation or organization, and (z), for the purposes of Cayman Islands law, is able to pay its debts.
- (j) Counterparty’s board of directors (the “**Board**”) has concluded that (A) the Transaction is suitable for Counterparty, for its commercial benefit and in its best interests, in light of its own investment objectives, financial condition and expertise and (B) the Transaction has been duly approved and authorized by the Board after due consideration by the Board of the foregoing matters and those referred to in subparagraph (h)(D) above.

**9. Other Provisions.**

- (a) Deliverables. Counterparty shall deliver to Dealer (A) an opinion of U.S. counsel and (B) an opinion of Cayman counsel, each dated as of the Premium Payment Date, with respect to, among other things, the matters set forth in Sections 8(a) through (c) of this Confirmation, it being understood that such opinions of counsel shall be limited to the federal laws of the United States and the laws of the State of New York (in the case of clause (A) above) and the laws Cayman Islands (in the case of clause (B) above) and may contain customary limitations, exceptions and qualifications for transactions of the same type as the Transaction. Delivery of such opinions to Dealer shall be a condition precedent for the purpose of Section 2(a)(iii) of the Agreement with respect to each obligation of Dealer under Section 2(a)(i) of the Agreement; (C) a resolution of the Board authorizing the Transaction; and (D) on or before the Premium Payment Date, a solvency certificate with respect to Counterparty signed by a member of the Board, the chief executive officer or the chief financial officer of the Counterparty certifying the solvency of Counterparty as of and immediately after the Premium Payment Date (after giving effect to Counterparty’s payment of amounts required to be paid by Counterparty on such date under the Transaction and the other transactions described under “Use of Proceeds” in the Offering Memorandum related to the offering of the Convertible Notes), which solvency certificate is reasonably satisfactory to Dealer.

- (b) Repurchase Notices. Counterparty shall, on or prior to the date that is one Scheduled Trading Day following any date on which Counterparty effects any repurchase of Shares and/or Underlying Shares, promptly give Dealer a written notice of such repurchase (a “**Repurchase Notice**”) on such day if following such repurchase, the number of outstanding Underlying Shares as determined on such day is (i) less than 727.2 million (in the case of the first such notice) or (ii) thereafter more than 37.8 million less than the number of Underlying Shares included in the immediately preceding Repurchase Notice; *provided* that Counterparty may provide Dealer advance notice on or prior to any such day including the maximum number of Shares and/or Underlying Shares that may be repurchased under a repurchase program entered into in reliance on Rule 10b5-1(c) and the approximate periods during which such repurchases may occur, to the extent it expects that repurchases effected on such day may result in an obligation to deliver a Repurchase Notice (and in such case, any such advance notice shall be deemed a Repurchase Notice to the maximum extent of repurchases set forth in such advance notice as if Counterparty had executed such repurchases). Counterparty agrees that, if Counterparty ceases to qualify as a “foreign private issuer” as defined in Rule 3b-4 under the Exchange Act or the Shares or Underlying Shares, as applicable, otherwise become subject to the requirements of Section 16 of the Exchange Act, Counterparty will indemnify and hold harmless Dealer and its affiliates and their respective officers, directors, employees, affiliates, advisors, agents and controlling persons (each, an “**Indemnified Person**”) from and against any and all losses (including losses relating to Dealer’s hedging activities as a consequence of becoming, or of the risk of becoming, a Section 16 “insider”, including without limitation, any forbearance from hedging activities or cessation of hedging activities and any losses in connection therewith with respect to the Transaction), claims, damages, judgments, liabilities and reasonable and documented out-of-pocket expenses (including reasonable attorney’s fees of one outside counsel in each relevant jurisdiction), joint or several, which an Indemnified Person may become subject to, in each case, as a result of Counterparty’s failure to provide Dealer with a Repurchase Notice on the day and in the manner specified in this paragraph, and to reimburse, within 30 days, upon written request, each of such Indemnified Persons for any reasonable legal or other out-of-pocket expenses (to the extent supported by invoices or other documentation setting forth in reasonable detail such expenses) incurred in connection with investigating, preparing for, providing testimony or other evidence in connection with or defending any of the foregoing. If any suit, action, proceeding (including any governmental or regulatory investigation), claim or demand shall be brought or asserted against the Indemnified Person as a result of Counterparty’s failure to provide Dealer with a Repurchase Notice in accordance with this paragraph, such Indemnified Person shall promptly notify Counterparty in writing, and Counterparty, upon request of the Indemnified Person, shall retain counsel reasonably satisfactory to the Indemnified Person to represent the Indemnified Person and any others Counterparty may designate in such proceeding and shall pay the reasonable fees and expenses of such counsel related to such proceeding. Counterparty shall not be liable to the extent that the Indemnified Person fails to notify Counterparty within a commercially reasonable period of time after any action is commenced against it in respect of which indemnity may be sought hereunder. In addition, Counterparty shall not have liability for any settlement of any such proceeding contemplated by this paragraph that is effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, Counterparty agrees to indemnify any Indemnified Person from and against any loss or liability by reason of such settlement or judgment. Counterparty shall not, without the prior written consent of the Indemnified Person, effect any settlement of any pending or threatened proceeding contemplated by this paragraph in respect of which any Indemnified Person is or could have been a party and indemnity could have been sought hereunder by such Indemnified Person, unless such settlement includes an unconditional release of such Indemnified Person from all liability on claims that are the subject matter of such proceeding on terms reasonably satisfactory to such Indemnified Person. If the indemnification provided for in this paragraph is unavailable to an Indemnified Person or insufficient in respect of any losses, claims, damages or liabilities referred to therein, then Counterparty hereunder, in lieu of indemnifying such Indemnified Person thereunder, shall contribute to the amount paid or payable by such Indemnified Person as a result of such losses, claims, damages or liabilities. The remedies provided for in this paragraph (b) are not exclusive and shall not limit any rights or remedies which may otherwise be available to any Indemnified Person at law or in equity. The indemnity and contribution agreements contained in this paragraph shall remain operative and in full force and effect regardless of the termination of the Transaction.
- (c) Regulation M. Counterparty is not on the Trade Date engaged in a distribution, as such term is used in Regulation M under the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), of any securities of Counterparty, other than a distribution meeting the requirements of the exception set forth in Rules 101(b)(10) and 102(b)(7) of Regulation M. Counterparty shall not, until the second Scheduled Trading Day immediately following the Effective Date, engage in any such distribution.
- (d) No Manipulation. Counterparty is not entering into the Transaction to create actual or apparent trading activity in the Shares and/or Underlying Shares (or any security convertible into or exchangeable for the Shares and/or Underlying Shares) or to raise or depress or otherwise manipulate the price of the Shares and/or Underlying Shares (or any security convertible into or exchangeable for the Shares and/or Underlying Shares) or otherwise in violation of the Exchange Act.

(e) Transfer or Assignment.

- (i) Counterparty shall have the right to transfer or assign all or any of its rights and obligations hereunder with respect to all, or any, of the Options hereunder (such Options, the “**Transfer Options**”) with the prior written consent of Dealer, such consent not to be unreasonably withheld; *provided* that withholding of such consent by Dealer shall not be considered unreasonable if such transfer or assignment does not meet any of the following conditions:
- (A) With respect to any Transfer Options, Counterparty shall not be released from its notice and indemnification obligations pursuant to Section 9(b) of this Confirmation;
  - (B) Such transfer or assignment shall be effected on terms, including any reasonable undertakings by such third party (including, but not limited to, an undertaking with respect to compliance with applicable securities laws in a manner that, in the reasonable judgment of Dealer, will not expose Dealer to material risks under applicable securities laws) and execution of any documentation and delivery of legal opinions with respect to securities laws and other matters by such third party and Counterparty, as are reasonably requested and reasonably satisfactory to Dealer;
  - (C) Under the applicable law effective on the date of such transfer or assignment, (1) Dealer will not, as a result of such transfer or assignment, be required to pay the transferee or assignee on any payment date or delivery date an amount or a number of Shares, as applicable, under Section 2(d)(i)(4) of the Agreement greater than the amount or the number of Shares, as applicable, that Dealer would have been required to pay to Counterparty in the absence of such transfer or assignment and (2) Dealer will not, as a result of such transfer or assignment, receive from the transferee or assignee on any payment date an amount under Section 2(d)(i)(4) of the Agreement that is less than the amount that Dealer would have received from Counterparty in the absence of such transfer or assignment;
  - (D) No Event of Default, Potential Event of Default or Termination Event will occur as a result of such transfer and assignment;
  - (E) Counterparty shall cause the transferee to make such tax representations and to provide such tax documentation as may be reasonably requested by Dealer to permit Dealer to determine that results described in clauses (C) and (D) will not occur upon or after such transfer and assignment, including but not limited to providing tax documentation specified in Section 9(bb) of this Confirmation and making the tax representations specified in Section 9(aa) of this Confirmation on or prior to such transfer and at the other times specified in such Sections; and
  - (F) Counterparty shall be responsible for all reasonable and documented costs and expenses, including reasonable counsel fees, incurred by Dealer in connection with such transfer or assignment.

- (ii) Dealer may, without Counterparty's consent, transfer or assign all or any part of its rights or obligations under the Transaction to any affiliate of Dealer (1) that has a long-term issuer rating that is equal to or better than Dealer's credit rating at the time of such transfer or assignment, or (2) whose obligations hereunder will be guaranteed, pursuant to the terms of a customary guarantee in a form used by Dealer generally for similar transactions, by Dealer; *provided* that, in the case of any such transfer or assignment, under the applicable law effective on the date of such transfer or assignment, (I) Counterparty will not, as a result of such transfer or assignment, be required to pay the transferee or assignee on any payment date an amount under Section 2(d)(i)(4) of the Agreement greater than the amount that Counterparty would have been required to pay to Dealer in the absence of such transfer or assignment; (II) Counterparty will not, as a result of such transfer or assignment, receive from the transferee or assignee on any payment or delivery date an amount or a number of Shares, as applicable, under Section 2(d)(i)(4) of the Agreement that is less than the amount or the number of Shares that Counterparty would have received from Dealer in the absence of such transfer or assignment; (III) Dealer shall cause the transferee or assignee to make such tax representations and to provide such tax documentation as may be reasonably requested by Counterparty to permit Counterparty to determine that events described in clauses (I) and (II) of this proviso will not occur upon or after such transfer or assignment; and (IV) no Event of Default, Potential Event of Default or Termination Event will occur as a result of such transfer and assignment. If at any time at which (A) the Section 13 Percentage exceeds 8.5%, (B) the Option Equity Percentage exceeds 14.5%, or (C) the Share Amount exceeds the Applicable Share Limit (if any applies) (any such condition described in clauses (A), (B) or (C), an "**Excess Ownership Position**"), Dealer is unable after using its commercially reasonable efforts to effect a transfer or assignment of Options to a third party on pricing terms reasonably acceptable to Dealer and within a time period reasonably acceptable to Dealer such that no Excess Ownership Position exists, then Dealer may designate any Exchange Business Day as an Early Termination Date with respect to a portion of the Transaction (the "**Terminated Portion**"), to the extent necessary so that following such partial termination no Excess Ownership Position exists. In the event that Dealer so designates an Early Termination Date with respect to a portion of the Transaction, a payment shall be made pursuant to Section 6 of the Agreement as if (1) an Early Termination Date had been designated in respect of a Transaction having terms identical to the Transaction and a Number of Options equal to the number of Options underlying the Terminated Portion, (2) Counterparty were the sole Affected Party with respect to such partial termination and (3) the Terminated Portion were the sole Affected Transaction (and, for the avoidance of doubt, the provisions of Section 9(m) shall apply to any amount that is payable by Dealer to Counterparty pursuant to this sentence as if Counterparty was not the Affected Party). The "**Section 13 Percentage**" as of any day is the fraction, expressed as a percentage, (A) the numerator of which is the number of Underlying Shares that Dealer and any of its affiliates or any other person subject to aggregation with Dealer for purposes of the "beneficial ownership" test under Section 13 of the Exchange Act, or any "group" (within the meaning of Section 13 of the Exchange Act) of which Dealer is or may be deemed to be a part beneficially owns (within the meaning of Section 13 of the Exchange Act), without duplication, on such day (or, to the extent that for any reason the equivalent calculation under Section 16 of the Exchange Act applies with respect to the Shares or Underlying Shares, as applicable, and the rules and regulations thereunder results in a higher number, such higher number) and (B) the denominator of which is the number of Underlying Shares outstanding on such day. The "**Option Equity Percentage**" as of any day is the fraction, expressed as a percentage, (A) the numerator of which is the sum of (1) the product of (x) the Number of Options (y) the Option Entitlement and (z) the number of Underlying Shares represented by one Share and (2) the aggregate number of Underlying Shares underlying any other call option transaction sold by Dealer to Counterparty, and (B) the denominator of which is the number of Underlying Shares outstanding. The "**Share Amount**" as of any day is the number of Underlying Shares that Dealer and any person whose ownership position would be aggregated with that of Dealer (Dealer or any such person, a "**Dealer Person**") under any law, rule, regulation, regulatory order or organizational documents or contracts of Counterparty that are, in each case, applicable to ownership of Underlying Shares ("**Applicable Restrictions**"), owns, beneficially owns, constructively owns, controls, holds the power to vote or otherwise meets a relevant definition of ownership under any Applicable Restriction, as determined by Dealer in its reasonable discretion. The "**Applicable Share Limit**" means a number of Underlying Shares equal to (A) the minimum number of Underlying Shares that could give rise to reporting or registration obligations (except for any filing requirements on Form 13F, Schedule 13D or Schedule 13G under the Exchange Act, in each case, as in effect on the Trade Date) or other requirements (including obtaining prior approval from any person or entity) of a Dealer Person, or could result in an adverse effect on a Dealer Person, under any Applicable Restriction, as determined by Dealer in good faith and in its commercially reasonable discretion, *minus* (B) 1% of the number of Underlying Shares outstanding.

- (iii) Notwithstanding any other provision in this Confirmation to the contrary requiring or allowing Dealer to purchase, sell, receive or deliver any Shares, Underlying Shares or other securities, or make or receive any payment in cash, to or from Counterparty, Dealer may designate any of its affiliates to purchase, sell, receive or deliver such Shares, Underlying Shares or other securities, or to make or receive such payment in cash, and otherwise to perform Dealer's obligations in respect of the Transaction and any such designee may assume such obligations. Dealer shall be discharged of its obligations to Counterparty to the extent of any such performance.
- (f) Staggered Settlement. If upon advice of counsel with respect to applicable legal and regulatory requirements, including any requirements relating to Dealer's hedging activities hereunder, Dealer reasonably determines that it would not be practicable or advisable to deliver, or to acquire Shares to deliver, any or all of the Shares to be delivered by Dealer on any Settlement Date for the Transaction, Dealer may, by notice to Counterparty on or prior to any Settlement Date (a "**Nominal Settlement Date**"), elect to deliver the Shares on two or more dates (each, a "**Staggered Settlement Date**") as follows:
  - (i) in such notice, Dealer will specify to Counterparty the related Staggered Settlement Dates (the first of which will be such Nominal Settlement Date and the last of which will be no later than the twentieth (20<sup>th</sup>) Exchange Business Day following such Nominal Settlement Date) and the number of Shares that it will deliver on each Staggered Settlement Date;
  - (ii) the aggregate number of Shares that Dealer will deliver to Counterparty hereunder on all such Staggered Settlement Dates will equal the number of Shares that Dealer would otherwise be required to deliver on such Nominal Settlement Date; and
  - (iii) if the Net Share Settlement terms set forth above were to apply on the Nominal Settlement Date, then the Net Share Settlement terms will apply on each Staggered Settlement Date, except that the Shares otherwise deliverable on such Nominal Settlement Date will be allocated among such Staggered Settlement Dates as specified by Dealer in the notice referred to in clause (i) above.
- (g) Role of Agent. As a broker-dealer registered with the U.S. Securities and Exchange Commission ("SEC"), Credit Suisse Securities (USA) LLC in its capacity as Agent will be responsible for (i) effecting the Transaction, (ii) issuing all required confirmations and statements to Dealer and Counterparty, (iii) maintaining books and records relating to the Transaction as required by Rules 17a-3 and 17a-4 under the Exchange Act and (iv) unless otherwise requested by Counterparty, receiving, delivering, and safeguarding Counterparty's funds and any securities in connection with each Transaction, in compliance with Rule 15c3-3 under the Exchange Act.

Credit Suisse Securities (USA) LLC is acting in connection with the Transaction solely in its capacity as Agent for Dealer and Counterparty pursuant to instructions from Dealer and Counterparty. Credit Suisse Securities (USA) LLC shall have no responsibility or personal liability to Dealer or Counterparty arising from any failure by Dealer or Counterparty to pay or perform any obligations hereunder, or to monitor or enforce compliance by Dealer or Counterparty with any obligation hereunder, including without limitation, any obligations to maintain collateral. Each of Dealer and Counterparty agrees to proceed solely against the other to collect or recover any securities or monies owing to it in connection with or as a result of the Transaction. Credit Suisse Securities (USA) LLC shall otherwise have no liability in respect of the Transaction, except for its gross negligence or willful misconduct in performing its duties as Agent.



Any and all notices, demands, or communications of any kind relating to this Transaction between Dealer and Counterparty shall be transmitted exclusively through Agent at the following address:

Credit Suisse Capital LLC  
c/o Credit Suisse Securities (USA) LLC  
Eleven Madison Avenue  
New York, NY 10010  
Attention: Tucker Martin  
Telephone: (212) 325-9182  
Facsimile: (212) 743-3661  
Email: tucker.martin@credit-suisse.com

With a copy to:

Credit Suisse Securities (USA) LLC  
1 Madison Avenue, 9th Floor  
New York, New York 10010  
Attn: Senior Legal Officer  
Telephone: (212) 538-2616  
Facsimile: (212) 325-8036  
Email: stephen.gray@credit-suisse.com

For payments and deliveries:

Facsimile No.: (212) 325 8175  
Telephone No.: (212) 325 8678 / (212) 325 3213

For all other communications:

Telephone: (212) 538-6040  
Facsimile: (917) 326-8603

The date and time of the Transaction evidenced hereby will be furnished by the Agent to Dealer and Counterparty upon written request.

The Agent will furnish to Counterparty upon written request a statement as to the source and amount of any remuneration received or to be received by the Agent in connection with the Transaction evidenced hereby.

Dealer is not a member of the SIPC (Securities Investor Protection Corporation).

Dealer represents that it is an "OTC derivatives dealer" as such term is defined in the Exchange Act and is an affiliate of a broker-dealer that is registered with and fully-regulated by the SEC, Credit Suisse Securities (USA) LLC.

- (h) QFC Stay Provisions. To the extent that the QFC Stay Rules are applicable hereto, then the parties agree that (i) to the extent that prior to the date hereof both parties have adhered to the 2018 ISDA U.S. Resolution Stay Protocol (the “**Protocol**”), the terms of the Protocol are incorporated into and form a part of this Confirmation, and for such purposes this 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; (ii) to the extent that prior to the date hereof the parties have executed a separate agreement the effect of which is to amend the qualified financial contracts between them to conform with the requirements of the QFC Stay Rules (the “Bilateral Agreement”), the terms of the Bilateral Agreement are incorporated into and form a part of this Confirmation and each party shall be deemed to have the status of “Covered Entity” or “Counterparty Entity” (or other similar term) as applicable to it under the Bilateral Agreement; or (iii) if clause (i) and clause (ii) do not apply, the terms of Section 1 and Section 2 and the related defined terms (together, the “**Bilateral Terms**”) of the form of bilateral template entitled “Full-Length Omnibus (for use between U.S. G-SIBs and Corporate Groups)” published by ISDA on November 2, 2018 (currently available on the 2018 ISDA U.S. Resolution Stay Protocol page at [www.isda.org](http://www.isda.org) and, a copy of which is available upon request), the effect of which is to amend the qualified financial contracts between the parties thereto to conform with the requirements of the QFC Stay Rules, are hereby incorporated into and form a part of this Confirmation, and for such purposes this Confirmation shall be deemed a “Covered Agreement,” Dealer shall be deemed a “Covered Entity” and Counterparty shall be deemed a “Counterparty Entity.” In the event that, after the date of this Confirmation, both parties hereto become adhering parties to the Protocol, the terms of the Protocol will replace the terms of this paragraph. In the event of any inconsistencies between this Confirmation and the terms of the Protocol, the Bilateral Agreement or the Bilateral Terms (each, the “**QFC Stay Terms**”), as applicable, the QFC Stay Terms will govern. Terms used in this paragraph without definition shall have the meanings assigned to them under the QFC Stay Rules. For purposes of this paragraph, references to “this 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**” means 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 FDIC 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.

(i) Additional Termination Events.

- (i) Notwithstanding anything to the contrary in this Confirmation, upon any conversion of a Convertible Note occurring prior to the 45th Scheduled Valid Day immediately prior to the Expiration Date (any such conversion, an “**Early Conversion**”) in respect of which a Conversion Notice that is effective as to Counterparty has been delivered by the relevant converting Holder:
- (A) Counterparty may, within two Scheduled Trading Days of the date on which the Holder (as such term is defined in the Indenture) of such Convertible Note satisfies all of the requirements for conversion thereof as set forth in Section 14.02 of the Indenture (the “**Conversion Date**”) for such Early Conversion, provide written notice (an “**Early Conversion Notice**”) to Dealer specifying the number of Convertible Notes surrendered for conversion on such Conversion Date (such Convertible Notes, the “**Affected Convertible Notes**”), and the giving of such Early Conversion Notice shall constitute an Additional Termination Event as provided in this clause (i) (*provided* that Counterparty acknowledges its responsibilities under applicable securities laws, and in particular Section 9 and Section 10(b) of the Exchange Act and the rules and regulations thereunder, in respect of any Early Conversion Notice);

- (B) upon receipt of any such Early Conversion Notice, Dealer shall designate an Exchange Business Day as an Early Termination Date (which Exchange Business Day shall be no earlier than one Scheduled Trading Day following the Conversion Date for such Early Conversion) with respect to the portion of the Transaction corresponding to a number of Options (the “**Affected Number of Options**”) equal to the lesser of (x) the number of Affected Convertible Notes *minus* the “Affected Number of Options” (as defined in the Base Call Option Transaction Confirmation letter agreement dated January 30, 2019 between Dealer and Counterparty (the “**Base Call Option Confirmation**”)), if any, that relate to such Affected Convertible Notes and (y) the Number of Options as of the Conversion Date for such Early Conversion;
  - (C) any payment hereunder with respect to such termination shall be calculated pursuant to Section 6 of the Agreement as if (x) an Early Termination Date had been designated in respect of a Transaction having terms identical to the Transaction and a Number of Options equal to the Affected Number of Options, (y) Counterparty were the sole Affected Party with respect to such Additional Termination Event and (z) the terminated portion of the Transaction were the sole Affected Transaction;
  - (D) for the avoidance of doubt, in determining the amount payable in respect of such Affected Transaction pursuant to Section 6 of the Agreement, the Calculation Agent shall assume that (x) the relevant Early Conversion and any conversions, adjustments, agreements, payments, deliveries or acquisitions by or on behalf of Counterparty leading thereto had not occurred, (y) no adjustments to the Conversion Rate have occurred pursuant to any Excluded Provision and (z) the corresponding Convertible Notes remain outstanding; and
  - (E) the Transaction shall remain in full force and effect, except that, as of the Conversion Date for such Early Conversion, the Number of Options shall be reduced by the Affected Number of Options.
- (ii) Notwithstanding anything to the contrary in this Confirmation if an event of default with respect to Counterparty occurs under the terms of the Convertible Notes as set forth in Section 6.01 of the Indenture and such event of default results in the Convertible Notes being accelerated and declared due and payable, then such event of default shall constitute an Additional Termination Event applicable to the Transaction and, with respect to such Additional Termination Event, (A) Counterparty shall be deemed to be the sole Affected Party, (B) the Transaction shall be the sole Affected Transaction and (C) Dealer shall be the party entitled to designate an Early Termination Date pursuant to Section 6(b) of the Agreement (which Early Termination Date shall be on or as promptly as reasonably practicable after Dealer becomes aware of the occurrence of such acceleration).
  - (iii) Notwithstanding anything to the contrary in this Confirmation, the occurrence of an Amendment Event shall constitute an Additional Termination Event applicable to the Transaction and, with respect to such Additional Termination Event, (A) Counterparty shall be deemed to be the sole Affected Party, (B) the Transaction shall be the sole Affected Transaction and (C) Dealer shall be the party entitled to designate an Early Termination Date pursuant to Section 6(b) of the Agreement. “**Amendment Event**” means that Counterparty amends, modifies, supplements, waives or obtains a waiver in respect of any term of the Indenture or the Convertible Notes governing the principal amount, coupon, maturity, repurchase obligation of Counterparty, tax redemption right of Counterparty, any term relating to conversion of the Convertible Notes (including changes to the conversion rate, conversion rate adjustment provisions, conversion settlement dates or conversion conditions), or any term that would require consent of the holders of not less than 100% of the principal amount of the Convertible Notes to amend (other than, in each case, any amendment or supplement (x) pursuant to Section 10.01(i) of the Indenture that, as determined by the Calculation Agent, conforms the Indenture to the description of Convertible Notes in the Offering Memorandum or (y) pursuant to Section 14.07 of the Indenture), in each case, without the consent of Dealer.

- (iv) Promptly (but in any event within five Scheduled Trading Days) following any Repurchase Event (as defined below), Counterparty shall notify Dealer of such Repurchase Event and the aggregate principal amount of Convertible Notes subject to such Repurchase Event (any such notice, a “**Convertible Notes Repurchase Notice**”); *provided* that any such Convertible Notes Repurchase Notice shall contain a repetition by Counterparty of the representation set forth in Section 8(f) as of the date of such Convertible Notes Repurchase Notice and an acknowledgment by Counterparty of its responsibilities under applicable securities laws, and in particular Section 9 and Section 10(b) of the Exchange Act and the rules and regulations thereunder, in respect of such Repurchase Event and the delivery of such Convertible Notes Repurchase Notice. Any Convertible Notes Repurchase Notice delivered to Dealer pursuant to the Base Call Option Confirmation shall be deemed to be a Convertible Notes Repurchase Notice pursuant to this Confirmation and the terms of such Convertible Notes Repurchase Notice shall apply, *mutatis mutandis*, to this Confirmation. The receipt by Dealer from Counterparty of any Convertible Notes Repurchase Notice shall constitute an Additional Termination Event as provided in this Section 9(i)(iv). Upon receipt of any such Convertible Notes Repurchase Notice, Dealer shall designate an Exchange Business Day following receipt of such Convertible Notes Repurchase Notice (which Exchange Business Day shall be on or as promptly as reasonably practicable following the settlement date for such Repurchase Event) as an Early Termination Date with respect to the portion of the Transaction corresponding to a number of Options (the “**Repurchase Options**”) equal to the lesser of (A) (x) the aggregate principal amount of such Convertible Notes specified in such Convertible Notes Repurchase Notice, *divided by* USD 1,000 *minus* (y) the “Repurchase Options” (as defined in the Base Call Option Confirmation), if any, that relate to such Convertible Notes and (B) the Number of Options as of the date Dealer designates such Early Termination Date and, as of such date, the Number of Options shall be reduced by the number of Repurchase Options. Any payment hereunder with respect to such termination (the “**Repurchase Unwind Payment**”) shall be calculated pursuant to Section 6 of the Agreement as if (1) an Early Termination Date had been designated in respect of a Transaction having terms identical to the Transaction and a Number of Options equal to the number of Repurchase Options, (2) Counterparty were the sole Affected Party with respect to such Additional Termination Event and (3) the terminated portion of the Transaction were the sole Affected Transaction (and, for the avoidance of doubt, in determining the amount payable in respect of such Affected Transaction pursuant to Section 6 of the Agreement, Dealer shall assume that (x) the relevant Repurchase Event and any conversions, adjustments, agreements, payments, deliveries or acquisitions by or on behalf of Counterparty leading thereto had not occurred, (y) no adjustments to the Conversion Rate have occurred pursuant to any Excluded Provisions and (z) the corresponding Convertible Notes remain outstanding). “**Repurchase Event**” means that (i) any Convertible Notes are repurchased or redeemed (whether pursuant to Section 15.01 of the Indenture, Section 15.02 of the Indenture, Section 16.01 of the Indenture or otherwise) by Counterparty or any of its subsidiaries, (ii) any Convertible Notes are delivered to Counterparty in exchange for delivery of any property or assets of Counterparty or any of its subsidiaries (howsoever described), including for the avoidance of doubt shares or American depository shares of Issuer and/or cash, (iii) any principal of any of the Convertible Notes is repaid prior to the final maturity date of the Convertible Notes (other than upon acceleration of the Convertible Notes described in Section 9(i)(ii)), or (iv) any Convertible Notes are exchanged by or for the benefit of the holders thereof for any other securities of Counterparty or any of its affiliates (or any other property, or any combination thereof) pursuant to any exchange offer or similar transaction; *provided* that any conversion of Convertible Notes pursuant to the terms of the Indenture shall not constitute a Repurchase Event. Counterparty acknowledges and agrees that if an Additional Termination Event has occurred under this Section 9(i)(iv) that any related Convertible Notes subject to a Repurchase Event will be promptly cancelled under the applicable provisions of the Indenture and, in any event, will be deemed to be cancelled and disregarded and no longer outstanding for all purposes hereunder.

- (j) Amendments to Equity Definitions.
- (i) Solely in respect of adjustments to the Cap Price pursuant to Section 9(y), Section 11.2(e)(vii) of the Equity Definitions is hereby amended by deleting the words “that may have a diluting or concentrative effect on the theoretical value of the relevant Shares” and replacing them with the words “that is the result of a corporate event involving the Underlying Shares Issuer or its securities that has a material economic effect on the Shares and/or the Underlying Shares or options on the Shares and/or the Underlying Shares; *provided* that such event is not based on (a) an observable market, other than the market for the Underlying Shares Issuer’s own stock or (b) an observable index, other than an index calculated and measured solely by reference to the Underlying Shares Issuer’s own operations.”
- (ii) Section 12.6(a)(ii) of the Equity Definitions is hereby amended by (1) inserting “(1)” immediately following the word “means” in the first line thereof and (2) inserting immediately prior to the semi-colon at the end of subsection (B) thereof the following words: “or (2) the occurrence of any of the events specified in Section 5(a)(vii)(1) through (9) of the ISDA Master Agreement with respect to that Issuer” *provided* that the period for dismissal, discharge, stay or restraint therein shall be increased from “within 15 days” to “within 30 days.”
- (iii) Section 12.9(b)(i) of the Equity Definitions is hereby amended by (1) replacing “either party may elect” with “Dealer may elect” and (2) replacing “notice to the other party” with “notice to Counterparty” in the first sentence of such section.
- (k) Setoff. Neither party shall have the right to set off any obligation that it may have to the other party under the Transaction against any obligation such other party may have to it, whether arising under the Agreement, this Confirmation or any other agreement between the parties hereto, by operation of law or otherwise and each party hereby waives any such right to setoff.
- (l) Adjustments. For the avoidance of doubt, whenever the Calculation Agent is called upon to make an adjustment pursuant to the terms of this Confirmation or the Equity Definitions to take into account the effect of an event (other than on adjustments made by reference to the Indenture), the Calculation Agent shall make such adjustment in a commercially reasonable manner by reference to the effect of such event on Dealer, assuming that Dealer maintains a commercially reasonable hedge position
- (m) Alternative Calculations and Payment on Early Termination and on Certain Extraordinary Events. If (a) an Early Termination Date (whether as a result of an Event of Default or a Termination Event) occurs or is designated with respect to the Transaction or (b) the Transaction is cancelled or terminated upon the occurrence of an Extraordinary Event, and if Dealer would owe any amount to Counterparty pursuant to Section 6(d)(ii) of the Agreement or any Cancellation Amount pursuant to Article 12 of the Equity Definitions (any such amount, a “**Payment Obligation**”), Counterparty may request Dealer to satisfy the Payment Obligation by the Share Termination Alternative (as defined below) (except as a result of (i) a Nationalization, Insolvency or Merger Event in which the consideration to be paid to holders of Shares and/or Underlying Shares, as applicable, consists solely of cash, (ii) an Announcement Event, Merger Event or Tender Offer that is within Counterparty’s control, or (iii) an Event of Default in which Counterparty is the Defaulting Party or a Termination Event in which Counterparty is the Affected Party other than an Event of Default of the type described in Section 5(a)(iii), (v), (vi), (vii) or (viii) of the Agreement or a Termination Event of the type described in Section 5(b) of the Agreement, in each case that resulted from an event or events outside Counterparty’s control), as long as Counterparty remakes the representation set forth in Section 8(f) as of the date of such election, and Counterparty shall give irrevocable telephonic notice to Dealer, confirmed in writing within one Scheduled Trading Day, no later than 12:00 p.m. (New York City time) on the date of the Announcement Event, Merger Date, Tender Offer Date, Announcement Date (in the case of a Nationalization, Insolvency or Delisting), Early Termination Date or date of cancellation, as applicable; *provided* that if Counterparty does not validly request Dealer to satisfy the Payment Obligation by the Share Termination Alternative, Dealer shall have the right, in its sole discretion, to satisfy its Payment Obligation by the Share Termination Alternative, notwithstanding Counterparty’s failure to elect or election to the contrary. If such election is not made, then the provisions of Section 12.7 or Section 12.9 of the Equity Definitions, or the provisions of Section 6(d)(ii) and Section 6(e) of the Agreement, as the case may be, shall apply.

Share Termination Alternative:	If applicable, Dealer shall deliver to Counterparty the Share Termination Delivery Property on, or as promptly as commercially reasonably practicable thereafter, the date when the relevant Payment Obligation would otherwise be due pursuant to Section 12.7 or 12.9 of the Equity Definitions or Section 6(d) (ii) and 6(e) of the Agreement, as applicable, in satisfaction of such Payment Obligation in the manner reasonably requested by Counterparty free of payment.
Share Termination Delivery Property:	A number of Share Termination Delivery Units, as calculated by the Calculation Agent, equal to the Payment Obligation divided by the Share Termination Unit Price. The Calculation Agent shall adjust the Share Termination Delivery Property by replacing any fractional portion of a security therein with an amount of cash equal to the value of such fractional security based on the values used to calculate the Share Termination Unit Price.
Share Termination Unit Price:	The value of property contained in one Share Termination Delivery Unit, as determined by the Calculation Agent in its discretion by commercially reasonable means and notified by the Calculation Agent to Dealer at the time of notification of the Payment Obligation.
Share Termination Delivery Unit:	One Share or, if the Shares or Underlying Shares, as applicable, have changed into cash or any other property or the right to receive cash or any other property as the result of a Nationalization, Insolvency or Merger Event (any such cash or other property, the “ <b>Exchange Property</b> ”), a unit consisting of the type and amount of such Exchange Property received by a holder of one Share or Underlying Share, as applicable (without consideration of any requirement to pay cash or other consideration in lieu of fractional amounts of any securities) in such Nationalization, Insolvency or Merger Event, as determined by the Calculation Agent. If such Nationalization, Insolvency, or Merger Event involves a choice of Exchange Property to be received by holders, such holders shall be deemed to have elected to receive the maximum possible amount of cash.

Failure to Deliver:

Applicable

Other applicable provisions:

If Share Termination Alternative is applicable, the provisions of Sections 9.8, 9.9 and 9.11 (as modified above) of the Equity Definitions and the provisions set forth opposite the caption "Representation and Agreement" in Section 2 will be applicable, except that all references in such provisions to "Physically-settled" shall be read as references to "Share Termination Settled" and all references to "Shares" shall be read as references to "Share Termination Delivery Units". "Share Termination Settled" in relation to the Transaction means that Share Termination Alternative is applicable to the Transaction.

- (n) Waiver of Jury Trial. Each party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any suit, action or proceeding relating to the Transaction. Each party (i) certifies that no representative, agent or attorney of either party has represented, expressly or otherwise, that such other party would not, in the event of such a suit, action or proceeding, seek to enforce the foregoing waiver and (ii) acknowledges that it and the other party have been induced to enter into the Transaction, as applicable, by, among other things, the mutual waivers and certifications provided herein.
- (o) Registration. Counterparty hereby agrees that if, in the good faith reasonable judgment of Dealer, based on the advice of counsel, the Shares and/or Underlying Shares ("**Hedge Shares**") acquired by Dealer for the purpose of commercially reasonably hedging its obligations pursuant to the Transaction cannot be sold in the public market by Dealer without registration under the Securities Act, Counterparty shall, at its election, either (i) in order to allow Dealer to sell the Hedge Shares in a registered offering, make available to Dealer an effective registration statement under the Securities Act and enter into an agreement, in form and substance reasonably satisfactory to Dealer, substantially in the form of an underwriting agreement customary for a registered secondary offering of a similar size in respect of a similar issuer; *provided, however*, that if Dealer, in its sole reasonable discretion, is not satisfied with access to due diligence materials, the results of its due diligence investigation, or the procedures and documentation for the registered offering referred to above, then clause (ii) or clause (iii) of this paragraph shall apply at the election of Counterparty, (ii) in order to allow Dealer to sell the Hedge Shares in a private placement, use commercially reasonable efforts to enter into a private placement agreement substantially similar to private placement purchase agreements customary for private placements of equity securities of a similar size in respect of a similar issuer, in form and substance satisfactory to Dealer (in which case, the Calculation Agent shall make any adjustments to the terms of the Transaction that are necessary, in its commercially reasonable judgment, to compensate Dealer for any commercially reasonable discount from the public market price of the Shares and/or Underlying Shares incurred on the sale of Hedge Shares in a private placement), or (iii) purchase the Hedge Shares from Dealer at the then-current market price on such Exchange Business Days, and in the amounts and at such time(s), reasonably requested by Dealer.
- (p) Tax Disclosure. Effective from the date of commencement of discussions concerning the Transaction, Counterparty and each of its employees, representatives, or other agents may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the Transaction and all materials of any kind (including opinions or other tax analyses) that are provided to Counterparty relating to such tax treatment and tax structure.

- (q) Right to Extend. Dealer may postpone or add, in whole or in part, any Valid Day or Valid Days during the Settlement Averaging Period or any other date of valuation, payment or delivery by Dealer, with respect to some or all of the Options hereunder, if Dealer reasonably determines, in the case of clause (i) below, in its commercially reasonable judgment or, in the case of clause (ii) below, based on advice of counsel, that such action is reasonably necessary or appropriate (i) to preserve Dealer's commercially reasonable hedging or hedge unwind activity hereunder in light of existing liquidity conditions in the relevant market or (ii) to enable Dealer to effect transactions with respect to Shares and/or Underlying Shares in connection with its commercially reasonable hedging, hedge unwind or settlement activity hereunder in a manner that would, if Dealer were Counterparty or an affiliated purchaser of Counterparty, be in compliance with applicable legal, regulatory or self-regulatory requirements, or with related policies and procedures adopted by Dealer in good faith so long as such policies and procedures are generally applicable in similar situations and applied in a non-discriminatory manner); *provided* that no such Valid Day or other date of valuation, payment or delivery may be postponed or added more than 40 Valid Days after the original Valid Day or other date of valuation, payment or delivery, as the case may be.
- (r) Status of Claims in Bankruptcy. Dealer acknowledges and agrees that this Confirmation is not intended to convey to Dealer rights against Counterparty with respect to the Transaction that are senior to the claims of common or ordinary shareholders of Counterparty in any United States or Cayman Islands 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 the Transaction; *provided, further* that nothing herein shall limit or shall be deemed to limit Dealer's rights in respect of any transactions other than the Transaction.
- (s) Securities Contract; Swap Agreement. The parties hereto intend for (i) the Transaction to be a "securities contract" and a "swap agreement" as defined in the Bankruptcy Code (Title 11 of the United States Code) (the "**Bankruptcy Code**"), and the parties hereto to be entitled to the protections afforded by, among other Sections, Sections 362(b)(6), 362(b)(17), 546(e), 546(g), 555 and 560 of the Bankruptcy Code, (ii) a party's right to liquidate the Transaction and to exercise any other remedies upon the occurrence of any Event of Default under the Agreement with respect to the other party to constitute a "contractual right" as described in the Bankruptcy Code, and (iii) each payment and delivery of cash, securities or other property hereunder to constitute a "margin payment" or "settlement payment" and a "transfer" as defined in the Bankruptcy Code.
- (t) Notice of Certain Other Events. Counterparty covenants and agrees that:
- (i) promptly following the public announcement of the results of any election by the holders of Shares and/or Underlying Shares, as applicable, with respect to the consideration due upon consummation of any Merger Event, Counterparty shall give Dealer written notice of (x) the weighted average of the types and amounts of consideration that holders of Shares and/or Underlying Shares, as applicable, have elected to receive upon consummation of such Merger Event or (y) if no holders of Shares and/or Underlying Shares, as applicable, affirmatively make such election, the types and amounts of consideration actually received by holders of Shares and/or Underlying Shares, as applicable, (the date of such notification, the "**Consideration Notification Date**"); *provided* that in no event shall the Consideration Notification Date be later than the date on which such Merger Event is consummated;
  - (ii) (A) Counterparty shall give Dealer commercially reasonable advance (but in no event less than one Exchange Business Day) written notice of the section or sections of the Indenture and, if applicable, the formula therein, pursuant to which any adjustment will be made to the Convertible Notes in connection with any Potential Adjustment Event, Merger Event or Tender Offer and (B) promptly following any such adjustment, Counterparty shall give Dealer written notice of the details of such adjustment; and
  - (iii) Counterparty will provide a written notice to Dealer immediately upon becoming aware that Counterparty is not or will no longer be a "foreign private issuer," as such term is defined in Rule 3b-4 under the Exchange Act.



- (u) 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 Confirmation or the Agreement, as applicable, arising from a termination event, force majeure, illegality, increased costs, regulatory change or similar event under this Confirmation, the Equity Definitions incorporated herein, or the Agreement (including, but not limited to, rights arising from Change in Law, Hedging Disruption, an Excess Ownership Position, or Illegality (as defined in the Agreement)).
- (v) Agreements and Acknowledgements Regarding Hedging. Counterparty understands, acknowledges and agrees that: (A) at any time on and prior to the Expiration Date, Dealer and its affiliates may buy or sell Shares, Underlying Shares or other securities or buy or sell options or futures contracts or enter into swaps or other derivative securities in order to adjust its hedge position with respect to the Transaction; (B) Dealer and its affiliates also may be active in the market for Shares and/or Underlying Shares other than in connection with hedging activities in relation to the Transaction; (C) Dealer shall make its own determination as to whether, when or in what manner any hedging or market activities in securities of Issuer and/or Underlying Shares Issuer shall be conducted and shall do so in a manner that it deems appropriate to hedge its price and market risk with respect to the Relevant Prices; and (D) any market activities of Dealer and its affiliates with respect to Shares and/or Underlying Shares may affect the market price and volatility of Shares and/or Underlying Shares, as well as the Relevant Prices, each in a manner that may be adverse to Counterparty.
- (w) Early Unwind. In the event the sale of the “Option Securities” (as defined in the Purchase Agreement) is not consummated with the Initial Purchasers for any reason, or Counterparty fails to deliver to Dealer opinions of counsel as required pursuant to Section 9(a), in each case by 5:00 p.m. (New York City time) on the Premium Payment Date, or such later date as agreed upon by the parties (the Premium Payment Date or such later date the “**Early Unwind Date**”), the Transaction shall automatically terminate (the “**Early Unwind**”), on the Early Unwind Date and (i) the Transaction and all of the respective rights and obligations of Dealer and Counterparty under the Transaction shall be cancelled and terminated and (ii) each party shall be released and discharged by the other party from and agrees not to make any claim against the other party with respect to any obligations or liabilities of the other party arising out of and to be performed in connection with the Transaction either prior to or after the Early Unwind Date. Each of Dealer and Counterparty represents and acknowledges to the other that, upon an Early Unwind, all obligations with respect to the Transaction shall be deemed fully and finally discharged.
- (x) Payment by Counterparty. In the event that, following payment of the Premium, (i) an Early Termination Date occurs or is designated with respect to the Transaction as a result of a Termination Event or an Event of Default (other than an Event of Default arising under Section 5(a)(ii) or 5(a)(iv) of the Agreement) and, as a result, Counterparty owes to Dealer an amount calculated under Section 6(e) of the Agreement, or (ii) Counterparty owes to Dealer, pursuant to Section 12.7 or Section 12.9 of the Equity Definitions, an amount calculated under Section 12.8 of the Equity Definitions, such amount shall be deemed to be zero.
- (y) Other Adjustments Pursuant to the Equity Definitions. Notwithstanding anything to the contrary in this Confirmation, solely for the purpose of adjusting the Cap Price, the terms “Potential Adjustment Event,” “Merger Event,” and “Tender Offer” shall each have the meanings assigned to such term in the Equity Definitions (as amended by Section 9(j)(i) or, if applicable, by the definition of “Announcement Event”), and upon the occurrence of a Merger Date, the occurrence of a Tender Offer Date, or declaration by Counterparty of the terms of any Potential Adjustment Event, respectively, as such terms are defined in the Equity Definitions, the Calculation Agent may, in its sole discretion, adjust the Cap Price to preserve the fair value of the Options; *provided* that in no event shall the Cap Price be less than the Strike Price; *provided further* that any adjustment to the Cap Price made pursuant to this Section 9(y) shall be made without duplication of any other adjustment hereunder (including, for the avoidance of doubt, adjustment made pursuant to the provisions opposite the captions “Method of Adjustment,” “Consequences of Merger Events/Tender Offers” and “Consequence of Announcement Events” in Section 3 above). For the avoidance of doubt, for purposes of this Section 9(y), Section 12.1(d) of the Equity Definitions is hereby amended by replacing “10%” with “20%” in the third line thereof.

- (z) Service of Process. Counterparty irrevocably appoints Law Debenture Corporate Services Inc. as its authorized agent upon which process may be served in any suit, action or proceeding relating to the Transaction, and agrees that service of process in any manner permitted by applicable law upon such agent shall be deemed in every respect effective service of process in any manner permitted by applicable law upon Counterparty in any such suit, action or proceeding. Counterparty further agrees to take any and all action as may be necessary to maintain such designation and appointment of such agent in full force and effect for a period of five and a half years from the date of this Confirmation. If for any reason such agent shall cease to be such agent for service of process, Counterparty shall forthwith appoint a new agent of recognized standing for service of process in the State of New York and deliver to Dealer a copy of the new agent's acceptance of that appointment within 10 days. Nothing herein shall affect the right of Dealer to serve process in any other manner permitted by law or to commence legal proceedings or otherwise proceed against Counterparty in any other court of competent jurisdiction.
- (aa) Taxes, Foreign Account Tax Compliance Act and HIRE Act. Counterparty is classified as a corporation for the U.S. federal income tax purposes. No income received or to be received under the Agreement will be effectively connected with the conduct of a trade or business by Counterparty in the United States. Counterparty is a "non-U.S. branch of a foreign person" as that term is used in Section 1.1441-4(a)(3) (ii) of the United States Treasury Regulations (the "**Regulations**"), and it is a "foreign person" as that term is used in Section 1.6041-4(a)(4) of the Regulations. The term "Indemnifiable Tax" as defined in Section 14 of the Agreement shall not include any U.S. federal withholding tax imposed or collected pursuant to Sections 1471 through 1474 of the U.S. Internal Revenue Code of 1986, as amended (the "**Code**"), any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b) of the Code, or any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code (a "**FATCA Withholding Tax**"). For the avoidance of doubt, a FATCA Withholding Tax is a Tax the deduction or withholding of which is required by applicable law for the purposes of Section 2(d) of the Agreement. The parties agree that the definitions and provisions contained in the ISDA 2015 Section 871(m) Protocol, as published by the International Swaps and Derivatives Association, Inc. and as may be amended, supplemented, replaced or superseded from time to time (the "**871(m) Protocol**") shall apply to the Agreement as if the parties had adhered to the 871(m) Protocol as of the Effective Date. If there is any inconsistency between this provision and a provision in any other agreement executed between the parties, this provision shall prevail unless such other agreement expressly overrides the provisions of the 871(m) Protocol. Each of Dealer and Counterparty shall provide to the other party tax forms and documents required to be delivered pursuant to Sections 1471(b) or Section 1472(b)(1) of the Code promptly upon request by the other party and any other tax forms and documents they are legally able to provide that are reasonably requested by the other party.
- (bb) U.S. Tax Forms. Without limiting the generality of the foregoing, Counterparty will provide a US Tax Form W-8BEN-E upon the execution of this Confirmation, promptly upon learning that any such tax form previously provided by it has become obsolete or incorrect and promptly upon reasonable demand by Dealer.

(cc) Additional Definitions and Amendments to Equity Definitions.

(i) For the purposes of this Confirmation the following definitions will apply:

**“Depositary”** means, in relation to the Shares, Deutsche Bank Trust Company Americas, or any successor thereto from time to time.

**“Deposit Agreement”** means, (i) that certain Deposit Agreement, dated as of September 11, 2018, by and among Underlying Shares Issuer, Depositary and the holders and beneficial owners of the Shares and (ii) the other agreements or other instruments constituting the Shares, as from time to time amended or supplemented in accordance with their terms.

**“DS Amendment”** means, where specified as applicable to a definition or provision, that the following changes shall be made to such definition or provision: (a) all references to “Shares” shall be deleted and replaced with the words “Shares and/or the Underlying Shares, as appropriate”; and (b) all references to “Issuer” shall be deleted and replaced with the words “Issuer or Underlying Shares Issuer, as appropriate”.

**“Replacement DSs”** means depositary shares or receipts, other than the Shares, over the same Underlying Shares.

(ii) The following amendments shall be made to the Equity Definitions:

(A) The definition of Potential Adjustment Event in Section 11.2(e) of the Equity Definitions shall be amended as follows:

(i) the DS Amendment shall be applicable, provided that an event under Section 11.2(e)(i) to (vii) of the Equity Definitions in respect of the Underlying Shares shall not constitute a Potential Adjustment Event unless, in the commercially reasonable opinion of the Calculation Agent, such event has a material effect on the theoretical value of the Shares; and

(ii) (A) ‘or’ shall be deleted where it appears at the end of subsection (vi);

(B) ‘.’ shall be deleted where it appears at the end of subsection (vii) and replaced with ‘;’;

(C) the following shall be inserted as subsection (viii): “(viii) the making of any amendment or supplement to the terms of the Deposit Agreement and/or the Shares; or”; and

(D) the following shall be inserted as provision (ix): “(ix) any other event as a result of which the Shares represent fewer or more Underlying Shares than, and/or any property or assets in addition to, or as a whole or partial replacement of, in each case, the number of Underlying Shares represented by the Shares prior to such event.”

(B) In making any adjustment following any Potential Adjustment Event, the Calculation Agent shall have reference to (to the extent necessary or appropriate among other factors) any adjustment made by the Depositary under the Deposit Agreement, any fees and/or expenses of the Depositary and any withholding or deduction of taxes. If the Calculation Agent determines that no adjustment that it could make will produce a commercially reasonable result, it shall notify the parties that the relevant consequence shall be the termination of the relevant Transaction, in which case “Cancellation and Payment (Calculation Agent Determination)” will be deemed to apply and any payment to be made by one party to the other shall be calculated in accordance with Section 12.7 of the Equity Definitions (as amended by this Confirmation).

- (C) If a Potential Adjustment Event occurs under Section 11.2(e)(viii) of the Equity Definitions (as amended by this Confirmation), then the following further amendments shall be deemed to be made to Section 11.2(c) of the Equity Definitions in respect of such Potential Adjustment Event:
- (i) the words “the Calculation Agent will determine whether such Potential Adjustment Event has a material effect on the theoretical value of the relevant Shares, options on the Shares or the Transaction” shall be deleted and replaced with the words “the Calculation Agent will determine whether such Potential Adjustment Event has a material economic effect on such Transaction”; and
  - (ii) the words “as the Calculation Agent determines appropriate to account for that material effect” shall be deleted and replaced with the words “as the Calculation Agent determines appropriate to account for such economic effect on such Transaction”.
- (D) The definitions of “Merger Event”, “Tender Offer”, “Announcement Date”, “Share-for-Share”, “Share-for-Other” and “Share-for-Combined” in Section 12.1 of the Equity Definitions shall be amended in accordance with the DS Amendment.
- (E) In making any adjustment in respect of a Merger Event, Tender Offer or Announcement Event in relation to the Underlying Shares, the Calculation Agent shall in determining any adjustment pursuant to Modified Calculation Adjustment, have reference to (amongst other factors) any adjustment made by the Depository under the Deposit Agreement, any fees and/or expenses of the Depository and any withholding or deduction of taxes, as determined by the Calculation Agent in its commercially reasonable discretion.
- (F) The definitions of Nationalization and Insolvency in Section 12.6 of the Equity Definitions shall be amended in accordance with the DS Amendment.
- (G) The consequence of a Nationalization or Insolvency in respect of the Depository shall be Cancellation and Payment.
- (H) If a Delisting of the Shares occurs or the Depository announces that the Deposit Agreement is (or will be) terminated, then:
- (i) Cancellation and Payment will apply as provided in this Confirmation; and
  - (ii) where Cancellation and Payment applies under (H)(i) above in respect of a termination of the Deposit Agreement, the Equity Definitions shall be interpreted as follows: (i) such termination shall be deemed to be an “Extraordinary Event”; (ii) Cancellation and Payment shall apply as defined in Section 12.6(c)(ii) of the Equity Definitions; and (iii) the definition of “Announcement Date” in Section 12.1(l) of the Equity Definitions shall include the following additional clause (vii) at the end of the first sentence thereof: “(vii) in the case of a termination of the Deposit Agreement, the date of the first public announcement by the Depository that the Deposit Agreement is (or will be) terminated”.
- (I) If Cancellation and Payment applies under Section 9(cc)(ii)(G) or Section 9(cc)(ii)(H) of this Confirmation in respect of a Transaction, then the Determining Party shall be Dealer.
- (J) The definition of “Insolvency Filing” in Section 12.9(a)(iv) of the Equity Definitions shall be amended in accordance with the DS Amendment.
- (K) For the avoidance of doubt, where a provision is amended by this Section 9(cc) in accordance with the DS Amendment, if the event described in such provision occurs in respect of the Underlying Shares or Underlying Shares Issuer, then the consequence of such event shall be interpreted consistently with the DS Amendment and such event.

- (dd) *Incorporation of ISDA 2015 Section 871(m) Protocol*. The parties to this Confirmation agree that the amendments set out in the Attachment to the ISDA 2015 Section 871(m) Protocol published by ISDA on November 2, 2015 and available on the ISDA website ([www.isda.org](http://www.isda.org)) shall apply to this Confirmation. The parties further agree that this Confirmation will be deemed to be a Covered Master Agreement and that the Implementation Date shall be the effective date of this Confirmation as amended by the parties for the purposes of such Protocol amendments regardless of the definitions of such terms in the Protocol.
- (ee) *Incorporation of ISDA 2012 FATCA Protocol*. The parties to this Confirmation agree that the amendments set out in the Attachment to the ISDA 2012 FATCA Protocol published by ISDA on August 15, 2012 and available on the ISDA website ([www.isda.org](http://www.isda.org)) shall apply to this Confirmation. The parties further agree that this Confirmation will be deemed to be a Covered Master Agreement and that the Implementation Date shall be the effective date of this Confirmation as amended by the parties for the purposes of such Protocol amendments regardless of the definitions of such terms in the Protocol.

Please confirm that the foregoing correctly sets forth the terms of our agreement by executing this Confirmation and returning it to Dealer.

Very truly yours,

**CREDIT SUISSE CAPITAL LLC**

By: /s/ Authorized Signatory

Authorized Signatory

Name:

By: /s/ Authorized Signatory

Authorized Signatory

Name:

**CREDIT SUISSE SECURITIES (USA) LLC, as agent**

By: /s/ Authorized Signatory

Authorized Signatory

Name:

Accepted and confirmed  
as of the Trade Date:

**NIO Inc.**

By: /s/ Authorized Signatory  
Authorized Signatory  
Name:

**Goldman Sachs International | Peterborough Court | 133 Fleet Street | London EC4A 2BB | Tel: 020-7774-1000 | Telex: 887902 | Cable: GOLDSACHS LONDON | Registered in England No. 2263951 | Registered Office as Above | Authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority**

February 13, 2019

To: **NIO Inc.**Building 20, No. 56 AnTuo Road, Jiading District  
Shanghai, 201804

People's Republic of China

Attention: Louis T. Hsieh, Chief Financial Officer

Telephone No.: +86 (21) 6908 3306

Facsimile No.: +86 (21) 3913 0192

**From:** Goldman Sachs International**A/C:** [\_\_\_\_\_]

Re: Additional Call Option Transaction

The purpose of this letter agreement (this "**Confirmation**") is to confirm the terms and conditions of the call option transaction entered into between Goldman Sachs International ("**Dealer**") and NIO Inc. ("**Counterparty**") as of the Trade Date specified below (the "**Transaction**"). This letter agreement constitutes a "Confirmation" as referred to in the ISDA Master Agreement specified below. Each party further agrees that this Confirmation together with the Agreement evidence a complete binding agreement between Counterparty and Dealer as to the subject matter and terms of the Transaction to which this Confirmation relates, and shall supersede all prior or contemporaneous written or oral communications with respect thereto.

The definitions and provisions contained in the 2002 ISDA Equity Derivatives Definitions (the "**Equity Definitions**"), as published by the International Swaps and Derivatives Association, Inc. ("**ISDA**") are incorporated into this Confirmation. In the event of any inconsistency between the Equity Definitions and this Confirmation, this Confirmation shall govern. Certain defined terms used herein are based on terms that are defined in the Offering Memorandum dated January 30, 2019 (the "**Offering Memorandum**") relating to the 4.50% Convertible Senior Notes due 2024 (as originally issued by Counterparty, the "**Convertible Notes**" and each USD 1,000 principal amount of Convertible Notes, a "**Convertible Note**") issued by Counterparty in an aggregate initial principal amount of USD 650,000,000 (as increased by an aggregate principal amount of USD 51,773,000 pursuant to the exercise by the Initial Purchasers (as defined herein) of their option to purchase additional Convertible Notes pursuant to the Purchase Agreement (as defined herein)) pursuant to an Indenture dated February 4, 2019 between Counterparty and The Bank of New York Mellon, as trustee (the "**Indenture**"). In the event of any inconsistency between the terms defined in the Offering Memorandum, the Indenture and this Confirmation, this Confirmation shall govern. The parties acknowledge that this Confirmation is entered into on the date hereof with the understanding that (i) definitions set forth in the Indenture which are also defined herein by reference to the Indenture and (ii) sections of the Indenture that are referred to herein will conform to the descriptions thereof in the Offering Memorandum. If any such definitions in the Indenture or any such sections of the Indenture differ from the descriptions thereof in the Offering Memorandum, the descriptions thereof in the Offering Memorandum will govern for purposes of this Confirmation. The parties further acknowledge that the Indenture section numbers used herein are based on the Indenture as executed. Subject to the foregoing, references to the Indenture herein are references to the Indenture as in effect on the date of its execution, and if the Indenture is amended or supplemented following such date (other than any amendment or supplement (x) pursuant to Section 10.01(i) of the Indenture that, as determined by the Calculation Agent, conforms the Indenture to the description of Convertible Notes in the Offering Memorandum, and (y) pursuant to Section 14.07(a) of the Indenture, subject, in the case of this clause (y), to the second paragraph under "Method of Adjustment" in Section 3), any such amendment or supplement will be disregarded for purposes of this Confirmation (other than as provided in Section 9(i)(iii) below) unless the parties agree otherwise in writing. For the avoidance of doubt, adjustments pursuant to any Dilution Adjustment Provision shall not constitute amendment, modification, supplement, or waiver in respect of any term of the Indenture or the Convertible Notes for any purpose under this paragraph and under Section 9(i)(iii).

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

1. This Confirmation evidences a complete and binding agreement between Dealer and Counterparty as to the terms of the Transaction to which this Confirmation relates. This Confirmation shall supplement, form a part of, and be subject to an agreement in the form of the 2002 ISDA Master Agreement (the "**Agreement**") as if Dealer and Counterparty had executed an agreement in such form (but without any Schedule except for (i) the election of the laws of the State of New York as the governing law (without reference to choice of law doctrine) and (ii) the agreement of the parties hereto that, following the payment of the Premium and the delivery to Dealer of the opinions of counsel as required pursuant to Section 9(a), the condition precedent in Section 2(a)(iii) of the Agreement shall not apply to a payment or delivery owing by Dealer to Counterparty (it being understood that such condition precedent will continue to apply and this clause (ii) will have no effect with respect to a Potential Event of Default, Event of Default and/or Early Termination Date arising under, or with respect to, Section 5(a)(ii) or 5(a)(iv) of the Agreement)) on the Trade Date.

In the event of any inconsistency between provisions of the Agreement and this Confirmation, this Confirmation will prevail for the purpose of the Transaction to which this Confirmation relates. The parties hereby agree that no transaction other than the Transaction to which this Confirmation relates shall be governed by the Agreement. If there exists any ISDA Master Agreement between Dealer and Counterparty or any confirmation or other agreement between Dealer and Counterparty pursuant to which an ISDA Master Agreement is deemed to exist between Dealer and Counterparty, then notwithstanding anything to the contrary in such ISDA Master Agreement, such confirmation or agreement or any other agreement to which Dealer and Counterparty are parties, the Transaction shall not be considered a Transaction under, or otherwise governed by, such existing or deemed ISDA Master Agreement.

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

General Terms.

Trade Date:	February 13, 2019
Effective Date:	The Trade Date.
Option Style:	"Modified American", as described under "Procedures for Exercise" below
Option Type:	Call
Buyer:	Counterparty
Seller:	Dealer
Shares:	The American Depositary Shares of Counterparty issued or deemed issued under the Deposit Agreement (as defined below) (Symbol: "NIO"), each representing as of the date hereof one Underlying Share.
Underlying Shares:	The Class A ordinary shares of Counterparty, nominal value USD \$0.00025 per Underlying Share.
Number of Options:	51,773. For the avoidance of doubt, the Number of Options shall be reduced by any Options exercised by Counterparty. In no event will the Number of Options be less than zero.
Underlying Shares Issuer:	Counterparty

Applicable Percentage: 50%

Option Entitlement: A number equal to the product of the Applicable Percentage and 105.1359.

Strike Price: USD 9.5115

Cap Price: USD 14.9200

Premium: USD 3,023,543.20

Premium Payment Date: February 15, 2019

Exchange: The New York Stock Exchange

Related Exchange(s): All Exchanges

Excluded Provisions: Section 14.04(h) and Section 14.03 of the Indenture.

Procedures for Exercise.

Expiration Time: The Valuation Time

Expiration Date: February 1, 2024, subject to earlier exercise.

Multiple Exercise: Applicable, as described under “Automatic Exercise” below.

Automatic Exercise: Notwithstanding Section 3.4 of the Equity Definitions, all Options then outstanding as of 5:00 p.m. New York City time on the Expiration Date will be deemed to be automatically exercised; *provided* that, for the avoidance of doubt, no such automatic exercise pursuant to this paragraph will occur if the Relevant Price for each Valid Day during the applicable Settlement Averaging Period is less than or equal to the Strike Price.

Notwithstanding the foregoing, in no event shall the number of Options that are exercised or deemed exercised hereunder exceed the Number of Options.

Valuation Time: At the close of trading of the regular trading session on the Exchange; *provided* that if the principal trading session is extended, the Calculation Agent shall determine the Valuation Time in its reasonable discretion.

Market Disruption Event: Section 6.3(a) of the Equity Definitions is hereby replaced in its entirety by the following:

“‘Market Disruption Event’ means, in respect of a Share, (i) a failure by the primary United States national or regional securities exchange or market on which the Shares are 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 Valid Day for the Shares 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 Shares or in any options contracts or futures contracts relating to the Shares.”

Settlement Terms.

Settlement Method Election:

Applicable; *provided* that (i) Section 7.1 of the Equity Definitions is hereby amended by deleting the word "Physical" in the sixth line thereof and replacing it with the words "Net Share"; and (ii) as of such notice delivery date, Counterparty shall be deemed to have made the following representations:

(A) Counterparty is not aware of any material non-public information with respect to Counterparty, the Underlying Shares Issuer (if other than Counterparty), the Underlying Shares or the Shares;

(B) Counterparty is electing Cash Settlement in good faith and not as part of a plan or scheme to evade compliance with the U.S. federal securities laws; Counterparty is not electing Cash Settlement to create actual or apparent trading activity in the Shares and/or Underlying Shares (or any security convertible into or exchangeable for the Shares and/or Underlying Shares) or to raise or depress or otherwise manipulate the price of the Shares and/or Underlying Shares (or any security convertible into or exchangeable for the Shares and/or Underlying Shares) or otherwise in violation of the Exchange Act; and Counterparty has not entered into or altered any hedging transaction relating to the Shares or the Underlying Shares corresponding to or offsetting the Transaction;

(C) such election and performance of its obligations under this Confirmation do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets; and

(D) any transaction that Dealer makes with respect to the Shares and/or the Underlying Shares during the period beginning at the time that Counterparty delivers such notice and ending at the close of business on the final day of the Settlement Averaging Period shall be made by Dealer at Dealer's sole discretion for Dealer's own account and Counterparty shall not have, and shall not attempt to exercise, any influence over how, when, whether or at what price Dealer effects such transactions, including, without limitation, the prices paid or received by Dealer per Share or Underlying Share pursuant to such transactions, or whether such transactions are made on any securities exchange or privately.

Default Settlement Method:	Net Share Settlement
Settlement Method Election Date:	The third Scheduled Trading Day immediately preceding the first Scheduled Valid Day of the Settlement Averaging Period.
Net Share Settlement:	Dealer will deliver to Counterparty, on the relevant Settlement Date, a number of Shares equal to the Net Shares in respect of any Option exercised or deemed exercised hereunder. In no event will the Net Shares be less than zero.
Net Shares:	<p>In respect of any Option exercised or deemed exercised, a number of Shares equal to the sum of the quotients, for each Valid Day during the Settlement Averaging Period for such Option, of (i) (A) the Daily Option Value for such Valid Day, <i>divided by</i> (B) the Relevant Price on such Valid Day, <i>divided by</i> (ii) the number of Valid Days in the Settlement Averaging Period.</p> <p>Dealer will pay cash in lieu of delivering any fractional Shares to be delivered with respect to any Net Shares valued at the Relevant Price for the last Valid Day of the Settlement Averaging Period.</p>
Cash Settlement:	If Cash Settlement is applicable to any Option exercised or deemed exercised hereunder, in lieu of Section 8.1 of the Equity Definitions, Dealer will pay to Counterparty, on the relevant Settlement Date for each such Option, an amount of cash (the “ <b>Cash Settlement Amount</b> ”) equal to the sum, for each Valid Day during the Settlement Averaging Period for such Option, of (i) the Daily Option Value for such Valid Day, <i>divided by</i> (ii) the number of Valid Days in the Settlement Averaging Period.
Daily Option Value:	For any Valid Day, an amount equal to (i) the Option Entitlement on such Valid Day, <i>multiplied by</i> (ii) (A) the lesser of the Relevant Price on such Valid Day and the Cap Price, <i>less</i> (B) the Strike Price on such Valid Day; <i>provided</i> that if the calculation contained in clause (ii) above results in a negative number, the Daily Option Value for such Valid Day shall be deemed to be zero. In no event will the Daily Option Value be less than zero.
Valid Day:	A day on which (i) there is no Market Disruption Event and (ii) trading in the Shares generally occurs on the Exchange or, if the Shares are not then listed on the Exchange, on the principal other United States national or regional securities exchange on which the Shares are then listed or, if the Shares are not then listed on a United States national or regional securities exchange, on the principal other market on which the Shares are then listed or admitted for trading. If the Shares are not so listed or admitted for trading, “Valid Day” means a Business Day.

Scheduled Valid Day:	A day that is scheduled to be a Valid Day on the principal United States national or regional securities exchange or market on which the Shares are listed or admitted for trading. If the Shares are not so listed or admitted for trading, "Scheduled Valid Day" means a Business Day.
Business Day:	Any day other than a Saturday, a Sunday or a day on which the Federal Reserve Bank of New York is authorized or required by law or executive order to close or be closed.
Relevant Price:	On any Valid Day, the per Share volume-weighted average price as displayed under the heading "Bloomberg VWAP" on Bloomberg page "NIO <equity> AQR" (or its equivalent successor if such page is not available) in respect of the period from the scheduled opening time of the Exchange to the Scheduled Closing Time of the Exchange on such Valid Day (or if such volume-weighted average price is unavailable at such time, the market value of one Share on such Valid Day, as determined by the Calculation Agent using, if practicable, a volume-weighted average method). The Relevant Price will be determined without regard to after-hours trading or any other trading outside of the regular trading session trading hours.
Settlement Averaging Period:	For any Option being exercised hereunder, the 40 consecutive Valid Days commencing on, and including, the 41st Scheduled Valid Day immediately prior to the Expiration Date.
Settlement Date:	For any Option, the second Business Day immediately following the final Valid Day of the Settlement Averaging Period for such Option.
Settlement Currency:	USD
Other Applicable Provisions:	The provisions of Sections 9.1(c), 9.8, 9.9 and 9.11 of the Equity Definitions will be applicable, except that all references in such provisions to "Physically-settled" shall be read as references to "Net Share Settled". "Net Share Settled" in relation to any Option means that Net Share Settlement is applicable to that Option.
Representation and Agreement:	Notwithstanding anything to the contrary in the Equity Definitions (including, but not limited to, Section 9.11 thereof), the parties acknowledge that (i) any Shares delivered to Counterparty shall be, upon delivery, subject to restrictions and limitations arising from Counterparty's status as issuer of the Underlying Shares under applicable securities laws, (ii) Dealer may deliver any Shares required to be delivered hereunder in certificated form or restricted book-entry form, in each case, in lieu of delivery through the Clearance System and (iii) any Shares delivered to Counterparty may be "restricted securities" (as defined in Rule 144 under the Securities Act of 1933, as amended (the " <b>Securities Act</b> ")).

3. **Additional Terms applicable to the Transaction.**

Adjustments applicable to the Transaction:

- Potential Adjustment Events: Notwithstanding Section 11.2(e) of the Equity Definitions (which Section shall not apply for the purposes of the Transaction, except as provided in Section 9(y) below), a “Potential Adjustment Event” means an occurrence of any event or condition, as set forth in any Dilution Adjustment Provision, that requires an adjustment to be made under the Indenture to the “Conversion Rate” or the composition of a “unit of Reference Property” or to any “Last Reported Sale Price” (each as defined in the Indenture). For the avoidance of doubt, Dealer shall not have any delivery or payment obligation hereunder, and no adjustment shall be made to the terms of the Transaction, on account of (x) any distribution of cash, property or securities by Counterparty to holders of the Convertible Notes (upon conversion or otherwise) or (y) any other transaction in which holders of the Convertible Notes participate, in each case, in lieu of an adjustment under the Indenture of the type referred to in the immediately preceding sentence (including, without limitation, pursuant to the fourth sentence of the first paragraph of Section 14.04(c) of the Indenture or the fourth sentence of Section 14.04(d) of the Indenture).
- Method of Adjustment: Calculation Agent Adjustment, which means that, notwithstanding Section 11.2(c) of the Equity Definitions, (which Section shall not apply for the purposes of the Transaction, except as provided in Section 9(y) below) upon any Potential Adjustment Event, the Calculation Agent shall make an adjustment to any one or more of the Strike Price, Number of Options, Option Entitlement and any other variable relevant to the exercise, settlement or payment for the Transaction corresponding to the adjustment required to be made pursuant to the Indenture.

Notwithstanding the foregoing and “Consequences of Merger Events / Tender Offers” below:

- (i) if the Calculation Agent in good faith disagrees with any adjustment to the Convertible Notes that involves an exercise of discretion by Counterparty or its board of directors (including, without limitation, pursuant to Section 14.05 of the Indenture, Section 14.07 of the Indenture or any supplemental indenture entered into thereunder or in connection with any proportional adjustment or the determination of the fair value of any securities, property, rights or other assets), then in each such case, the Calculation Agent will determine in good faith and in a commercially reasonable manner, the adjustment to be made to any one or more of the Strike Price, Number of Options, Option Entitlement and any other variable relevant to the exercise, settlement or payment for the Transaction in a commercially reasonable manner; *provided* that, notwithstanding the foregoing, if any Potential Adjustment Event occurs during the Settlement Averaging Period but no adjustment was made to any Convertible Note under the Indenture because the relevant Holder (as such term is defined in the Indenture) was deemed to be a record owner of the underlying Shares on the related Conversion Date (as such term is defined in the Indenture), then the Calculation Agent shall make a commercially reasonable adjustment, as determined by it, to the terms hereof in order to account for such Potential Adjustment Event;
- (ii) in connection with any Potential Adjustment Event as a result of an event or condition set forth in Section 14.04(b) of the Indenture or Section 14.04(c) of the Indenture where, in either case, the period for determining “Y” (as such term is used in Section 14.04(b) of the Indenture) or “SP<sub>0</sub>” (as such term is used in Section 14.04(c) of the Indenture), as the case may be, begins before Counterparty has publicly announced the event or condition giving rise to such Potential Adjustment Event, then the Calculation Agent shall have the right to adjust any variable relevant to the exercise, settlement or payment for the Transaction as appropriate to reflect the costs (to account solely for hedging mismatches and market losses) and expenses incurred by Dealer in connection with its hedging activities, with such adjustments made assuming that Dealer maintains commercially reasonable hedge positions, as a result of such event or condition not having been publicly announced prior to the beginning of such period; and

- (iii) if any Potential Adjustment Event is declared and (a) the event or condition giving rise to such Potential Adjustment Event is subsequently amended, modified, cancelled or abandoned, (b) the “Conversion Rate” (as defined in the Indenture) is otherwise not adjusted at the time or in the manner contemplated by the relevant Dilution Adjustment Provision based on such declaration or (c) the “Conversion Rate” (as defined in the Indenture) is adjusted as a result of such Potential Adjustment Event and subsequently re-adjusted (each of clauses (a), (b) and (c), a “**Potential Adjustment Event Change**”) then, in each case, the Calculation Agent shall have the right to adjust any variable relevant to the exercise, settlement or payment for the Transaction as appropriate to reflect the costs (to account solely for hedging mismatches and market losses) and expenses incurred by Dealer in connection with its hedging activities, with such adjustments made assuming that Dealer maintains commercially reasonable hedge positions, as a result of such Potential Adjustment Event Change.

Dilution Adjustment Provisions: Sections 14.04(a), (b), (c), (d) and (e) and Section 14.05 of the Indenture.

Extraordinary Events applicable to the Transaction:

Merger Events: Applicable; *provided* that notwithstanding Section 12.1(b) of the Equity Definitions, a “Merger Event” means the occurrence of any event or condition set forth in the definition of “Merger Event” in Section 14.07 of the Indenture.

Tender Offers: Applicable; *provided* that notwithstanding Section 12.1(d) of the Equity Definitions, a “Tender Offer” means the occurrence of any event or condition set forth in Section 14.04(e) of the Indenture.

Consequences of Merger Events/  
Tender Offers: Notwithstanding Section 12.2 and Section 12.3 of the Equity Definitions, upon the occurrence of a Merger Event or a Tender Offer, the Calculation Agent shall make a corresponding adjustment in respect of any adjustment under the Indenture to any one or more of the nature of the Shares (in the case of a Merger Event), Strike Price, Number of Options, Option Entitlement and any other variable relevant to the exercise, settlement or payment for the Transaction to the extent that an analogous adjustment is required to be made pursuant to the Indenture in respect of such Merger Event or Tender Offer, subject to the second paragraph under “Method of Adjustment”; *provided, however*, that such adjustment shall be made without regard to any adjustment to the Conversion Rate pursuant to any Excluded Provision; *provided further* that if, with respect to a Merger Event or a Tender Offer, (i) the consideration for the Shares or Underlying Shares, as applicable, includes (or, at the option of a holder of Shares, or Underlying Shares, as applicable, may include) shares of an entity or person that is not (1) a corporation or an entity that is treated as a corporation for U.S. federal income tax purposes or (2) organized under the laws of the Cayman Islands or (ii) the Counterparty to the Transaction following such Merger Event or Tender Offer will not be a corporation or an entity that is treated as a corporation for U.S. federal income tax purposes organized under the laws of the Cayman Islands, and/or will not be the Underlying Shares Issuer then, in any case, Cancellation and Payment (Calculation Agent Determination) may apply at Dealer’s commercially reasonable election; *provided further* that, for the avoidance of doubt, adjustments shall be made pursuant to the provisions set forth above regardless of whether any Merger Event or Tender Offer gives rise to an Early Conversion (as defined below).



Consequences of Announcement Events: If an Announcement Event occurs, the Calculation Agent shall determine the cumulative economic effect of such Announcement Event (it being understood that the Calculation Agent may take into account any changes to volatility in connection with such Announcement Event within a commercially reasonable (as determined by the Calculation Agent) period of time prior to or after such Announcement Event) on the Transaction on the earliest to occur of (i) the date on which the transaction described in such Announcement Event (as amended) is consummated or otherwise results in a Merger Date or Tender Offer Date, as applicable, (ii) the Valuation Date, or (iii) any earlier date of termination or cancellation with respect to any Option, and if the Calculation Agent determines that such economic effect is material and that making the relevant adjustment would be commercially reasonable, the Calculation Agent shall adjust the Cap Price to reflect such economic effect (but, for the avoidance of doubt, taking into account, and without duplication of, any other adjustment made pursuant to this “Consequences of Announcement Events” provision or pursuant to the provisions opposite the captions “Method of Adjustment”, “Consequences of Merger Events” or “Consequences of Tender Offers” above in respect of the transaction or intention giving rise to such Announcement Event).

Announcement Event:

(i) The public announcement by (x) any entity of any transaction or event that the Calculation Agent determines is reasonably likely to be completed and that, if completed, would constitute a Merger Event or Tender Offer (it being understood that Calculation Agent may make such determination by reference to the impact of such announcement on the market for the Shares and/or Underlying Shares or options relating to the Shares and/or Underlying Shares), (y) Underlying Shares Issuer or any subsidiary thereof of any potential acquisition or disposal by the Underlying Shares Issuer and/or its subsidiaries where the aggregate consideration payable or receivable exceeds 25% of the market capitalization of the Underlying Shares Issuer as of the date of such announcement (a “**Transformative Transaction**”) or (z) Underlying Shares Issuer, any subsidiary of the Underlying Shares Issuer or any Valid Third Party Entity of the intention to enter into a Merger Event or Tender Offer or a Transformative Transaction (in the case of a Valid Third-Party Entity, that the Calculation Agent determines is a bona fide intention, it being understood that the Calculation Agent may make such determination by reference to the impact of such announcement on the market for the Shares and/or Underlying Shares or options relating to the Shares and/or Underlying Shares), (ii) the public announcement by the Underlying Shares Issuer of an intention to solicit or enter into, or to explore strategic alternatives or other similar undertaking that may include, a Merger Event or Tender Offer or a Transformative Transaction or (iii) any subsequent public announcement by any entity of a change to a transaction or intention that is the subject of an announcement of the type described in clause (i) or (ii) of this sentence (including, without limitation, a new announcement, whether or not by the same party, relating to such a transaction or intention or the announcement of a withdrawal from, or the abandonment or discontinuation of, such a transaction or intention), as determined by the Calculation Agent. For the avoidance of doubt, the occurrence of an Announcement Event with respect to any transaction or intention shall not preclude the occurrence of a later Announcement Event with respect to such transaction or intention. For purposes of this definition of “Announcement Event,” (A) “Merger Event” shall mean such term as defined under Section 12.1(b) of the Equity Definitions (but, for the avoidance of doubt, the remainder of the definition of “Merger Event” in Section 12.1(b) of the Equity Definitions following the definition of “Reverse Merger” therein shall be disregarded) and (B) “Tender Offer” shall mean such term as defined under Section 12.1(d) of the Equity Definitions; *provided* that Section 12.1(d) of the Equity Definitions is hereby amended by replacing “10%” with “20%” in the third line thereof.

Valid Third Party Entity:

In respect of any transaction or intention, any third party (i) whose announcement is reasonably determined by the Calculation Agent to have had a material economic effect on the Shares and/or Underlying Shares and/or options on the Shares and/or Underlying Shares and (ii) that is the entity, or an affiliate of the entity, that is, or would be, a party to the relevant transaction or event.

Nationalization, Insolvency or Delisting:

Cancellation and Payment (Calculation Agent Determination); *provided* that, in addition to the provisions of Section 12.6(a)(iii) of the Equity Definitions, it will also constitute a Delisting if the 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 of the New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or their respective successors), such exchange or quotation system shall thereafter be deemed to be the Exchange.

Section 12.1 of the Equity Definitions is hereby amended by deleting subsection (v) thereof in its entirety and replacing it with “(v) in the case of an Insolvency, the date of (A) the institution of a proceeding or presentation of a petition or the passing of a resolution (or the convening of a meeting to pass a resolution or the proposing of a written resolution) (in each case the occurrence of which shall be deemed its announcement) that leads to an Insolvency within the meaning of subsection (A) of the definition thereof, (B) the first public announcement of the institution of a proceeding or presentation of a petition or passing of a resolution (or other analogous procedure in any jurisdiction) that leads to the Insolvency or (C) the occurrence of any of the events specified in Section 5(a)(vii)(1) through (9) of the ISDA Master Agreement with respect to that Issuer”.

Section 12.6(a)(ii) of the Equity Definitions is hereby amended by (1) inserting “(A)” after “means” in the first line thereof and replacing “(A)” and “(B)” in the third and fourth lines thereof with “(1)” and “(2)” respectively, (2) deleting from the fourth line thereof the word “or” after the word “official” and inserting a comma therefor, (3) inserting at the end of renumbered subsection (2) thereof the following wording, “or, under the laws of the Cayman Islands, any other jurisdiction or otherwise, any other impediment to or restriction on the transfer of any Share arises or becomes applicable including, without limitation, where (x) any transfer of a Share or alteration of the status of the members of the Issuer would be void unless a court of the Cayman Islands or any other jurisdiction orders otherwise or (y) any transfer of a Share not being a transfer with the sanction of a liquidator, and any alteration in the status of the Issuer’s members, would be void” and (4) deleting the semi-colon at the end of renumbered subsection (2) thereof and inserting the following words therefor “or (B) at Dealer’s option, the occurrence of any of the events specified in Section 5(a)(vii)(1) through (9) of the ISDA Master Agreement with respect to that Issuer.”

Additional Disruption Events:

Change in Law:	Applicable; <i>provided</i> that Section 12.9(a)(ii) of the Equity Definitions is hereby amended by (i) replacing the phrase “the interpretation” in the third line thereof with the phrase “, or public announcement of, the formal or informal interpretation”, (ii) replacing the word “Shares” where it appears in clause (X) thereof with the words “Hedge Position,” (iii) replacing the parenthetical beginning after the word “regulation” in the second line thereof with the words “(including, for the avoidance of doubt and without limitation, (x) any tax law or (y) adoption, effectiveness or promulgation of new regulations authorized or mandated by existing statute)” and (iv) adding the words “ <i>provided</i> that, in the case of clause (Y) hereof where such determination is based on Dealer’s policies and procedures, such policies and procedures have been adopted by Dealer in good faith and are generally applicable in similar situations and applied in a non-discriminatory manner;” after the semi-colon in the last line thereof.
Failure to Deliver:	Applicable
Hedging Disruption:	Applicable; <i>provided</i> that:  Section 12.9(b)(iii) of the Equity Definitions is hereby amended by inserting in the third line thereof, after the words “to terminate the Transaction”, the words “or a portion of the Transaction affected by such Hedging Disruption”.
Increased Cost of Hedging:	Not Applicable
Hedging Party:	For all applicable Additional Disruption Events, Dealer.
Determining Party:	For all applicable Extraordinary Events, Dealer; <i>provided</i> that when making any determination or calculation as “Determining Party,” Dealer shall make such determinations or calculations in good faith and in a commercially reasonable manner.  Following any determination or calculation by Determining Party hereunder, the Determining Party will, upon written request from Counterparty, promptly (but in any event within five Scheduled Trading Days) provide to Counterparty a report (in a commonly used file format for the storage and manipulation of financial data) displaying in reasonable detail the basis for such determination or calculation (including any assumptions used in making such determination or calculation), it being understood that in no event will the Determining Party be obligated to share with Counterparty any proprietary or confidential data or information or any proprietary or confidential models used by it in making such determination or calculation or any information that is subject to an obligation not to disclose such information.
Non-Reliance:	Applicable
Agreements and Acknowledgments Regarding Hedging Activities:	Applicable

Additional Acknowledgments:

Applicable

4. **Calculation Agent.**

Dealer; *provided* that, following the occurrence and during the continuance of an Event of Default under Section 5(a)(vii) of the Agreement with respect to which Dealer is the Defaulting Party, Counterparty shall have the right to designate a nationally recognized independent equity derivatives 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 adjustment, determination or calculation by the Calculation Agent hereunder, the Calculation Agent will, upon written request from Counterparty, promptly (but in any event within five Scheduled Trading Days) provide to Counterparty by email a report (in a commonly used file format for the storage and manipulation of financial data) displaying in reasonable detail the basis for such adjustment, determination or calculation (including any assumptions used in making such adjustment, determination or calculation), it being understood that in no event will the Calculation Agent be obligated to share with Counterparty any proprietary or confidential data or information or any proprietary or confidential models used by it in making such adjustment, determination or calculation or any information that is subject to an obligation not to disclose such information.

All calculations and determinations by the Calculation Agent shall be made in good faith and in a commercially reasonable manner.

5. **Account Details.**

(a) Account for payments to Counterparty:

To be provided.

Account for delivery of Shares to Counterparty:

To be provided.

(b) Account for payments to Dealer:

To be provided.

Account for delivery of Shares from Dealer:

To be provided.

6. **Offices.**

(a) The Office of Counterparty for the Transaction is: Inapplicable, Counterparty is not a Multibranch Party.

(b) The Office of Dealer for the Transaction is: London

7. **Notices.**

(a) Address for notices or communications to Counterparty:

NIO Inc.  
Building 20, No. 56 AnTuo Road, Jiading District  
Shanghai, 201804  
People's Republic of China  
Attention: Louis T. Hsieh, Chief Financial Officer  
Telephone No.: +86 (21) 6908 3306  
Facsimile No.: +86 (21) 3913 0192

with a copy to:

Nick Wang  
VP of Finance  
Telephone No.: +86 (21) 6908-2002  
Email: Nick.Wang@nio.com

with a copy to:

Fang Liu  
General Counsel  
Telephone No.: +86 (21) 6908-2277  
Email: Fang.Liu@nio.com

with a copy to:

Sabrina Shi  
Senior Corporate Counsel  
Telephone No.: +86 (21) 6908-3391  
Email: Danting.Shi@nio.com

(b) Address for notices or communications to Dealer:

Goldman Sachs International  
Peterborough Court  
133 Fleet Street  
London, UK, EC4A 2BB  
Attention: Derivatives Legal

With a copy to:

Goldman, Sachs & Co.  
200 West Street  
New York, NY 10282-2198  
Attention: Beesham Seecharan  
Phone: +1-212-357-6337  
Email: beesham.seecharan@ny.email.gs.com

Attention: Peter Petraro  
Phone: +1-212-855-9818  
Email: peter.petraro@ny.email.gs.com

And email notification to the following address:

**8. Representations and Warranties of Counterparty.**

Each of the representations and warranties of Counterparty set forth in Section 2 of the Purchase Agreement (the “**Purchase Agreement**”) dated as of January 30, 2019, between Counterparty and Credit Suisse Securities (USA) LLC, J.P. Morgan Securities LLC, Morgan Stanley & Co. LLC, and Goldman Sachs (Asia) LLC, as representatives of the Initial Purchasers party thereto (the “**Initial Purchasers**”), are true and correct and are hereby deemed to be repeated to Dealer as if set forth herein. Counterparty hereby further represents and warrants to Dealer on the date hereof and on and as of the Premium Payment Date, that:

- (a) Counterparty (i) is duly incorporated and validly existing as an exempted company with limited liability under the laws of the Cayman Islands and is in good standing under such laws, and (ii) has all necessary corporate power and authority to execute, deliver and perform its obligations and exercise its rights in respect of the Transaction; such execution, delivery, performance and exercise have been duly authorized by all necessary corporate action on Counterparty’s part; and this Confirmation has been duly and validly executed and delivered by Counterparty and constitutes its valid and binding obligation, enforceable against Counterparty in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar laws affecting creditors’ rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity) and except that rights to indemnification and contribution hereunder may be limited by federal or state securities laws or public policy relating thereto.
- (b) Neither the execution and delivery of this Confirmation nor the incurrence or performance of obligations nor the exercise of rights of Counterparty hereunder will conflict with or result in a breach of the memorandum and articles of association or by-laws (or any equivalent documents) of Counterparty, or any applicable law or regulation, or any order, writ, injunction or decree of any court or governmental authority or agency, or any agreement or instrument to which Counterparty or any of its subsidiaries is a party or by which Counterparty or any of its subsidiaries is bound or to which Counterparty or any of its subsidiaries is subject, or constitute a default under, or result in the creation of any lien under, any such agreement or instrument.
- (c) No consent, approval, authorization, or order of, or filing with, any governmental agency or body or any court is required in connection with the execution, delivery or performance by Counterparty of this Confirmation, except such as have been obtained or made and such as may be required under the Securities Act or state securities laws.
- (d) Counterparty is not and, after consummation of the transactions contemplated hereby, will not be required to register as an “investment company” as such term is defined in the Investment Company Act of 1940, as amended.
- (e) Counterparty is an “eligible contract participant” (as such term is defined in Section 1a(18) of the Commodity Exchange Act, as amended, other than a person that is an eligible contract participant under Section 1a(18)(C) of the Commodity Exchange Act).
- (f) Counterparty is not, on the date hereof, aware of any material non-public information with respect to Counterparty, the Underlying Shares Issuer (if other than Counterparty), the Underlying Shares or the Shares.
- (g) To the knowledge of Counterparty, no state or local (including any non-U.S. jurisdiction’s) law, rule, regulation or regulatory order applicable to the Shares and/or Underlying 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 and/or Underlying Shares (except for filings of Form 13F, Schedule 13D or Schedule 13G under the Exchange Act); *provided* that Counterparty makes no representation or warranty regarding any such requirement that is applicable generally to the ownership of equity securities by Dealer or any of its affiliates solely as a result of it or any of such affiliates being a financial institution or broker-dealer.

- (h) Counterparty (A) is capable of evaluating investment risks independently, both in general and with regard to all transactions and investment strategies involving a security or securities; (B) will exercise independent judgment in evaluating the recommendations of any broker-dealer or its associated persons, unless it has otherwise notified the broker-dealer in writing; (C) has total assets of at least USD 50 million; and (D) is acting for its own account, and it has made its own independent decisions to enter into the Transaction and as to whether the Transaction is appropriate or proper for it (including as to any legal, regulatory, tax, accounting or economic consequences arising from the Transaction) based upon its own judgment and upon advice from such advisers as it has deemed necessary (including legal, financial and accounting advisors).
- (i) Counterparty as of and immediately after the Trade Date and the Premium Payment Date (x) is not, and shall not be after giving effect to the transactions contemplated hereby, “insolvent” (as such term is defined in Section 101(32) of the Bankruptcy Code, (y) would be able to purchase 100,536,150 Shares and the Underlying Shares represented by such number of Shares in compliance with the laws of the jurisdiction of Counterparty’s incorporation or organization, and (z), for the purposes of Cayman Islands law, is able to pay its debts.
- (j) Counterparty’s board of directors (the “**Board**”) has concluded that (A) the Transaction is suitable for Counterparty, for its commercial benefit and in its best interests, in light of its own investment objectives, financial condition and expertise and (B) the Transaction has been duly approved and authorized by the Board after due consideration by the Board of the foregoing matters and those referred to in subparagraph (h)(D) above.

**9. Other Provisions.**

- (a) *Deliverables.* Counterparty shall deliver to Dealer (A) an opinion of U.S. counsel and (B) an opinion of Cayman counsel, each dated as of the Premium Payment Date, with respect to, among other things, the matters set forth in Sections 8(a) through (c) of this Confirmation, it being understood that such opinions of counsel shall be limited to the federal laws of the United States and the laws of the State of New York (in the case of clause (A) above) and the laws Cayman Islands (in the case of clause (B) above) and may contain customary limitations, exceptions and qualifications for transactions of the same type as the Transaction. Delivery of such opinions to Dealer shall be a condition precedent for the purpose of Section 2(a)(iii) of the Agreement with respect to each obligation of Dealer under Section 2(a)(i) of the Agreement; (C) a resolution of the Board authorizing the Transaction; and (D) on or before the Premium Payment Date, a solvency certificate with respect to Counterparty signed by a member of the Board, the chief executive officer or the chief financial officer of the Counterparty certifying the solvency of Counterparty as of and immediately after the Premium Payment Date (after giving effect to Counterparty’s payment of amounts required to be paid by Counterparty on such date under the Transaction and the other transactions described under “Use of Proceeds” in the Offering Memorandum related to the offering of the Convertible Notes), which solvency certificate is reasonably satisfactory to Dealer.



- (b) Repurchase Notices. Counterparty shall, on or prior to the date that is one Scheduled Trading Day following any date on which Counterparty effects any repurchase of Shares and/or Underlying Shares, promptly give Dealer a written notice of such repurchase (a “**Repurchase Notice**”) on such day if following such repurchase, the number of outstanding Underlying Shares as determined on such day is (i) less than 727.2 million (in the case of the first such notice) or (ii) thereafter more than 37.8 million less than the number of Underlying Shares included in the immediately preceding Repurchase Notice; *provided* that Counterparty may provide Dealer advance notice on or prior to any such day including the maximum number of Shares and/or Underlying Shares that may be repurchased under a repurchase program entered into in reliance on Rule 10b5-1(c) and the approximate periods during which such repurchases may occur, to the extent it expects that repurchases effected on such day may result in an obligation to deliver a Repurchase Notice (and in such case, any such advance notice shall be deemed a Repurchase Notice to the maximum extent of repurchases set forth in such advance notice as if Counterparty had executed such repurchases). Counterparty agrees that, if Counterparty ceases to qualify as a “foreign private issuer” as defined in Rule 3b-4 under the Exchange Act or the Shares or Underlying Shares, as applicable, otherwise become subject to the requirements of Section 16 of the Exchange Act, Counterparty will indemnify and hold harmless Dealer and its affiliates and their respective officers, directors, employees, affiliates, advisors, agents and controlling persons (each, an “**Indemnified Person**”) from and against any and all losses (including losses relating to Dealer’s hedging activities as a consequence of becoming, or of the risk of becoming, a Section 16 “insider”, including without limitation, any forbearance from hedging activities or cessation of hedging activities and any losses in connection therewith with respect to the Transaction), claims, damages, judgments, liabilities and reasonable and documented out-of-pocket expenses (including reasonable attorney’s fees of one outside counsel in each relevant jurisdiction), joint or several, which an Indemnified Person may become subject to, in each case, as a result of Counterparty’s failure to provide Dealer with a Repurchase Notice on the day and in the manner specified in this paragraph, and to reimburse, within 30 days, upon written request, each of such Indemnified Persons for any reasonable legal or other out-of-pocket expenses (to the extent supported by invoices or other documentation setting forth in reasonable detail such expenses) incurred in connection with investigating, preparing for, providing testimony or other evidence in connection with or defending any of the foregoing. If any suit, action, proceeding (including any governmental or regulatory investigation), claim or demand shall be brought or asserted against the Indemnified Person as a result of Counterparty’s failure to provide Dealer with a Repurchase Notice in accordance with this paragraph, such Indemnified Person shall promptly notify Counterparty in writing, and Counterparty, upon request of the Indemnified Person, shall retain counsel reasonably satisfactory to the Indemnified Person to represent the Indemnified Person and any others Counterparty may designate in such proceeding and shall pay the reasonable fees and expenses of such counsel related to such proceeding. Counterparty shall not be liable to the extent that the Indemnified Person fails to notify Counterparty within a commercially reasonable period of time after any action is commenced against it in respect of which indemnity may be sought hereunder. In addition, Counterparty shall not have liability for any settlement of any such proceeding contemplated by this paragraph that is effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, Counterparty agrees to indemnify any Indemnified Person from and against any loss or liability by reason of such settlement or judgment. Counterparty shall not, without the prior written consent of the Indemnified Person, effect any settlement of any pending or threatened proceeding contemplated by this paragraph in respect of which any Indemnified Person is or could have been a party and indemnity could have been sought hereunder by such Indemnified Person, unless such settlement includes an unconditional release of such Indemnified Person from all liability on claims that are the subject matter of such proceeding on terms reasonably satisfactory to such Indemnified Person. If the indemnification provided for in this paragraph is unavailable to an Indemnified Person or insufficient in respect of any losses, claims, damages or liabilities referred to therein, then Counterparty hereunder, in lieu of indemnifying such Indemnified Person thereunder, shall contribute to the amount paid or payable by such Indemnified Person as a result of such losses, claims, damages or liabilities. The remedies provided for in this paragraph (b) are not exclusive and shall not limit any rights or remedies which may otherwise be available to any Indemnified Person at law or in equity. The indemnity and contribution agreements contained in this paragraph shall remain operative and in full force and effect regardless of the termination of the Transaction.

- (c) Regulation M. Counterparty is not on the Trade Date engaged in a distribution, as such term is used in Regulation M under the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), of any securities of Counterparty, other than a distribution meeting the requirements of the exception set forth in Rules 101(b)(10) and 102(b)(7) of Regulation M. Counterparty shall not, until the second Scheduled Trading Day immediately following the Effective Date, engage in any such distribution.
- (d) No Manipulation. Counterparty is not entering into the Transaction to create actual or apparent trading activity in the Shares and/or Underlying Shares (or any security convertible into or exchangeable for the Shares and/or Underlying Shares) or to raise or depress or otherwise manipulate the price of the Shares and/or Underlying Shares (or any security convertible into or exchangeable for the Shares and/or Underlying Shares) or otherwise in violation of the Exchange Act.
- (e) Transfer or Assignment.
- (i) Counterparty shall have the right to transfer or assign all or any of its rights and obligations hereunder with respect to all, or any, of the Options hereunder (such Options, the “**Transfer Options**”) with the prior written consent of Dealer, such consent not to be unreasonably withheld; *provided* that withholding of such consent by Dealer shall not be considered unreasonable if such transfer or assignment does not meet any of the following conditions:
- (A) With respect to any Transfer Options, Counterparty shall not be released from its notice and indemnification obligations pursuant to Section 9(b) of this Confirmation;
- (B) Such transfer or assignment shall be effected on terms, including any reasonable undertakings by such third party (including, but not limited to, an undertaking with respect to compliance with applicable securities laws in a manner that, in the reasonable judgment of Dealer, will not expose Dealer to material risks under applicable securities laws) and execution of any documentation and delivery of legal opinions with respect to securities laws and other matters by such third party and Counterparty, as are reasonably requested and reasonably satisfactory to Dealer;
- (C) Under the applicable law effective on the date of such transfer or assignment, (1) Dealer will not, as a result of such transfer or assignment, be required to pay the transferee or assignee on any payment date or delivery date an amount or a number of Shares, as applicable, under Section 2(d)(i)(4) of the Agreement greater than the amount or the number of Shares, as applicable, that Dealer would have been required to pay to Counterparty in the absence of such transfer or assignment and (2) Dealer will not, as a result of such transfer or assignment, receive from the transferee or assignee on any payment date an amount under Section 2(d)(i)(4) of the Agreement that is less than the amount that Dealer would have received from Counterparty in the absence of such transfer or assignment;
- (D) No Event of Default, Potential Event of Default or Termination Event will occur as a result of such transfer and assignment;
- (E) Counterparty shall cause the transferee to make such tax representations and to provide such tax documentation as may be reasonably requested by Dealer to permit Dealer to determine that results described in clauses (C) and (D) will not occur upon or after such transfer and assignment, including but not limited to providing tax documentation specified in Section 9(bb) of this Confirmation and making the tax representations specified in Section 9(aa) of this Confirmation on or prior to such transfer and at the other times specified in such Sections; and

- (F) Counterparty shall be responsible for all reasonable and documented costs and expenses, including reasonable counsel fees, incurred by Dealer in connection with such transfer or assignment.
- (ii) Dealer may, without Counterparty's consent, transfer or assign all or any part of its rights or obligations under the Transaction to any affiliate of Dealer (1) that has a long-term issuer rating that is equal to or better than Dealer's credit rating at the time of such transfer or assignment, or (2) whose obligations hereunder will be guaranteed, pursuant to the terms of a customary guarantee in a form used by Dealer generally for similar transactions, by Dealer or The Goldman Sachs Group, Inc.; *provided* that, in the case of any such transfer or assignment, under the applicable law effective on the date of such transfer or assignment, (I) Counterparty will not, as a result of such transfer or assignment, be required to pay the transferee or assignee on any payment date an amount under Section 2(d)(i)(4) of the Agreement greater than the amount that Counterparty would have been required to pay to Dealer in the absence of such transfer or assignment; (II) Counterparty will not, as a result of such transfer or assignment, receive from the transferee or assignee on any payment or delivery date an amount or a number of Shares, as applicable, under Section 2(d)(i)(4) of the Agreement that is less than the amount or the number of Shares that Counterparty would have received from Dealer in the absence of such transfer or assignment; (III) Dealer shall cause the transferee or assignee to make such tax representations and to provide such tax documentation as may be reasonably requested by Counterparty to permit Counterparty to determine that events described in clauses (I) and (II) of this proviso will not occur upon or after such transfer or assignment; and (IV) no Event of Default, Potential Event of Default or Termination Event will occur as a result of such transfer and assignment. If at any time at which (A) the Section 13 Percentage exceeds 8.5%, (B) the Option Equity Percentage exceeds 14.5%, or (C) the Share Amount exceeds the Applicable Share Limit (if any applies) (any such condition described in clauses (A), (B) or (C), an "**Excess Ownership Position**"), Dealer is unable after using its commercially reasonable efforts to effect a transfer or assignment of Options to a third party on pricing terms reasonably acceptable to Dealer and within a time period reasonably acceptable to Dealer such that no Excess Ownership Position exists, then Dealer may designate any Exchange Business Day as an Early Termination Date with respect to a portion of the Transaction (the "**Terminated Portion**"), to the extent necessary so that following such partial termination no Excess Ownership Position exists. In the event that Dealer so designates an Early Termination Date with respect to a portion of the Transaction, a payment shall be made pursuant to Section 6 of the Agreement as if (1) an Early Termination Date had been designated in respect of a Transaction having terms identical to the Transaction and a Number of Options equal to the number of Options underlying the Terminated Portion, (2) Counterparty were the sole Affected Party with respect to such partial termination and (3) the Terminated Portion were the sole Affected Transaction (and, for the avoidance of doubt, the provisions of Section 9(m) shall apply to any amount that is payable by Dealer to Counterparty pursuant to this sentence as if Counterparty was not the Affected Party). The "**Section 13 Percentage**" as of any day is the fraction, expressed as a percentage, (A) the numerator of which is the number of Underlying Shares that Dealer and any of its affiliates or any other person subject to aggregation with Dealer for purposes of the "beneficial ownership" test under Section 13 of the Exchange Act, or any "group" (within the meaning of Section 13 of the Exchange Act) of which Dealer is or may be deemed to be a part beneficially owns (within the meaning of Section 13 of the Exchange Act), without duplication, on such day (or, to the extent that for any reason the equivalent calculation under Section 16 of the Exchange Act applies with respect to the Shares or Underlying Shares, as applicable, and the rules and regulations thereunder results in a higher number, such higher number) and (B) the denominator of which is the number of Underlying Shares outstanding on such day. The "**Option Equity Percentage**" as of any day is the fraction, expressed as a percentage, (A) the numerator of which is the sum of (1) the product of (x) the Number of Options (y) the Option Entitlement and (z) the number of Underlying Shares represented by one Share and (2) the aggregate number of Underlying Shares underlying any other call option transaction sold by Dealer to Counterparty, and (B) the denominator of which is the number of Underlying Shares outstanding. The "**Share Amount**" as of any day is the number of Underlying Shares that Dealer and any person whose ownership position would be aggregated with that of Dealer (Dealer or any such person, a "**Dealer Person**") under any law, rule, regulation, regulatory order or organizational documents or contracts of Counterparty that are, in each case, applicable to ownership of Underlying Shares ("**Applicable Restrictions**"), owns, beneficially owns, constructively owns, controls, holds the power to vote or otherwise meets a relevant definition of ownership under any Applicable Restriction, as determined by Dealer in its reasonable discretion. The "**Applicable Share Limit**" means a number of Underlying Shares equal to (A) the minimum number of Underlying Shares that could give rise to reporting or registration obligations (except for any filing requirements on Form 13F, Schedule 13D or Schedule 13G under the Exchange Act, in each case, as in effect on the Trade Date) or other requirements (including obtaining prior approval from any person or entity) of a Dealer Person, or could result in an adverse effect on a Dealer Person, under any Applicable Restriction, as determined by Dealer in good faith and in its commercially reasonable discretion, *minus* (B) 1% of the number of Underlying Shares outstanding.

- (iii) Notwithstanding any other provision in this Confirmation to the contrary requiring or allowing Dealer to purchase, sell, receive or deliver any Shares, Underlying Shares or other securities, or make or receive any payment in cash, to or from Counterparty, Dealer may designate any of its affiliates to purchase, sell, receive or deliver such Shares, Underlying Shares or other securities, or to make or receive such payment in cash, and otherwise to perform Dealer's obligations in respect of the Transaction and any such designee may assume such obligations. Dealer shall be discharged of its obligations to Counterparty to the extent of any such performance.
- (f) Staggered Settlement. If upon advice of counsel with respect to applicable legal and regulatory requirements, including any requirements relating to Dealer's hedging activities hereunder, Dealer reasonably determines that it would not be practicable or advisable to deliver, or to acquire Shares to deliver, any or all of the Shares to be delivered by Dealer on any Settlement Date for the Transaction, Dealer may, by notice to Counterparty on or prior to any Settlement Date (a "**Nominal Settlement Date**"), elect to deliver the Shares on two or more dates (each, a "**Staggered Settlement Date**") as follows:
  - (i) in such notice, Dealer will specify to Counterparty the related Staggered Settlement Dates (the first of which will be such Nominal Settlement Date and the last of which will be no later than the twentieth (20<sup>th</sup>) Exchange Business Day following such Nominal Settlement Date) and the number of Shares that it will deliver on each Staggered Settlement Date;
  - (ii) the aggregate number of Shares that Dealer will deliver to Counterparty hereunder on all such Staggered Settlement Dates will equal the number of Shares that Dealer would otherwise be required to deliver on such Nominal Settlement Date; and
  - (iii) if the Net Share Settlement terms set forth above were to apply on the Nominal Settlement Date, then the Net Share Settlement terms will apply on each Staggered Settlement Date, except that the Shares otherwise deliverable on such Nominal Settlement Date will be allocated among such Staggered Settlement Dates as specified by Dealer in the notice referred to in clause (i) above.
- (g) Reserved.

(h) QFC Stay Provisions. (i) (A) In the event that Dealer becomes subject to a proceeding under (i) the Federal Deposit Insurance Act and the regulations promulgated thereunder or (ii) Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the regulations promulgated thereunder (a “U.S. Special Resolution Regime”) the transfer from Dealer of this Confirmation, and any interest and obligation in or under, and any property securing, this Confirmation, will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if this Confirmation, and any interest and obligation in or under, and any property securing, this Confirmation were governed by the laws of the United States or a state of the United States. (B) In the event that Dealer or an Affiliate becomes subject to a proceeding under a U.S. Special Resolution Regime, any Default Rights (as defined in 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable (“Default Right”)) under this Confirmation that may be exercised against Dealer 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 Confirmation were governed by the laws of the United States or a state of the United States.

(ii) Notwithstanding anything to the contrary in this Confirmation, the Parties expressly acknowledge and agree that: (A) Counterparty shall not be permitted to exercise any Default Right with respect to this Confirmation or any Affiliate Credit Enhancement that is related, directly or indirectly, to an Affiliate of Dealer becoming subject to receivership, insolvency, liquidation, resolution, or similar proceeding (an “**Insolvency Proceeding**”), except to the extent that the exercise of such Default Right would be permitted under the provisions of 12 C.F.R. 252.84, 12 C.F.R. 47.5 or 12 C.F.R. 382.4, as applicable; and (B) Nothing in this Confirmation shall prohibit the transfer of any Affiliate Credit Enhancement, any interest or obligation in or under such Affiliate Credit Enhancement, or any property securing such Affiliate Credit Enhancement, to a transferee upon or following an Affiliate of Dealer becoming subject to an Insolvency Proceeding, unless the transfer would result in the Counterparty being the beneficiary of such Affiliate Credit Enhancement in violation of any law applicable to the Counterparty.

(iii) If Counterparty has previously adhered to, or subsequently adheres to, the ISDA 2018 U.S. Resolution Stay Protocol as published by the International Swaps and Derivatives Association, Inc. as of July 31, 2018 (the “**ISDA U.S. Protocol**”), the terms of such protocol shall be incorporated into and form a part of this Confirmation and the terms of the ISDA U.S. Protocol shall supersede and replace the terms of this Section 9(h). For purposes of incorporating the ISDA U.S. Protocol, Dealer shall be deemed to be a Regulated Entity, Counterparty shall be deemed to be an Adhering Party, and this Confirmation shall be deemed to be a Protocol Covered Agreement. Capitalized terms used but not defined in this paragraph shall have the meanings given to them in the ISDA U.S. Protocol.

(iv) Dealer and Counterparty agree that to the extent there are any outstanding “in-scope QFCs,” as defined in 12 C.F.R. § 252.82(d), that are not excluded under 12 C.F.R. § 252.88, between Dealer and Counterparty that do not otherwise comply with the requirements of 12 C.F.R. § 252.2, 252.81–8 (each such agreement, a “Preexisting In-Scope Agreement”), then each such Preexisting In-Scope Agreement is hereby amended to include the foregoing provisions in this Section 9(h), with references to “this Confirmation” being understood to be references to the applicable Preexisting In-Scope Agreement.

For purposes of this Section 9(h):

“**Affiliate**” is defined in, and shall be interpreted in accordance with, 12 U.S.C. § 1841(k).

“**Credit Enhancement**” means any credit enhancement or credit support arrangement in support of the obligations of Dealer under or with respect to this Confirmation, including any guarantee, collateral arrangement (including any pledge, charge, mortgage or other security interest in collateral or title transfer arrangement), trust or similar arrangement, letter of credit, transfer of margin or any similar arrangement.

(i) Additional Termination Events.

- (i) Notwithstanding anything to the contrary in this Confirmation, upon any conversion of a Convertible Note occurring prior to the 45th Scheduled Valid Day immediately prior to the Expiration Date (any such conversion, an “**Early Conversion**”) in respect of which a Conversion Notice that is effective as to Counterparty has been delivered by the relevant converting Holder:
- (A) Counterparty may, within two Scheduled Trading Days of the date on which the Holder (as such term is defined in the Indenture) of such Convertible Note satisfies all of the requirements for conversion thereof as set forth in Section 14.02 of the Indenture (the “**Conversion Date**”) for such Early Conversion, provide written notice (an “**Early Conversion Notice**”) to Dealer specifying the number of Convertible Notes surrendered for conversion on such Conversion Date (such Convertible Notes, the “**Affected Convertible Notes**”), and the giving of such Early Conversion Notice shall constitute an Additional Termination Event as provided in this clause (i) (*provided* that Counterparty acknowledges its responsibilities under applicable securities laws, and in particular Section 9 and Section 10(b) of the Exchange Act and the rules and regulations thereunder, in respect of any Early Conversion Notice);
  - (B) upon receipt of any such Early Conversion Notice, Dealer shall designate an Exchange Business Day as an Early Termination Date (which Exchange Business Day shall be no earlier than one Scheduled Trading Day following the Conversion Date for such Early Conversion) with respect to the portion of the Transaction corresponding to a number of Options (the “**Affected Number of Options**”) equal to the lesser of (x) the number of Affected Convertible Notes *minus* the “Affected Number of Options” (as defined in the Base Call Option Transaction Confirmation letter agreement dated January 30, 2019 between Dealer and Counterparty (the “**Base Call Option Confirmation**”)), if any, that relate to such Affected Convertible Notes and (y) the Number of Options as of the Conversion Date for such Early Conversion;
  - (C) any payment hereunder with respect to such termination shall be calculated pursuant to Section 6 of the Agreement as if (x) an Early Termination Date had been designated in respect of a Transaction having terms identical to the Transaction and a Number of Options equal to the Affected Number of Options, (y) Counterparty were the sole Affected Party with respect to such Additional Termination Event and (z) the terminated portion of the Transaction were the sole Affected Transaction;
  - (D) for the avoidance of doubt, in determining the amount payable in respect of such Affected Transaction pursuant to Section 6 of the Agreement, the Calculation Agent shall assume that (x) the relevant Early Conversion and any conversions, adjustments, agreements, payments, deliveries or acquisitions by or on behalf of Counterparty leading thereto had not occurred, (y) no adjustments to the Conversion Rate have occurred pursuant to any Excluded Provision and (z) the corresponding Convertible Notes remain outstanding; and
  - (E) the Transaction shall remain in full force and effect, except that, as of the Conversion Date for such Early Conversion, the Number of Options shall be reduced by the Affected Number of Options.

- (ii) Notwithstanding anything to the contrary in this Confirmation if an event of default with respect to Counterparty occurs under the terms of the Convertible Notes as set forth in Section 6.01 of the Indenture and such event of default results in the Convertible Notes being accelerated and declared due and payable, then such event of default shall constitute an Additional Termination Event applicable to the Transaction and, with respect to such Additional Termination Event, (A) Counterparty shall be deemed to be the sole Affected Party, (B) the Transaction shall be the sole Affected Transaction and (C) Dealer shall be the party entitled to designate an Early Termination Date pursuant to Section 6(b) of the Agreement (which Early Termination Date shall be on or as promptly as reasonably practicable after Dealer becomes aware of the occurrence of such acceleration).
- (iii) Notwithstanding anything to the contrary in this Confirmation, the occurrence of an Amendment Event shall constitute an Additional Termination Event applicable to the Transaction and, with respect to such Additional Termination Event, (A) Counterparty shall be deemed to be the sole Affected Party, (B) the Transaction shall be the sole Affected Transaction and (C) Dealer shall be the party entitled to designate an Early Termination Date pursuant to Section 6(b) of the Agreement. “**Amendment Event**” means that Counterparty amends, modifies, supplements, waives or obtains a waiver in respect of any term of the Indenture or the Convertible Notes governing the principal amount, coupon, maturity, repurchase obligation of Counterparty, tax redemption right of Counterparty, any term relating to conversion of the Convertible Notes (including changes to the conversion rate, conversion rate adjustment provisions, conversion settlement dates or conversion conditions), or any term that would require consent of the holders of not less than 100% of the principal amount of the Convertible Notes to amend (other than, in each case, any amendment or supplement (x) pursuant to Section 10.01(i) of the Indenture that, as determined by the Calculation Agent, conforms the Indenture to the description of Convertible Notes in the Offering Memorandum or (y) pursuant to Section 14.07 of the Indenture), in each case, without the consent of Dealer.
- (iv) Promptly (but in any event within five Scheduled Trading Days) following any Repurchase Event (as defined below), Counterparty shall notify Dealer of such Repurchase Event and the aggregate principal amount of Convertible Notes subject to such Repurchase Event (any such notice, a “**Convertible Notes Repurchase Notice**”); *provided* that any such Convertible Notes Repurchase Notice shall contain a repetition by Counterparty of the representation set forth in Section 8(f) as of the date of such Convertible Notes Repurchase Notice and an acknowledgment by Counterparty of its responsibilities under applicable securities laws, and in particular Section 9 and Section 10(b) of the Exchange Act and the rules and regulations thereunder, in respect of such Repurchase Event and the delivery of such Convertible Notes Repurchase Notice. Any Convertible Notes Repurchase Notice delivered to Dealer pursuant to the Base Call Option Confirmation shall be deemed to be a Convertible Notes Repurchase Notice pursuant to this Confirmation and the terms of such Convertible Notes Repurchase Notice shall apply, *mutatis mutandis*, to this Confirmation. The receipt by Dealer from Counterparty of any Convertible Notes Repurchase Notice shall constitute an Additional Termination Event as provided in this Section 9(i)(iv). Upon receipt of any such Convertible Notes Repurchase Notice, Dealer shall designate an Exchange Business Day following receipt of such Convertible Notes Repurchase Notice (which Exchange Business Day shall be on or as promptly as reasonably practicable following the settlement date for such Repurchase Event) as an Early Termination Date with respect to the portion of the Transaction corresponding to a number of Options (the “**Repurchase Options**”) equal to the lesser of (A) (x) the aggregate principal amount of such Convertible Notes specified in such Convertible Notes Repurchase Notice, *divided by* USD 1,000 *minus* (y) the “Repurchase Options” (as defined in the Base Call Option Confirmation), if any, that relate to such Convertible Notes and (B) the Number of Options as of the date Dealer designates such Early Termination Date and, as of such date, the Number of Options shall be reduced by the number of Repurchase Options. Any payment hereunder with respect to such termination (the “**Repurchase Unwind Payment**”) shall be calculated pursuant to Section 6 of the Agreement as if (1) an Early Termination Date had been designated in respect of a Transaction having terms identical to the Transaction and a Number of Options equal to the number of Repurchase Options, (2) Counterparty were the sole Affected Party with respect to such Additional Termination Event and (3) the terminated portion of the Transaction were the sole Affected Transaction (and, for the avoidance of doubt, in determining the amount payable in respect of such Affected Transaction pursuant to Section 6 of the Agreement, Dealer shall assume that (x) the relevant Repurchase Event and any conversions, adjustments, agreements, payments, deliveries or acquisitions by or on behalf of Counterparty leading thereto had not occurred, (y) no adjustments to the Conversion Rate have occurred pursuant to any Excluded Provisions and (z) the corresponding Convertible Notes remain outstanding). “**Repurchase Event**” means that (i) any Convertible Notes are repurchased or redeemed (whether pursuant to Section 15.01 of the Indenture, Section 15.02 of the Indenture, Section 16.01 of the Indenture or otherwise) by Counterparty or any of its subsidiaries, (ii) any Convertible Notes are delivered to Counterparty in exchange for delivery of any property or assets of Counterparty or any of its subsidiaries (howsoever described), including for the avoidance of doubt shares or American depositary shares of Issuer and/or cash, (iii) any principal of any of the Convertible Notes is repaid prior to the final maturity date of the Convertible Notes (other than upon acceleration of the Convertible Notes described in Section 9(i)(ii)), or (iv) any Convertible Notes are exchanged by or for the benefit of the holders thereof for any other securities of Counterparty or any of its affiliates (or any other property, or any combination thereof) pursuant to any exchange offer or similar transaction; *provided* that any conversion of Convertible Notes pursuant to the terms of the Indenture shall not constitute a Repurchase Event. Counterparty acknowledges and agrees that if an Additional Termination Event has occurred under this Section 9(i)(iv) that any related Convertible Notes subject to a Repurchase Event will be promptly cancelled under the applicable provisions of the Indenture and, in any event, will be deemed to be cancelled and disregarded and no longer outstanding for all purposes hereunder.

(j) Amendments to Equity Definitions.

- (i) Solely in respect of adjustments to the Cap Price pursuant to Section 9(y), Section 11.2(e)(vii) of the Equity Definitions is hereby amended by deleting the words “that may have a diluting or concentrative effect on the theoretical value of the relevant Shares” and replacing them with the words “that is the result of a corporate event involving the Underlying Shares Issuer or its securities that has a material economic effect on the Shares and/or the Underlying Shares or options on the Shares and/or the Underlying Shares; *provided* that such event is not based on (a) an observable market, other than the market for the Underlying Shares Issuer’s own stock or (b) an observable index, other than an index calculated and measured solely by reference to the Underlying Shares Issuer’s own operations.”
- (ii) Section 12.6(a)(ii) of the Equity Definitions is hereby amended by (1) inserting “(1)” immediately following the word “means” in the first line thereof and (2) inserting immediately prior to the semi-colon at the end of subsection (B) thereof the following words: “or (2) the occurrence of any of the events specified in Section 5(a)(vii)(1) through (9) of the ISDA Master Agreement with respect to that Issuer” *provided* that the period for dismissal, discharge, stay or restraint therein shall be increased from “within 15 days” to “within 30 days.”
- (iii) Section 12.9(b)(i) of the Equity Definitions is hereby amended by (1) replacing “either party may elect” with “Dealer may elect” and (2) replacing “notice to the other party” with “notice to Counterparty” in the first sentence of such section.



- (k) Setoff. Neither party shall have the right to set off any obligation that it may have to the other party under the Transaction against any obligation such other party may have to it, whether arising under the Agreement, this Confirmation or any other agreement between the parties hereto, by operation of law or otherwise and each party hereby waives any such right to setoff.
- (l) Adjustments. For the avoidance of doubt, whenever the Calculation Agent is called upon to make an adjustment pursuant to the terms of this Confirmation or the Equity Definitions to take into account the effect of an event (other than on adjustments made by reference to the Indenture), the Calculation Agent shall make such adjustment in a commercially reasonable manner by reference to the effect of such event on Dealer, assuming that Dealer maintains a commercially reasonable hedge position
- (m) Alternative Calculations and Payment on Early Termination and on Certain Extraordinary Events. If (a) an Early Termination Date (whether as a result of an Event of Default or a Termination Event) occurs or is designated with respect to the Transaction or (b) the Transaction is cancelled or terminated upon the occurrence of an Extraordinary Event, and if Dealer would owe any amount to Counterparty pursuant to Section 6(d)(ii) of the Agreement or any Cancellation Amount pursuant to Article 12 of the Equity Definitions (any such amount, a “**Payment Obligation**”), Counterparty may request Dealer to satisfy the Payment Obligation by the Share Termination Alternative (as defined below) (except as a result of (i) a Nationalization, Insolvency or Merger Event in which the consideration to be paid to holders of Shares and/or Underlying Shares, as applicable, consists solely of cash, (ii) an Announcement Event, Merger Event or Tender Offer that is within Counterparty’s control, or (iii) an Event of Default in which Counterparty is the Defaulting Party or a Termination Event in which Counterparty is the Affected Party other than an Event of Default of the type described in Section 5(a)(iii), (v), (vi), (vii) or (viii) of the Agreement or a Termination Event of the type described in Section 5(b) of the Agreement, in each case that resulted from an event or events outside Counterparty’s control), as long as Counterparty remakes the representation set forth in Section 8(f) as of the date of such election, and Counterparty shall give irrevocable telephonic notice to Dealer, confirmed in writing within one Scheduled Trading Day, no later than 12:00 p.m. (New York City time) on the date of the Announcement Event, Merger Date, Tender Offer Date, Announcement Date (in the case of a Nationalization, Insolvency or Delisting), Early Termination Date or date of cancellation, as applicable; *provided* that if Counterparty does not validly request Dealer to satisfy the Payment Obligation by the Share Termination Alternative, Dealer shall have the right, in its sole discretion, to satisfy its Payment Obligation by the Share Termination Alternative, notwithstanding Counterparty’s failure to elect or election to the contrary. If such election is not made, then the provisions of Section 12.7 or Section 12.9 of the Equity Definitions, or the provisions of Section 6(d)(ii) and Section 6(e) of the Agreement, as the case may be, shall apply.

Share Termination Alternative:

If applicable, Dealer shall deliver to Counterparty the Share Termination Delivery Property on, or as promptly as commercially reasonably practicable thereafter, the date when the relevant Payment Obligation would otherwise be due pursuant to Section 12.7 or 12.9 of the Equity Definitions or Section 6(d)(ii) and 6(e) of the Agreement, as applicable, in satisfaction of such Payment Obligation in the manner reasonably requested by Counterparty free of payment.

Share Termination Delivery Property:

A number of Share Termination Delivery Units, as calculated by the Calculation Agent, equal to the Payment Obligation divided by the Share Termination Unit Price. The Calculation Agent shall adjust the Share Termination Delivery Property by replacing any fractional portion of a security therein with an amount of cash equal to the value of such fractional security based on the values used to calculate the Share Termination Unit Price.

Share Termination Unit Price: The value of property contained in one Share Termination Delivery Unit, as determined by the Calculation Agent in its discretion by commercially reasonable means and notified by the Calculation Agent to Dealer at the time of notification of the Payment Obligation.

Share Termination Delivery Unit: One Share or, if the Shares or Underlying Shares, as applicable, have changed into cash or any other property or the right to receive cash or any other property as the result of a Nationalization, Insolvency or Merger Event (any such cash or other property, the “**Exchange Property**”), a unit consisting of the type and amount of such Exchange Property received by a holder of one Share or Underlying Share, as applicable (without consideration of any requirement to pay cash or other consideration in lieu of fractional amounts of any securities) in such Nationalization, Insolvency or Merger Event, as determined by the Calculation Agent. If such Nationalization, Insolvency, or Merger Event involves a choice of Exchange Property to be received by holders, such holders shall be deemed to have elected to receive the maximum possible amount of cash.

Failure to Deliver: Applicable

Other applicable provisions: If Share Termination Alternative is applicable, the provisions of Sections 9.8, 9.9 and 9.11 (as modified above) of the Equity Definitions and the provisions set forth opposite the caption “Representation and Agreement” in Section 2 will be applicable, except that all references in such provisions to “Physically-settled” shall be read as references to “Share Termination Settled” and all references to “Shares” shall be read as references to “Share Termination Delivery Units”. “Share Termination Settled” in relation to the Transaction means that Share Termination Alternative is applicable to the Transaction.

- (n) Waiver of Jury Trial. Each party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any suit, action or proceeding relating to the Transaction. Each party (i) certifies that no representative, agent or attorney of either party has represented, expressly or otherwise, that such other party would not, in the event of such a suit, action or proceeding, seek to enforce the foregoing waiver and (ii) acknowledges that it and the other party have been induced to enter into the Transaction, as applicable, by, among other things, the mutual waivers and certifications provided herein.

- (o) Registration. Counterparty hereby agrees that if, in the good faith reasonable judgment of Dealer, based on the advice of counsel, the Shares and/or Underlying Shares (“**Hedge Shares**”) acquired by Dealer for the purpose of commercially reasonably hedging its obligations pursuant to the Transaction cannot be sold in the public market by Dealer without registration under the Securities Act, Counterparty shall, at its election, either (i) in order to allow Dealer to sell the Hedge Shares in a registered offering, make available to Dealer an effective registration statement under the Securities Act and enter into an agreement, in form and substance reasonably satisfactory to Dealer, substantially in the form of an underwriting agreement customary for a registered secondary offering of a similar size in respect of a similar issuer; *provided, however*, that if Dealer, in its sole reasonable discretion, is not satisfied with access to due diligence materials, the results of its due diligence investigation, or the procedures and documentation for the registered offering referred to above, then clause (ii) or clause (iii) of this paragraph shall apply at the election of Counterparty, (ii) in order to allow Dealer to sell the Hedge Shares in a private placement, use commercially reasonable efforts to enter into a private placement agreement substantially similar to private placement purchase agreements customary for private placements of equity securities of a similar size in respect of a similar issuer, in form and substance satisfactory to Dealer (in which case, the Calculation Agent shall make any adjustments to the terms of the Transaction that are necessary, in its commercially reasonable judgment, to compensate Dealer for any commercially reasonable discount from the public market price of the Shares and/or Underlying Shares incurred on the sale of Hedge Shares in a private placement), or (iii) purchase the Hedge Shares from Dealer at the then-current market price on such Exchange Business Days, and in the amounts and at such time(s), reasonably requested by Dealer.
- (p) Tax Disclosure. Effective from the date of commencement of discussions concerning the Transaction, Counterparty and each of its employees, representatives, or other agents may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the Transaction and all materials of any kind (including opinions or other tax analyses) that are provided to Counterparty relating to such tax treatment and tax structure.
- (q) Right to Extend. Dealer may postpone or add, in whole or in part, any Valid Day or Valid Days during the Settlement Averaging Period or any other date of valuation, payment or delivery by Dealer, with respect to some or all of the Options hereunder, if Dealer reasonably determines, in the case of clause (i) below, in its commercially reasonable judgment or, in the case of clause (ii) below, based on advice of counsel, that such action is reasonably necessary or appropriate (i) to preserve Dealer’s commercially reasonable hedging or hedge unwind activity hereunder in light of existing liquidity conditions in the relevant market or (ii) to enable Dealer to effect transactions with respect to Shares and/or Underlying Shares in connection with its commercially reasonable hedging, hedge unwind or settlement activity hereunder in a manner that would, if Dealer were Counterparty or an affiliated purchaser of Counterparty, be in compliance with applicable legal, regulatory or self-regulatory requirements, or with related policies and procedures adopted by Dealer in good faith so long as such policies and procedures are generally applicable in similar situations and applied in a non-discriminatory manner); *provided* that no such Valid Day or other date of valuation, payment or delivery may be postponed or added more than 40 Valid Days after the original Valid Day or other date of valuation, payment or delivery, as the case may be.
- (r) Status of Claims in Bankruptcy. Dealer acknowledges and agrees that this Confirmation is not intended to convey to Dealer rights against Counterparty with respect to the Transaction that are senior to the claims of common or ordinary shareholders of Counterparty in any United States or Cayman Islands 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 the Transaction; *provided, further* that nothing herein shall limit or shall be deemed to limit Dealer’s rights in respect of any transactions other than the Transaction.

- (s) Securities Contract; Swap Agreement. The parties hereto intend for (i) the Transaction to be a “securities contract” and a “swap agreement” as defined in the Bankruptcy Code (Title 11 of the United States Code) (the “**Bankruptcy Code**”), and the parties hereto to be entitled to the protections afforded by, among other Sections, Sections 362(b)(6), 362(b)(17), 546(e), 546(g), 555 and 560 of the Bankruptcy Code, (ii) a party’s right to liquidate the Transaction and to exercise any other remedies upon the occurrence of any Event of Default under the Agreement with respect to the other party to constitute a “contractual right” as described in the Bankruptcy Code, and (iii) each payment and delivery of cash, securities or other property hereunder to constitute a “margin payment” or “settlement payment” and a “transfer” as defined in the Bankruptcy Code.
- (t) Notice of Certain Other Events. Counterparty covenants and agrees that:
- (i) promptly following the public announcement of the results of any election by the holders of Shares and/or Underlying Shares, as applicable, with respect to the consideration due upon consummation of any Merger Event, Counterparty shall give Dealer written notice of (x) the weighted average of the types and amounts of consideration that holders of Shares and/or Underlying Shares, as applicable, have elected to receive upon consummation of such Merger Event or (y) if no holders of Shares and/or Underlying Shares, as applicable, affirmatively make such election, the types and amounts of consideration actually received by holders of Shares and/or Underlying Shares, as applicable, (the date of such notification, the “**Consideration Notification Date**”); *provided* that in no event shall the Consideration Notification Date be later than the date on which such Merger Event is consummated;
  - (ii) (A) Counterparty shall give Dealer commercially reasonable advance (but in no event less than one Exchange Business Day) written notice of the section or sections of the Indenture and, if applicable, the formula therein, pursuant to which any adjustment will be made to the Convertible Notes in connection with any Potential Adjustment Event, Merger Event or Tender Offer and (B) promptly following any such adjustment, Counterparty shall give Dealer written notice of the details of such adjustment; and
  - (iii) Counterparty will provide a written notice to Dealer immediately upon becoming aware that Counterparty is not or will no longer be a “foreign private issuer,” as such term is defined in Rule 3b-4 under the Exchange Act.
- (u) 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 Confirmation or the Agreement, as applicable, arising from a termination event, force majeure, illegality, increased costs, regulatory change or similar event under this Confirmation, the Equity Definitions incorporated herein, or the Agreement (including, but not limited to, rights arising from Change in Law, Hedging Disruption, an Excess Ownership Position, or Illegality (as defined in the Agreement)).
- (v) Agreements and Acknowledgements Regarding Hedging. Counterparty understands, acknowledges and agrees that: (A) at any time on and prior to the Expiration Date, Dealer and its affiliates may buy or sell Shares, Underlying Shares or other securities or buy or sell options or futures contracts or enter into swaps or other derivative securities in order to adjust its hedge position with respect to the Transaction; (B) Dealer and its affiliates also may be active in the market for Shares and/or Underlying Shares other than in connection with hedging activities in relation to the Transaction; (C) Dealer shall make its own determination as to whether, when or in what manner any hedging or market activities in securities of Issuer and/or Underlying Shares Issuer shall be conducted and shall do so in a manner that it deems appropriate to hedge its price and market risk with respect to the Relevant Prices; and (D) any market activities of Dealer and its affiliates with respect to Shares and/or Underlying Shares may affect the market price and volatility of Shares and/or Underlying Shares, as well as the Relevant Prices, each in a manner that may be adverse to Counterparty.

- (w) Early Unwind. In the event the sale of the “Option Securities” (as defined in the Purchase Agreement) is not consummated with the Initial Purchasers for any reason, or Counterparty fails to deliver to Dealer opinions of counsel as required pursuant to Section 9(a), in each case by 5:00 p.m. (New York City time) on the Premium Payment Date, or such later date as agreed upon by the parties (the Premium Payment Date or such later date the “**Early Unwind Date**”), the Transaction shall automatically terminate (the “**Early Unwind**”), on the Early Unwind Date and (i) the Transaction and all of the respective rights and obligations of Dealer and Counterparty under the Transaction shall be cancelled and terminated and (ii) each party shall be released and discharged by the other party from and agrees not to make any claim against the other party with respect to any obligations or liabilities of the other party arising out of and to be performed in connection with the Transaction either prior to or after the Early Unwind Date. Each of Dealer and Counterparty represents and acknowledges to the other that, upon an Early Unwind, all obligations with respect to the Transaction shall be deemed fully and finally discharged.
- (x) Payment by Counterparty. In the event that, following payment of the Premium, (i) an Early Termination Date occurs or is designated with respect to the Transaction as a result of a Termination Event or an Event of Default (other than an Event of Default arising under Section 5(a)(ii) or 5(a)(iv) of the Agreement) and, as a result, Counterparty owes to Dealer an amount calculated under Section 6(e) of the Agreement, or (ii) Counterparty owes to Dealer, pursuant to Section 12.7 or Section 12.9 of the Equity Definitions, an amount calculated under Section 12.8 of the Equity Definitions, such amount shall be deemed to be zero.
- (y) Other Adjustments Pursuant to the Equity Definitions. Notwithstanding anything to the contrary in this Confirmation, solely for the purpose of adjusting the Cap Price, the terms “Potential Adjustment Event,” “Merger Event,” and “Tender Offer” shall each have the meanings assigned to such term in the Equity Definitions (as amended by Section 9(j)(i) or, if applicable, by the definition of “Announcement Event”), and upon the occurrence of a Merger Date, the occurrence of a Tender Offer Date, or declaration by Counterparty of the terms of any Potential Adjustment Event, respectively, as such terms are defined in the Equity Definitions, the Calculation Agent may, in its sole discretion, adjust the Cap Price to preserve the fair value of the Options; *provided* that in no event shall the Cap Price be less than the Strike Price; *provided further* that any adjustment to the Cap Price made pursuant to this Section 9(y) shall be made without duplication of any other adjustment hereunder (including, for the avoidance of doubt, adjustment made pursuant to the provisions opposite the captions “Method of Adjustment,” “Consequences of Merger Events/Tender Offers” and “Consequence of Announcement Events” in Section 3 above). For the avoidance of doubt, for purposes of this Section 9(y), Section 12.1(d) of the Equity Definitions is hereby amended by replacing “10%” with “20%” in the third line thereof.
- (z) Service of Process. Counterparty irrevocably appoints Law Debenture Corporate Services Inc. as its authorized agent upon which process may be served in any suit, action or proceeding relating to the Transaction, and agrees that service of process in any manner permitted by applicable law upon such agent shall be deemed in every respect effective service of process in any manner permitted by applicable law upon Counterparty in any such suit, action or proceeding. Counterparty further agrees to take any and all action as may be necessary to maintain such designation and appointment of such agent in full force and effect for a period of five and a half years from the date of this Confirmation. If for any reason such agent shall cease to be such agent for service of process, Counterparty shall forthwith appoint a new agent of recognized standing for service of process in the State of New York and deliver to Dealer a copy of the new agent’s acceptance of that appointment within 10 days. Nothing herein shall affect the right of Dealer to serve process in any other manner permitted by law or to commence legal proceedings or otherwise proceed against Counterparty in any other court of competent jurisdiction.

- (aa) Taxes, Foreign Account Tax Compliance Act and HIRE Act. Counterparty is classified as a corporation for the U.S. federal income tax purposes. No income received or to be received under the Agreement will be effectively connected with the conduct of a trade or business by Counterparty in the United States. Counterparty is a “non-U.S. branch of a foreign person” as that term is used in Section 1.1441-4(a)(3)(ii) of the United States Treasury Regulations (the “**Regulations**”), and it is a “foreign person” as that term is used in Section 1.6041-4(a)(4) of the Regulations. The term “Indemnifiable Tax” as defined in Section 14 of the Agreement shall not include any U.S. federal withholding tax imposed or collected pursuant to Sections 1471 through 1474 of the U.S. Internal Revenue Code of 1986, as amended (the “**Code**”), any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b) of the Code, or any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code (a “**FATCA Withholding Tax**”). For the avoidance of doubt, a FATCA Withholding Tax is a Tax the deduction or withholding of which is required by applicable law for the purposes of Section 2(d) of the Agreement. The parties agree that the definitions and provisions contained in the ISDA 2015 Section 871(m) Protocol, as published by the International Swaps and Derivatives Association, Inc. and as may be amended, supplemented, replaced or superseded from time to time (the “**871(m) Protocol**”) shall apply to the Agreement as if the parties had adhered to the 871(m) Protocol as of the Effective Date. If there is any inconsistency between this provision and a provision in any other agreement executed between the parties, this provision shall prevail unless such other agreement expressly overrides the provisions of the 871(m) Protocol. Each of Dealer and Counterparty shall provide to the other party tax forms and documents required to be delivered pursuant to Sections 1471(b) or Section 1472(b)(1) of the Code promptly upon request by the other party and any other tax forms and documents they are legally able to provide that are reasonably requested by the other party.
- (bb) U.S. Tax Forms. Without limiting the generality of the foregoing, Counterparty will provide a US Tax Form W-8BEN-E upon the execution of this Confirmation, promptly upon learning that any such tax form previously provided by it has become obsolete or incorrect and promptly upon reasonable demand by Dealer.

(cc) Additional Definitions and Amendments to Equity Definitions.

(i) For the purposes of this Confirmation the following definitions will apply:

“**Depository**” means, in relation to the Shares, Deutsche Bank Trust Company Americas, or any successor thereto from time to time.

“**Deposit Agreement**” means, (i) that certain Deposit Agreement, dated as of September 11, 2018, by and among Underlying Shares Issuer, Depository and the holders and beneficial owners of the Shares and (ii) the other agreements or other instruments constituting the Shares, as from time to time amended or supplemented in accordance with their terms.

“**DS Amendment**” means, where specified as applicable to a definition or provision, that the following changes shall be made to such definition or provision: (a) all references to “Shares” shall be deleted and replaced with the words “Shares and/or the Underlying Shares, as appropriate”; and (b) all references to “Issuer” shall be deleted and replaced with the words “Issuer or Underlying Shares Issuer, as appropriate”.

“**Replacement DSS**” means depository shares or receipts, other than the Shares, over the same Underlying Shares.

(ii) The following amendments shall be made to the Equity Definitions:

- (A) The definition of Potential Adjustment Event in Section 11.2(e) of the Equity Definitions shall be amended as follows:
- (i) the DS Amendment shall be applicable, provided that an event under Section 11.2(e)(i) to (vii) of the Equity Definitions in respect of the Underlying Shares shall not constitute a Potential Adjustment Event unless, in the commercially reasonable opinion of the Calculation Agent, such event has a material effect on the theoretical value of the Shares; and
  - (ii)
    - (A) ‘or’ shall be deleted where it appears at the end of subsection (vi);
    - (B) ‘.’ shall be deleted where it appears at the end of subsection (vii) and replaced with ‘;’;
    - (C) the following shall be inserted as subsection (viii): “(viii) the making of any amendment or supplement to the terms of the Deposit Agreement and/or the Shares; or”; and
    - (D) the following shall be inserted as provision (ix): “(ix) any other event as a result of which the Shares represent fewer or more Underlying Shares than, and/or any property or assets in addition to, or as a whole or partial replacement of, in each case, the number of Underlying Shares represented by the Shares prior to such event.”
- (B) In making any adjustment following any Potential Adjustment Event, the Calculation Agent shall have reference to (to the extent necessary or appropriate among other factors) any adjustment made by the Depositary under the Deposit Agreement, any fees and/or expenses of the Depositary and any withholding or deduction of taxes. If the Calculation Agent determines that no adjustment that it could make will produce a commercially reasonable result, it shall notify the parties that the relevant consequence shall be the termination of the relevant Transaction, in which case “Cancellation and Payment (Calculation Agent Determination)” will be deemed to apply and any payment to be made by one party to the other shall be calculated in accordance with Section 12.7 of the Equity Definitions (as amended by this Confirmation).
- (C) If a Potential Adjustment Event occurs under Section 11.2(e)(viii) of the Equity Definitions (as amended by this Confirmation), then the following further amendments shall be deemed to be made to Section 11.2(c) of the Equity Definitions in respect of such Potential Adjustment Event:
- (i) the words “the Calculation Agent will determine whether such Potential Adjustment Event has a material effect on the theoretical value of the relevant Shares, options on the Shares or the Transaction” shall be deleted and replaced with the words “the Calculation Agent will determine whether such Potential Adjustment Event has a material economic effect on such Transaction”; and
  - (ii) the words “as the Calculation Agent determines appropriate to account for that material effect” shall be deleted and replaced with the words “as the Calculation Agent determines appropriate to account for such economic effect on such Transaction”.
- (D) The definitions of “Merger Event”, “Tender Offer”, “Announcement Date”, “Share-for-Share”, “Share-for-Other” and “Share-for-Combined” in Section 12.1 of the Equity Definitions shall be amended in accordance with the DS Amendment.
- (E) In making any adjustment in respect of a Merger Event, Tender Offer or Announcement Event in relation to the Underlying Shares, the Calculation Agent shall in determining any adjustment pursuant to Modified Calculation Adjustment, have reference to (amongst other factors) any adjustment made by the Depositary under the Deposit Agreement, any fees and/or expenses of the Depositary and any withholding or deduction of taxes, as determined by the Calculation Agent in its commercially reasonable discretion.

- (F) The definitions of Nationalization and Insolvency in Section 12.6 of the Equity Definitions shall be amended in accordance with the DS Amendment.
- (G) The consequence of a Nationalization or Insolvency in respect of the Depository shall be Cancellation and Payment.
- (H) If a Delisting of the Shares occurs or the Depository announces that the Deposit Agreement is (or will be) terminated, then:
- (i) Cancellation and Payment will apply as provided in this Confirmation; and
  - (ii) where Cancellation and Payment applies under (H)(i) above in respect of a termination of the Deposit Agreement, the Equity Definitions shall be interpreted as follows: (i) such termination shall be deemed to be an “Extraordinary Event”; (ii) Cancellation and Payment shall apply as defined in Section 12.6(c)(ii) of the Equity Definitions; and (iii) the definition of “Announcement Date” in Section 12.1(l) of the Equity Definitions shall include the following additional clause (vii) at the end of the first sentence thereof: “(vii) in the case of a termination of the Deposit Agreement, the date of the first public announcement by the Depository that the Deposit Agreement is (or will be) terminated”.
- (I) If Cancellation and Payment applies under Section 9(cc)(ii)(G) or Section 9(cc)(ii)(H) of this Confirmation in respect of a Transaction, then the Determining Party shall be Dealer.
- (J) The definition of “Insolvency Filing” in Section 12.9(a)(iv) of the Equity Definitions shall be amended in accordance with the DS Amendment.
- (K) For the avoidance of doubt, where a provision is amended by this Section 9(cc) in accordance with the DS Amendment, if the event described in such provision occurs in respect of the Underlying Shares or Underlying Shares Issuer, then the consequence of such event shall be interpreted consistently with the DS Amendment and such event.
- (dd) 2013 EMIR Portfolio Reconciliation, Dispute Resolution and Disclosure Protocol. The parties agree that the Attachment to the 2013 EMIR Portfolio Reconciliation, Dispute Resolution and Disclosure Protocol published by ISDA on July 19, 2013 (“**PDD Protocol**”) apply to the Confirmation as if set out in full herein. 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 Section 9(dd) (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 this Confirmation”, (iii) references to “Protocol Covered Agreement” shall be deemed to be references to this Confirmation (and each “Protocol Covered Agreement” shall be read accordingly), (iv) references to “Implementation Date” shall be deemed to be references to the date of this Confirmation, (v) the words “or the Investment Manager on its behalf,” shall be inserted after the words “Portfolio Data Receiving Entity” in Part I(1)(a)(ii), (vi) (a) the words “, or the Investment Manager on its behalf” shall be inserted after the words “Portfolio Data Receiving Entity”, and (b) the words “such party” shall be deleted and replaced with the words “Portfolio Data Receiving Party” in Part I(1)(a)(iii), and (vii) the words “, or, in the case of Counterparty, its board of directors,” shall be inserted after the words “senior members of staff of such party or of its Affiliate, adviser or agent” in Part I(4)(c). For the purposes of this Section 9(dd):



1. Dealer is a Portfolio Data Sending Entity and Counterparty is a Portfolio Data Receiving Entity;
2. 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.
3. The Local Business Days for such purposes in relation to Dealer are London, United Kingdom and in relation to Counterparty are Shanghai, Hong Kong and New York;
4. The provisions in this paragraph shall survive the termination of this Transaction.
5. The following are the applicable email addresses.

Portfolio Data:	Dealer: portfolio.reconciliation@gs.com
	Counterparty: chao.wang10@nio.com
Notice of discrepancy:	Dealer: portfolio.reconciliation@gs.com
	Counterparty: chao.wang10@nio.com
Dispute Notice:	Dealer: portfolio.reconciliation@gs.com
	Counterparty: chao.wang10@nio.com

- (ee) NFC Representation Protocol. (i) 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 Confirmation as if each party were an Adhering Party under the terms of the NFC Representation Protocol. In respect of the Attachment to the Protocol, (A) the definition of “Adherence Letter” shall be deemed to be deleted and references to “Adherence Letter” shall be deemed to be to this Section 9(ee) (and references to “the relevant Adherence Letter” and “its Adherence Letter” shall be read accordingly), (B) references to “adheres to the Protocol” shall be deemed to be “enters into this Confirmation”, (C) references to “Covered Master Agreement” shall be deemed to be references to this Confirmation (and each “Covered Master Agreement” shall be read accordingly), and (D) references to “Implementation Date” shall be deemed to be references to the date of this Confirmation. (ii) Counterparty confirms that it enters into this Confirmation as a party making the NFC Representation (as such term is defined in the NFC Representation Protocol). Counterparty shall promptly notify Dealer of any change to its status as a party making the NFC Representation.
- (ff) 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**”):
1. 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

2. 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 such information becoming available to the public or recipients in a jurisdiction which may have a different level of protection for personal data from that of the relevant party's home jurisdiction.

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 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.

Please confirm that the foregoing correctly sets forth the terms of our agreement by executing this Confirmation and returning it to Dealer.

Very truly yours,

**GOLDMAN SACHS INTERNATIONAL**

By: /s/ Authorized Signatory

Authorized Signatory

Name:

Accepted and confirmed  
as of the Trade Date:

**NIO Inc.**

By:           /s/ Authorized Signatory            
Authorized Signatory  
Name:

February 13, 2019

To: **NIO Inc.**  
Building 20, No. 56 AnTuo Road, Jiading District  
Shanghai, 201804  
People's Republic of China  
Attention: Louis T. Hsieh, Chief Financial Officer  
Telephone No.: +86 (21) 6908 3306  
Facsimile No.: +86 (21) 3913 0192

**From:** Morgan Stanley & Co. LLC  
1585 Broadway, 5th Floor  
New York, NY 10036

Re: Additional Call Option Transaction

The purpose of this letter agreement (this "**Confirmation**") is to confirm the terms and conditions of the call option transaction entered into between Morgan Stanley & Co. LLC ("**Dealer**") and NIO Inc. ("**Counterparty**") as of the Trade Date specified below (the "**Transaction**"). This letter agreement constitutes a "Confirmation" as referred to in the ISDA Master Agreement specified below. Each party further agrees that this Confirmation together with the Agreement evidence a complete binding agreement between Counterparty and Dealer as to the subject matter and terms of the Transaction to which this Confirmation relates, and shall supersede all prior or contemporaneous written or oral communications with respect thereto.

The definitions and provisions contained in the 2002 ISDA Equity Derivatives Definitions (the "**Equity Definitions**"), as published by the International Swaps and Derivatives Association, Inc. ("**ISDA**") are incorporated into this Confirmation. In the event of any inconsistency between the Equity Definitions and this Confirmation, this Confirmation shall govern. Certain defined terms used herein are based on terms that are defined in the Offering Memorandum dated January 30, 2019 (the "**Offering Memorandum**") relating to the 4.50% Convertible Senior Notes due 2024 (as originally issued by Counterparty, the "**Convertible Notes**" and each USD 1,000 principal amount of Convertible Notes, a "**Convertible Note**") issued by Counterparty in an aggregate initial principal amount of USD 650,000,000 (as increased by an aggregate principal amount of USD 51,773,000 pursuant to the exercise by the Initial Purchasers (as defined herein) of their option to purchase additional Convertible Notes pursuant to the Purchase Agreement (as defined herein)) pursuant to an Indenture dated February 4, 2019 between Counterparty and The Bank of New York Mellon, as trustee (the "**Indenture**"). In the event of any inconsistency between the terms defined in the Offering Memorandum, the Indenture and this Confirmation, this Confirmation shall govern. The parties acknowledge that this Confirmation is entered into on the date hereof with the understanding that (i) definitions set forth in the Indenture which are also defined herein by reference to the Indenture and (ii) sections of the Indenture that are referred to herein will conform to the descriptions thereof in the Offering Memorandum. If any such definitions in the Indenture or any such sections of the Indenture differ from the descriptions thereof in the Offering Memorandum, the descriptions thereof in the Offering Memorandum will govern for purposes of this Confirmation. The parties further acknowledge that the Indenture section numbers used herein are based on the Indenture as executed. Subject to the foregoing, references to the Indenture herein are references to the Indenture as in effect on the date of its execution, and if the Indenture is amended or supplemented following such date (other than any amendment or supplement (x) pursuant to Section 10.01(i) of the Indenture that, as determined by the Calculation Agent, conforms the Indenture to the description of Convertible Notes in the Offering Memorandum, and (y) pursuant to Section 14.07(a) of the Indenture, subject, in the case of this clause (y), to the second paragraph under "Method of Adjustment" in Section 3), any such amendment or supplement will be disregarded for purposes of this Confirmation (other than as provided in Section 9(i)(iii) below) unless the parties agree otherwise in writing. For the avoidance of doubt, adjustments pursuant to any Dilution Adjustment Provision shall not constitute amendment, modification, supplement, or waiver in respect of any term of the Indenture or the Convertible Notes for any purpose under this paragraph and under Section 9(i)(iii).

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

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1. This Confirmation evidences a complete and binding agreement between Dealer and Counterparty as to the terms of the Transaction to which this Confirmation relates. This Confirmation shall supplement, form a part of, and be subject to an agreement in the form of the 2002 ISDA Master Agreement (the “**Agreement**”) as if Dealer and Counterparty had executed an agreement in such form (but without any Schedule except for (i) the election of the laws of the State of New York as the governing law (without reference to choice of law doctrine) and (ii) the agreement of the parties hereto that, following the payment of the Premium and the delivery to Dealer of the opinions of counsel as required pursuant to Section 9(a), the condition precedent in Section 2(a)(iii) of the Agreement shall not apply to a payment or delivery owing by Dealer to Counterparty (it being understood that such condition precedent will continue to apply and this clause (ii) will have no effect with respect to a Potential Event of Default, Event of Default and/or Early Termination Date arising under, or with respect to, Section 5(a)(ii) or 5(a)(iv) of the Agreement)) on the Trade Date.

In the event of any inconsistency between provisions of the Agreement and this Confirmation, this Confirmation will prevail for the purpose of the Transaction to which this Confirmation relates. The parties hereby agree that no transaction other than the Transaction to which this Confirmation relates shall be governed by the Agreement. If there exists any ISDA Master Agreement between Dealer and Counterparty or any confirmation or other agreement between Dealer and Counterparty pursuant to which an ISDA Master Agreement is deemed to exist between Dealer and Counterparty, then notwithstanding anything to the contrary in such ISDA Master Agreement, such confirmation or agreement or any other agreement to which Dealer and Counterparty are parties, the Transaction shall not be considered a Transaction under, or otherwise governed by, such existing or deemed ISDA Master Agreement.

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

General Terms.

Trade Date:	February 13, 2019
Effective Date:	The Trade Date.
Option Style:	“Modified American”, as described under “Procedures for Exercise” below
Option Type:	Call
Buyer:	Counterparty
Seller:	Dealer
Shares:	The American Depositary Shares of Counterparty issued or deemed issued under the Deposit Agreement (as defined below) (Symbol: “NIO”), each representing as of the date hereof one Underlying Share.
Underlying Shares:	The Class A ordinary shares of Counterparty, nominal value USD \$0.00025 per Underlying Share.
Number of Options:	51,773. For the avoidance of doubt, the Number of Options shall be reduced by any Options exercised by Counterparty. In no event will the Number of Options be less than zero.
Underlying Shares Issuer:	Counterparty
Applicable Percentage:	20%
Option Entitlement:	A number equal to the product of the Applicable Percentage and 105.1359.
Strike Price:	USD 9.5115

Cap Price: USD 14.9200  
Premium: USD 1,209,417.28  
Premium Payment Date: February 15, 2019  
Exchange: The New York Stock Exchange  
Related Exchange(s): All Exchanges  
Excluded Provisions: Section 14.04(h) and Section 14.03 of the Indenture.

Procedures for Exercise.

Expiration Time: The Valuation Time  
Expiration Date: February 1, 2024, subject to earlier exercise.  
Multiple Exercise: Applicable, as described under “Automatic Exercise” below.  
Automatic Exercise: Notwithstanding Section 3.4 of the Equity Definitions, all Options then outstanding as of 5:00 p.m. New York City time on the Expiration Date will be deemed to be automatically exercised; *provided* that, for the avoidance of doubt, no such automatic exercise pursuant to this paragraph will occur if the Relevant Price for each Valid Day during the applicable Settlement Averaging Period is less than or equal to the Strike Price.  
  
Notwithstanding the foregoing, in no event shall the number of Options that are exercised or deemed exercised hereunder exceed the Number of Options.  
Valuation Time: At the close of trading of the regular trading session on the Exchange; *provided* that if the principal trading session is extended, the Calculation Agent shall determine the Valuation Time in its reasonable discretion.  
Market Disruption Event: Section 6.3(a) of the Equity Definitions is hereby replaced in its entirety by the following:  
  
“‘Market Disruption Event’ means, in respect of a Share, (i) a failure by the primary United States national or regional securities exchange or market on which the Shares are 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 Valid Day for the Shares 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 Shares or in any options contracts or futures contracts relating to the Shares.”

Settlement Terms.

Settlement Method Election: Applicable; *provided* that (i) Section 7.1 of the Equity Definitions is hereby amended by deleting the word “Physical” in the sixth line thereof and replacing it with the words “Net Share”; and (ii) as of such notice delivery date, Counterparty shall be deemed to have made the following representations:

(A) Counterparty is not aware of any material non-public information with respect to Counterparty, the Underlying Shares Issuer (if other than Counterparty), the Underlying Shares or the Shares;

(B) Counterparty is electing Cash Settlement in good faith and not as part of a plan or scheme to evade compliance with the U.S. federal securities laws; Counterparty is not electing Cash Settlement to create actual or apparent trading activity in the Shares and/or Underlying Shares (or any security convertible into or exchangeable for the Shares and/or Underlying Shares) or to raise or depress or otherwise manipulate the price of the Shares and/or Underlying Shares (or any security convertible into or exchangeable for the Shares and/or Underlying Shares) or otherwise in violation of the Exchange Act; and Counterparty has not entered into or altered any hedging transaction relating to the Shares or the Underlying Shares corresponding to or offsetting the Transaction;

(C) such election and performance of its obligations under this Confirmation do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets; and

(D) any transaction that Dealer makes with respect to the Shares and/or the Underlying Shares during the period beginning at the time that Counterparty delivers such notice and ending at the close of business on the final day of the Settlement Averaging Period shall be made by Dealer at Dealer’s sole discretion for Dealer’s own account and Counterparty shall not have, and shall not attempt to exercise, any influence over how, when, whether or at what price Dealer effects such transactions, including, without limitation, the prices paid or received by Dealer per Share or Underlying Share pursuant to such transactions, or whether such transactions are made on any securities exchange or privately.

Default Settlement Method: Net Share Settlement

Settlement Method Election Date: The third Scheduled Trading Day immediately preceding the first Scheduled Valid Day of the Settlement Averaging Period.



Net Share Settlement:	Dealer will deliver to Counterparty, on the relevant Settlement Date, a number of Shares equal to the Net Shares in respect of any Option exercised or deemed exercised hereunder. In no event will the Net Shares be less than zero.
Net Shares:	<p>In respect of any Option exercised or deemed exercised, a number of Shares equal to the sum of the quotients, for each Valid Day during the Settlement Averaging Period for such Option, of (i) (A) the Daily Option Value for such Valid Day, <i>divided by</i> (B) the Relevant Price on such Valid Day, <i>divided by</i> (ii) the number of Valid Days in the Settlement Averaging Period.</p> <p>Dealer will pay cash in lieu of delivering any fractional Shares to be delivered with respect to any Net Shares valued at the Relevant Price for the last Valid Day of the Settlement Averaging Period.</p>
Cash Settlement:	If Cash Settlement is applicable to any Option exercised or deemed exercised hereunder, in lieu of Section 8.1 of the Equity Definitions, Dealer will pay to Counterparty, on the relevant Settlement Date for each such Option, an amount of cash (the “ <b>Cash Settlement Amount</b> ”) equal to the sum, for each Valid Day during the Settlement Averaging Period for such Option, of (i) the Daily Option Value for such Valid Day, <i>divided by</i> (ii) the number of Valid Days in the Settlement Averaging Period.
Daily Option Value:	For any Valid Day, an amount equal to (i) the Option Entitlement on such Valid Day, <i>multiplied by</i> (ii) (A) the lesser of the Relevant Price on such Valid Day and the Cap Price, <i>less</i> (B) the Strike Price on such Valid Day; <i>provided</i> that if the calculation contained in clause (ii) above results in a negative number, the Daily Option Value for such Valid Day shall be deemed to be zero. In no event will the Daily Option Value be less than zero.
Valid Day:	A day on which (i) there is no Market Disruption Event and (ii) trading in the Shares generally occurs on the Exchange or, if the Shares are not then listed on the Exchange, on the principal other United States national or regional securities exchange on which the Shares are then listed or, if the Shares are not then listed on a United States national or regional securities exchange, on the principal other market on which the Shares are then listed or admitted for trading. If the Shares are not so listed or admitted for trading, “Valid Day” means a Business Day.
Scheduled Valid Day:	A day that is scheduled to be a Valid Day on the principal United States national or regional securities exchange or market on which the Shares are listed or admitted for trading. If the Shares are not so listed or admitted for trading, “Scheduled Valid Day” means a Business Day.
Business Day:	Any day other than a Saturday, a Sunday or a day on which the Federal Reserve Bank of New York is authorized or required by law or executive order to close or be closed.

Relevant Price:	On any Valid Day, the per Share volume-weighted average price as displayed under the heading “Bloomberg VWAP” on Bloomberg page “NIO <equity> AQR” (or its equivalent successor if such page is not available) in respect of the period from the scheduled opening time of the Exchange to the Scheduled Closing Time of the Exchange on such Valid Day (or if such volume-weighted average price is unavailable at such time, the market value of one Share on such Valid Day, as determined by the Calculation Agent using, if practicable, a volume-weighted average method). The Relevant Price will be determined without regard to after-hours trading or any other trading outside of the regular trading session trading hours.
Settlement Averaging Period:	For any Option being exercised hereunder, the 40 consecutive Valid Days commencing on, and including, the 41st Scheduled Valid Day immediately prior to the Expiration Date.
Settlement Date:	For any Option, the second Business Day immediately following the final Valid Day of the Settlement Averaging Period for such Option.
Settlement Currency:	USD
Other Applicable Provisions:	The provisions of Sections 9.1(c), 9.8, 9.9 and 9.11 of the Equity Definitions will be applicable, except that all references in such provisions to “Physically-settled” shall be read as references to “Net Share Settled”. “Net Share Settled” in relation to any Option means that Net Share Settlement is applicable to that Option.
Representation and Agreement:	Notwithstanding anything to the contrary in the Equity Definitions (including, but not limited to, Section 9.11 thereof), the parties acknowledge that (i) any Shares delivered to Counterparty shall be, upon delivery, subject to restrictions and limitations arising from Counterparty’s status as issuer of the Underlying Shares under applicable securities laws, (ii) Dealer may deliver any Shares required to be delivered hereunder in certificated form or restricted book-entry form, in each case, in lieu of delivery through the Clearance System and (iii) any Shares delivered to Counterparty may be “restricted securities” (as defined in Rule 144 under the Securities Act of 1933, as amended (the “ <b>Securities Act</b> ”)).

3. **Additional Terms applicable to the Transaction.**

Adjustments applicable to the Transaction:

Potential Adjustment Events: Notwithstanding Section 11.2(e) of the Equity Definitions (which Section shall not apply for the purposes of the Transaction, except as provided in Section 9(y) below), a “Potential Adjustment Event” means an occurrence of any event or condition, as set forth in any Dilution Adjustment Provision, that requires an adjustment to be made under the Indenture to the “Conversion Rate” or the composition of a “unit of Reference Property” or to any “Last Reported Sale Price” (each as defined in the Indenture). For the avoidance of doubt, Dealer shall not have any delivery or payment obligation hereunder, and no adjustment shall be made to the terms of the Transaction, on account of (x) any distribution of cash, property or securities by Counterparty to holders of the Convertible Notes (upon conversion or otherwise) or (y) any other transaction in which holders of the Convertible Notes participate, in each case, in lieu of an adjustment under the Indenture of the type referred to in the immediately preceding sentence (including, without limitation, pursuant to the fourth sentence of the first paragraph of Section 14.04(c) of the Indenture or the fourth sentence of Section 14.04(d) of the Indenture).

Method of Adjustment: Calculation Agent Adjustment, which means that, notwithstanding Section 11.2(c) of the Equity Definitions, (which Section shall not apply for the purposes of the Transaction, except as provided in Section 9(y) below) upon any Potential Adjustment Event, the Calculation Agent shall make an adjustment to any one or more of the Strike Price, Number of Options, Option Entitlement and any other variable relevant to the exercise, settlement or payment for the Transaction corresponding to the adjustment required to be made pursuant to the Indenture.

Notwithstanding the foregoing and “Consequences of Merger Events / Tender Offers” below:

- (i) if the Calculation Agent in good faith disagrees with any adjustment to the Convertible Notes that involves an exercise of discretion by Counterparty or its board of directors (including, without limitation, pursuant to Section 14.05 of the Indenture, Section 14.07 of the Indenture or any supplemental indenture entered into thereunder or in connection with any proportional adjustment or the determination of the fair value of any securities, property, rights or other assets), then in each such case, the Calculation Agent will determine in good faith and in a commercially reasonable manner, the adjustment to be made to any one or more of the Strike Price, Number of Options, Option Entitlement and any other variable relevant to the exercise, settlement or payment for the Transaction in a commercially reasonable manner; *provided* that, notwithstanding the foregoing, if any Potential Adjustment Event occurs during the Settlement Averaging Period but no adjustment was made to any Convertible Note under the Indenture because the relevant Holder (as such term is defined in the Indenture) was deemed to be a record owner of the underlying Shares on the related Conversion Date (as such term is defined in the Indenture), then the Calculation Agent shall make a commercially reasonable adjustment, as determined by it, to the terms hereof in order to account for such Potential Adjustment Event;

- (ii) in connection with any Potential Adjustment Event as a result of an event or condition set forth in Section 14.04(b) of the Indenture or Section 14.04(c) of the Indenture where, in either case, the period for determining “Y” (as such term is used in Section 14.04(b) of the Indenture) or “SP<sub>0</sub>” (as such term is used in Section 14.04(c) of the Indenture), as the case may be, begins before Counterparty has publicly announced the event or condition giving rise to such Potential Adjustment Event, then the Calculation Agent shall have the right to adjust any variable relevant to the exercise, settlement or payment for the Transaction as appropriate to reflect the costs (to account solely for hedging mismatches and market losses) and expenses incurred by Dealer in connection with its hedging activities, with such adjustments made assuming that Dealer maintains commercially reasonable hedge positions, as a result of such event or condition not having been publicly announced prior to the beginning of such period; and
- (iii) if any Potential Adjustment Event is declared and (a) the event or condition giving rise to such Potential Adjustment Event is subsequently amended, modified, cancelled or abandoned, (b) the “Conversion Rate” (as defined in the Indenture) is otherwise not adjusted at the time or in the manner contemplated by the relevant Dilution Adjustment Provision based on such declaration or (c) the “Conversion Rate” (as defined in the Indenture) is adjusted as a result of such Potential Adjustment Event and subsequently re-adjusted (each of clauses (a), (b) and (c), a “**Potential Adjustment Event Change**”) then, in each case, the Calculation Agent shall have the right to adjust any variable relevant to the exercise, settlement or payment for the Transaction as appropriate to reflect the costs (to account solely for hedging mismatches and market losses) and expenses incurred by Dealer in connection with its hedging activities, with such adjustments made assuming that Dealer maintains commercially reasonable hedge positions, as a result of such Potential Adjustment Event Change.

Dilution Adjustment Provisions: Sections 14.04(a), (b), (c), (d) and (e) and Section 14.05 of the Indenture.

Extraordinary Events applicable to the Transaction:

Merger Events: Applicable; *provided* that notwithstanding Section 12.1(b) of the Equity Definitions, a “Merger Event” means the occurrence of any event or condition set forth in the definition of “Merger Event” in Section 14.07 of the Indenture.

Tender Offers: Applicable; *provided* that notwithstanding Section 12.1(d) of the Equity Definitions, a “Tender Offer” means the occurrence of any event or condition set forth in Section 14.04(e) of the Indenture.

Consequences of Merger Events/Tender Offers: Notwithstanding Section 12.2 and Section 12.3 of the Equity Definitions, upon the occurrence of a Merger Event or a Tender Offer, the Calculation Agent shall make a corresponding adjustment in respect of any adjustment under the Indenture to any one or more of the nature of the Shares (in the case of a Merger Event), Strike Price, Number of Options, Option Entitlement and any other variable relevant to the exercise, settlement or payment for the Transaction to the extent that an analogous adjustment is required to be made pursuant to the Indenture in respect of such Merger Event or Tender Offer, subject to the second paragraph under “Method of Adjustment”; *provided, however*, that such adjustment shall be made without regard to any adjustment to the Conversion Rate pursuant to any Excluded Provision; *provided further* that if, with respect to a Merger Event or a Tender Offer, (i) the consideration for the Shares or Underlying Shares, as applicable, includes (or, at the option of a holder of Shares, or Underlying Shares, as applicable, may include) shares of an entity or person that is not (1) a corporation or an entity that is treated as a corporation for U.S. federal income tax purposes or (2) organized under the laws of the Cayman Islands or (ii) the Counterparty to the Transaction following such Merger Event or Tender Offer will not be a corporation or an entity that is treated as a corporation for U.S. federal income tax purposes organized under the laws of the Cayman Islands, and/or will not be the Underlying Shares Issuer then, in any case, Cancellation and Payment (Calculation Agent Determination) may apply at Dealer’s commercially reasonable election; *provided further* that, for the avoidance of doubt, adjustments shall be made pursuant to the provisions set forth above regardless of whether any Merger Event or Tender Offer gives rise to an Early Conversion (as defined below).

Consequences of Announcement Events:

If an Announcement Event occurs, the Calculation Agent shall determine the cumulative economic effect of such Announcement Event (it being understood that the Calculation Agent may take into account any changes to volatility in connection with such Announcement Event within a commercially reasonable (as determined by the Calculation Agent) period of time prior to or after such Announcement Event) on the Transaction on the earliest to occur of (i) the date on which the transaction described in such Announcement Event (as amended) is consummated or otherwise results in a Merger Date or Tender Offer Date, as applicable, (ii) the Valuation Date, or (iii) any earlier date of termination or cancellation with respect to any Option, and if the Calculation Agent determines that such economic effect is material and that making the relevant adjustment would be commercially reasonable, the Calculation Agent shall adjust the Cap Price to reflect such economic effect (but, for the avoidance of doubt, taking into account, and without duplication of, any other adjustment made pursuant to this “Consequences of Announcement Events” provision or pursuant to the provisions opposite the captions “Method of Adjustment”, “Consequences of Merger Events” or “Consequences of Tender Offers” above in respect of the transaction or intention giving rise to such Announcement Event).

Announcement Event:

(i) The public announcement by (x) any entity of any transaction or event that the Calculation Agent determines is reasonably likely to be completed and that, if completed, would constitute a Merger Event or Tender Offer (it being understood that Calculation Agent may make such determination by reference to the impact of such announcement on the market for the Shares and/or Underlying Shares or options relating to the Shares and/or Underlying Shares), (y) Underlying Shares Issuer or any subsidiary thereof of any potential acquisition or disposal by the Underlying Shares Issuer and/or its subsidiaries where the aggregate consideration payable or receivable exceeds 25% of the market capitalization of the Underlying Shares Issuer as of the date of such announcement (a “**Transformative Transaction**”) or (z) Underlying Shares Issuer, any subsidiary of the Underlying Shares Issuer or any Valid Third Party Entity of the intention to enter into a Merger Event or Tender Offer or a Transformative Transaction (in the case of a Valid Third-Party Entity, that the Calculation Agent determines is a bona fide intention, it being understood that the Calculation Agent may make such determination by reference to the impact of such announcement on the market for the Shares and/or Underlying Shares or options relating to the Shares and/or Underlying Shares), (ii) the public announcement by the Underlying Shares Issuer of an intention to solicit or enter into, or to explore strategic alternatives or other similar undertaking that may include, a Merger Event or Tender Offer or a Transformative Transaction or (iii) any subsequent public announcement by any entity of a change to a transaction or intention that is the subject of an announcement of the type described in clause (i) or (ii) of this sentence (including, without limitation, a new announcement, whether or not by the same party, relating to such a transaction or intention or the announcement of a withdrawal from, or the abandonment or discontinuation of, such a transaction or intention), as determined by the Calculation Agent. For the avoidance of doubt, the occurrence of an Announcement Event with respect to any transaction or intention shall not preclude the occurrence of a later Announcement Event with respect to such transaction or intention. For purposes of this definition of “Announcement Event,” (A) “Merger Event” shall mean such term as defined under Section 12.1(b) of the Equity Definitions (but, for the avoidance of doubt, the remainder of the definition of “Merger Event” in Section 12.1(b) of the Equity Definitions following the definition of “Reverse Merger” therein shall be disregarded) and (B) “Tender Offer” shall mean such term as defined under Section 12.1(d) of the Equity Definitions; *provided* that Section 12.1(d) of the Equity Definitions is hereby amended by replacing “10%” with “20%” in the third line thereof.

Valid Third Party Entity:

In respect of any transaction or intention, any third party (i) whose announcement is reasonably determined by the Calculation Agent to have had a material economic effect on the Shares and/or Underlying Shares and/or options on the Shares and/or Underlying Shares and (ii) that is the entity, or an affiliate of the entity, that is, or would be, a party to the relevant transaction or event.

Nationalization, Insolvency or  
Delisting:

Cancellation and Payment (Calculation Agent Determination); *provided* that, in addition to the provisions of Section 12.6(a)(iii) of the Equity Definitions, it will also constitute a Delisting if the 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 of the New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or their respective successors), such exchange or quotation system shall thereafter be deemed to be the Exchange.

Section 12.1 of the Equity Definitions is hereby amended by deleting subsection (v) thereof in its entirety and replacing it with “(v) in the case of an Insolvency, the date of (A) the institution of a proceeding or presentation of a petition or the passing of a resolution (or the convening of a meeting to pass a resolution or the proposing of a written resolution) (in each case the occurrence of which shall be deemed its announcement) that leads to an Insolvency within the meaning of subsection (A) of the definition thereof, (B) the first public announcement of the institution of a proceeding or presentation of a petition or passing of a resolution (or other analogous procedure in any jurisdiction) that leads to the Insolvency or (C) the occurrence of any of the events specified in Section 5(a)(vii)(1) through (9) of the ISDA Master Agreement with respect to that Issuer”.

Section 12.6(a)(ii) of the Equity Definitions is hereby amended by (1) inserting “(A)” after “means” in the first line thereof and replacing “(A)” and “(B)” in the third and fourth lines thereof with “(1)” and “(2)” respectively, (2) deleting from the fourth line thereof the word “or” after the word “official” and inserting a comma therefor, (3) inserting at the end of renumbered subsection (2) thereof the following wording, “or, under the laws of the Cayman Islands, any other jurisdiction or otherwise, any other impediment to or restriction on the transfer of any Share arises or becomes applicable including, without limitation, where (x) any transfer of a Share or alteration of the status of the members of the Issuer would be void unless a court of the Cayman Islands or any other jurisdiction orders otherwise or (y) any transfer of a Share not being a transfer with the sanction of a liquidator, and any alteration in the status of the Issuer’s members, would be void” and (4) deleting the semi-colon at the end of renumbered subsection (2) thereof and inserting the following words therefor “or (B) at Dealer’s option, the occurrence of any of the events specified in Section 5(a)(vii) (1) through (9) of the ISDA Master Agreement with respect to that Issuer.”

Additional Disruption Events:

Change in Law:

Applicable; *provided* that Section 12.9(a)(ii) of the Equity Definitions is hereby amended by (i) replacing the phrase “the interpretation” in the third line thereof with the phrase “, or public announcement of, the formal or informal interpretation”, (ii) replacing the word “Shares” where it appears in clause (X) thereof with the words “Hedge Position,” (iii) replacing the parenthetical beginning after the word “regulation” in the second line thereof with the words “(including, for the avoidance of doubt and without limitation, (x) any tax law or (y) adoption, effectiveness or promulgation of new regulations authorized or mandated by existing statute)” and (iv) adding the words “*provided* that, in the case of clause (Y) hereof where such determination is based on Dealer’s policies and procedures, such policies and procedures have been adopted by Dealer in good faith and are generally applicable in similar situations and applied in a non-discriminatory manner;” after the semi-colon in the last line thereof.



Failure to Deliver:	Applicable
Hedging Disruption:	Applicable; <i>provided</i> that:  Section 12.9(b)(iii) of the Equity Definitions is hereby amended by inserting in the third line thereof, after the words “to terminate the Transaction”, the words “or a portion of the Transaction affected by such Hedging Disruption”.
Increased Cost of Hedging:	Not Applicable
Hedging Party:	For all applicable Additional Disruption Events, Dealer.
Determining Party:	For all applicable Extraordinary Events, Dealer; <i>provided</i> that when making any determination or calculation as “Determining Party,” Dealer shall make such determinations or calculations in good faith and in a commercially reasonable manner.  Following any determination or calculation by Determining Party hereunder, the Determining Party will, upon written request from Counterparty, promptly (but in any event within five Scheduled Trading Days) provide to Counterparty a report (in a commonly used file format for the storage and manipulation of financial data) displaying in reasonable detail the basis for such determination or calculation (including any assumptions used in making such determination or calculation), it being understood that in no event will the Determining Party be obligated to share with Counterparty any proprietary or confidential data or information or any proprietary or confidential models used by it in making such determination or calculation or any information that is subject to an obligation not to disclose such information.
Non-Reliance:	Applicable
Agreements and Acknowledgments Regarding Hedging Activities:	Applicable
Additional Acknowledgments:	Applicable

4. **Calculation Agent.** Dealer; *provided* that, following the occurrence and during the continuance of an Event of Default under Section 5(a)(vii) of the Agreement with respect to which Dealer is the Defaulting Party, Counterparty shall have the right to designate a nationally recognized independent equity derivatives 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 adjustment, determination or calculation by the Calculation Agent hereunder, the Calculation Agent will, upon written request from Counterparty, promptly (but in any event within five Scheduled Trading Days) provide to Counterparty by email a report (in a commonly used file format for the storage and manipulation of financial data) displaying in reasonable detail the basis for such adjustment, determination or calculation (including any assumptions used in making such adjustment, determination or calculation), it being understood that in no event will the Calculation Agent be obligated to share with Counterparty any proprietary or confidential data or information or any proprietary or confidential models used by it in making such adjustment, determination or calculation or any information that is subject to an obligation not to disclose such information.
- All calculations and determinations by the Calculation Agent shall be made in good faith and in a commercially reasonable manner.

**5. Account Details.**

- (a) Account for payments to Counterparty:

To be provided.

Account for delivery of Shares to Counterparty:

To be provided.

- (b) Account for payments to Dealer:

To be provided.

Account for delivery of Shares from Dealer:

To be provided.

**6. Offices.**

- (a) The Office of Counterparty for the Transaction is: Inapplicable, Counterparty is not a Multibranch Party.

- (b) The Office of Dealer for the Transaction is: Morgan Stanley & Co. LLC, 1221 Avenue of the Americas, New York, NY 10020

**7. Notices.**

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

NIO Inc.  
Building 20, No. 56 AnTuo Road, Jiading District  
Shanghai, 201804  
People's Republic of China  
Attention: Louis T. Hsieh, Chief Financial Officer  
Telephone No.: +86 (21) 6908 3306  
Facsimile No.: +86 (21) 3913 0192

with a copy to:

Nick Wang  
VP of Finance  
Telephone No.: +86 (21) 6908-2002  
Email: Nick.Wang@nio.com

with a copy to:

Fang Liu  
General Counsel  
Telephone No.: +86 (21) 6908-2277  
Email: Fang.Liu@nio.com

with a copy to:

Sabrina Shi  
Senior Corporate Counsel  
Telephone No.: +86 (21) 6908-3391  
Email: Danting.Shi@nio.com

- (b) Address for notices or communications to Dealer:

Morgan Stanley & Co. LLC  
1585 Broadway, 5<sup>th</sup> Floor  
New York, NY 10036  
Attn: Global Capital Markets  
Telephone: +1 212 761-9363  
Facsimile: +1 212 404-9481  
Email: nycd-notices@morganstanley.com

With a copy to: Morgan Stanley & Co. LLC  
1221 Avenue of the Americas, 34<sup>th</sup> Floor  
New York, NY 10020  
Attn: Global Capital Markets  
Telephone: +1 212 761-9363  
Facsimile: +1 212 404-9481  
Email: nycd-notices@morganstanley.com

With a copy to: Steven.Seltzer1@morganstanley.com; David.Oakes@morganstanley.com; and Saurabh.Dinakar@morganstanley.com

## 8. Representations and Warranties of Counterparty.

Each of the representations and warranties of Counterparty set forth in Section 2 of the Purchase Agreement (the “**Purchase Agreement**”) dated as of January 30, 2019, between Counterparty and Credit Suisse Securities (USA) LLC, J.P. Morgan Securities LLC, Morgan Stanley & Co. LLC, and Goldman Sachs (Asia) LLC, as representatives of the Initial Purchasers party thereto (the “**Initial Purchasers**”), are true and correct and are hereby deemed to be repeated to Dealer as if set forth herein. Counterparty hereby further represents and warrants to Dealer on the date hereof and on and as of the Premium Payment Date, that:

- (a) Counterparty (i) is duly incorporated and validly existing as an exempted company with limited liability under the laws of the Cayman Islands and is in good standing under such laws, and (ii) has all necessary corporate power and authority to execute, deliver and perform its obligations and exercise its rights in respect of the Transaction; such execution, delivery, performance and exercise have been duly authorized by all necessary corporate action on Counterparty’s part; and this Confirmation has been duly and validly executed and delivered by Counterparty and constitutes its valid and binding obligation, enforceable against Counterparty in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar laws affecting creditors’ rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity) and except that rights to indemnification and contribution hereunder may be limited by federal or state securities laws or public policy relating thereto.

- (b) Neither the execution and delivery of this Confirmation nor the incurrence or performance of obligations nor the exercise of rights of Counterparty hereunder will conflict with or result in a breach of the memorandum and articles of association or by-laws (or any equivalent documents) of Counterparty, or any applicable law or regulation, or any order, writ, injunction or decree of any court or governmental authority or agency, or any agreement or instrument to which Counterparty or any of its subsidiaries is a party or by which Counterparty or any of its subsidiaries is bound or to which Counterparty or any of its subsidiaries is subject, or constitute a default under, or result in the creation of any lien under, any such agreement or instrument.
- (c) No consent, approval, authorization, or order of, or filing with, any governmental agency or body or any court is required in connection with the execution, delivery or performance by Counterparty of this Confirmation, except such as have been obtained or made and such as may be required under the Securities Act or state securities laws.
- (d) Counterparty is not and, after consummation of the transactions contemplated hereby, will not be required to register as an “investment company” as such term is defined in the Investment Company Act of 1940, as amended.
- (e) Counterparty is an “eligible contract participant” (as such term is defined in Section 1a(18) of the Commodity Exchange Act, as amended, other than a person that is an eligible contract participant under Section 1a(18)(C) of the Commodity Exchange Act).
- (f) Counterparty is not, on the date hereof, aware of any material non-public information with respect to Counterparty, the Underlying Shares Issuer (if other than Counterparty), the Underlying Shares or the Shares.
- (g) To the knowledge of Counterparty, no state or local (including any non-U.S. jurisdiction’s) law, rule, regulation or regulatory order applicable to the Shares and/or Underlying 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 and/or Underlying Shares (except for filings of Form 13F, Schedule 13D or Schedule 13G under the Exchange Act); *provided* that Counterparty makes no representation or warranty regarding any such requirement that is applicable generally to the ownership of equity securities by Dealer or any of its affiliates solely as a result of it or any of such affiliates being a financial institution or broker-dealer.
- (h) Counterparty (A) is capable of evaluating investment risks independently, both in general and with regard to all transactions and investment strategies involving a security or securities; (B) will exercise independent judgment in evaluating the recommendations of any broker-dealer or its associated persons, unless it has otherwise notified the broker-dealer in writing; (C) has total assets of at least USD 50 million; and (D) is acting for its own account, and it has made its own independent decisions to enter into the Transaction and as to whether the Transaction is appropriate or proper for it (including as to any legal, regulatory, tax, accounting or economic consequences arising from the Transaction) based upon its own judgment and upon advice from such advisers as it has deemed necessary (including legal, financial and accounting advisors).
- (i) Counterparty as of and immediately after the Trade Date and the Premium Payment Date (x) is not, and shall not be after giving effect to the transactions contemplated hereby, “insolvent” (as such term is defined in Section 101(32) of the Bankruptcy Code, (y) would be able to purchase 100,536,150 Shares and the Underlying Shares represented by such number of Shares in compliance with the laws of the jurisdiction of Counterparty’s incorporation or organization, and (z), for the purposes of Cayman Islands law, is able to pay its debts.

- (j) Counterparty's board of directors (the "**Board**") has concluded that (A) the Transaction is suitable for Counterparty, for its commercial benefit and in its best interests, in light of its own investment objectives, financial condition and expertise and (B) the Transaction has been duly approved and authorized by the Board after due consideration by the Board of the foregoing matters and those referred to in subparagraph (h)(D) above.

**9. Other Provisions.**

- (a) *Deliverables.* Counterparty shall deliver to Dealer (A) an opinion of U.S. counsel and (B) an opinion of Cayman counsel, each dated as of the Premium Payment Date, with respect to, among other things, the matters set forth in Sections 8(a) through (c) of this Confirmation, it being understood that such opinions of counsel shall be limited to the federal laws of the United States and the laws of the State of New York (in the case of clause (A) above) and the laws of the Cayman Islands (in the case of clause (B) above) and may contain customary limitations, exceptions and qualifications for transactions of the same type as the Transaction. Delivery of such opinions to Dealer shall be a condition precedent for the purpose of Section 2(a)(iii) of the Agreement with respect to each obligation of Dealer under Section 2(a)(i) of the Agreement; (C) a resolution of the Board authorizing the Transaction; and (D) on or before the Premium Payment Date, a solvency certificate with respect to Counterparty signed by a member of the Board, the chief executive officer or the chief financial officer of the Counterparty certifying the solvency of Counterparty as of and immediately after the Premium Payment Date (after giving effect to Counterparty's payment of amounts required to be paid by Counterparty on such date under the Transaction and the other transactions described under "Use of Proceeds" in the Offering Memorandum related to the offering of the Convertible Notes), which solvency certificate is reasonably satisfactory to Dealer.
- (b) *Repurchase Notices.* Counterparty shall, on or prior to the date that is one Scheduled Trading Day following any date on which Counterparty effects any repurchase of Shares and/or Underlying Shares, promptly give Dealer a written notice of such repurchase (a "**Repurchase Notice**") on such day if following such repurchase, the number of outstanding Underlying Shares as determined on such day is (i) less than 727.2 million (in the case of the first such notice) or (ii) thereafter more than 37.8 million less than the number of Underlying Shares included in the immediately preceding Repurchase Notice; *provided* that Counterparty may provide Dealer advance notice on or prior to any such day including the maximum number of Shares and/or Underlying Shares that may be repurchased under a repurchase program entered into in reliance on Rule 10b5-1(c) and the approximate periods during which such repurchases may occur, to the extent it expects that repurchases effected on such day may result in an obligation to deliver a Repurchase Notice (and in such case, any such advance notice shall be deemed a Repurchase Notice to the maximum extent of repurchases set forth in such advance notice as if Counterparty had executed such repurchases). Counterparty agrees that, if Counterparty ceases to qualify as a "foreign private issuer" as defined in Rule 3b-4 under the Exchange Act or the Shares or Underlying Shares, as applicable, otherwise become subject to the requirements of Section 16 of the Exchange Act, Counterparty will indemnify and hold harmless Dealer and its affiliates and their respective officers, directors, employees, affiliates, advisors, agents and controlling persons (each, an "**Indemnified Person**") from and against any and all losses (including losses relating to Dealer's hedging activities as a consequence of becoming, or of the risk of becoming, a Section 16 "insider", including without limitation, any forbearance from hedging activities or cessation of hedging activities and any losses in connection therewith with respect to the Transaction), claims, damages, judgments, liabilities and reasonable and documented out-of-pocket expenses (including reasonable attorney's fees of one outside counsel in each relevant jurisdiction), joint or several, which an Indemnified Person may become subject to, in each case, as a result of Counterparty's failure to provide Dealer with a Repurchase Notice on the day and in the manner specified in this paragraph, and to reimburse, within 30 days, upon written request, each of such Indemnified Persons for any reasonable legal or other out-of-pocket expenses (to the extent supported by invoices or other documentation setting forth in reasonable detail such expenses) incurred in connection with investigating, preparing for, providing testimony or other evidence in connection with or defending any of the foregoing. If any suit, action, proceeding (including any governmental or regulatory investigation), claim or demand shall be brought or asserted against the Indemnified Person as a result of Counterparty's failure to provide Dealer with a Repurchase Notice in accordance with this paragraph, such Indemnified Person shall promptly notify Counterparty in writing, and Counterparty, upon request of the Indemnified Person, shall retain counsel reasonably satisfactory to the Indemnified Person to represent the Indemnified Person and any others Counterparty may designate in such proceeding and shall pay the reasonable fees and expenses of such counsel related to such proceeding. Counterparty shall not be liable to the extent that the Indemnified Person fails to notify Counterparty within a commercially reasonable period of time after any action is commenced against it in respect of which indemnity may be sought hereunder. In addition, Counterparty shall not have liability for any settlement of any such proceeding contemplated by this paragraph that is effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, Counterparty agrees to indemnify any Indemnified Person from and against any loss or liability by reason of such settlement or judgment. Counterparty shall not, without the prior written consent of the Indemnified Person, effect any settlement of any pending or threatened proceeding contemplated by this paragraph in respect of which any Indemnified Person is or could have been a party and indemnity could have been sought hereunder by such Indemnified Person, unless such settlement includes an unconditional release of such Indemnified Person from all liability on claims that are the subject matter of such proceeding on terms reasonably satisfactory to such Indemnified Person. If the indemnification provided for in this paragraph is unavailable to an Indemnified Person or insufficient in respect of any losses, claims, damages or liabilities referred to therein, then Counterparty hereunder, in lieu of indemnifying such Indemnified Person thereunder, shall contribute to the amount paid or payable by such Indemnified Person as a result of such losses, claims, damages or liabilities. The remedies provided for in this paragraph (b) are not exclusive and shall not limit any rights or remedies which may otherwise be available to any Indemnified Person at law or in equity. The indemnity and contribution agreements contained in this paragraph shall remain operative and in full force and effect regardless of the termination of the Transaction.

- (c) Regulation M. Counterparty is not on the Trade Date engaged in a distribution, as such term is used in Regulation M under the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), of any securities of Counterparty, other than a distribution meeting the requirements of the exception set forth in Rules 101(b)(10) and 102(b)(7) of Regulation M. Counterparty shall not, until the second Scheduled Trading Day immediately following the Effective Date, engage in any such distribution.
- (d) No Manipulation. Counterparty is not entering into the Transaction to create actual or apparent trading activity in the Shares and/or Underlying Shares (or any security convertible into or exchangeable for the Shares and/or Underlying Shares) or to raise or depress or otherwise manipulate the price of the Shares and/or Underlying Shares (or any security convertible into or exchangeable for the Shares and/or Underlying Shares) or otherwise in violation of the Exchange Act.
- (e) Transfer or Assignment.
  - (i) Counterparty shall have the right to transfer or assign all or any of its rights and obligations hereunder with respect to all, or any, of the Options hereunder (such Options, the “**Transfer Options**”) with the prior written consent of Dealer, such consent not to be unreasonably withheld; *provided* that withholding of such consent by Dealer shall not be considered unreasonable if such transfer or assignment does not meet any of the following conditions:
    - (A) With respect to any Transfer Options, Counterparty shall not be released from its notice and indemnification obligations pursuant to Section 9(b) of this Confirmation;

- (B) Such transfer or assignment shall be effected on terms, including any reasonable undertakings by such third party (including, but not limited to, an undertaking with respect to compliance with applicable securities laws in a manner that, in the reasonable judgment of Dealer, will not expose Dealer to material risks under applicable securities laws) and execution of any documentation and delivery of legal opinions with respect to securities laws and other matters by such third party and Counterparty, as are reasonably requested and reasonably satisfactory to Dealer;
- (C) Under the applicable law effective on the date of such transfer or assignment, (1) Dealer will not, as a result of such transfer or assignment, be required to pay the transferee or assignee on any payment date or delivery date an amount or a number of Shares, as applicable, under Section 2(d)(i)(4) of the Agreement greater than the amount or the number of Shares, as applicable, that Dealer would have been required to pay to Counterparty in the absence of such transfer or assignment and (2) Dealer will not, as a result of such transfer or assignment, receive from the transferee or assignee on any payment date an amount under Section 2(d)(i)(4) of the Agreement that is less than the amount that Dealer would have received from Counterparty in the absence of such transfer or assignment;
- (D) No Event of Default, Potential Event of Default or Termination Event will occur as a result of such transfer and assignment;
- (E) Counterparty shall cause the transferee to make such tax representations and to provide such tax documentation as may be reasonably requested by Dealer to permit Dealer to determine that results described in clauses (C) and (D) will not occur upon or after such transfer and assignment, including but not limited to providing tax documentation specified in Section 9(bb) of this Confirmation and making the tax representations specified in Section 9(aa) of this Confirmation on or prior to such transfer and at the other times specified in such Sections; and
- (F) Counterparty shall be responsible for all reasonable and documented costs and expenses, including reasonable counsel fees, incurred by Dealer in connection with such transfer or assignment.

- (ii) Dealer may, without Counterparty's consent, transfer or assign all or any part of its rights or obligations under the Transaction to any affiliate of Dealer (1) that has a long-term issuer rating that is equal to or better than Dealer's credit rating at the time of such transfer or assignment, or (2) whose obligations hereunder will be guaranteed, pursuant to the terms of a customary guarantee in a form used by Dealer generally for similar transactions, by Dealer or Morgan Stanley; *provided* that, in the case of any such transfer or assignment, under the applicable law effective on the date of such transfer or assignment, (I) Counterparty will not, as a result of such transfer or assignment, be required to pay the transferee or assignee on any payment date an amount under Section 2(d)(i)(4) of the Agreement greater than the amount that Counterparty would have been required to pay to Dealer in the absence of such transfer or assignment; (II) Counterparty will not, as a result of such transfer or assignment, receive from the transferee or assignee on any payment or delivery date an amount or a number of Shares, as applicable, under Section 2(d)(i)(4) of the Agreement that is less than the amount or the number of Shares that Counterparty would have received from Dealer in the absence of such transfer or assignment; (III) Dealer shall cause the transferee or assignee to make such tax representations and to provide such tax documentation as may be reasonably requested by Counterparty to permit Counterparty to determine that events described in clauses (I) and (II) of this proviso will not occur upon or after such transfer or assignment; and (IV) no Event of Default, Potential Event of Default or Termination Event will occur as a result of such transfer and assignment. If at any time at which (A) the Section 13 Percentage exceeds 8.5%, (B) the Option Equity Percentage exceeds 14.5%, or (C) the Share Amount exceeds the Applicable Share Limit (if any applies) (any such condition described in clauses (A), (B) or (C), an "**Excess Ownership Position**"), Dealer is unable after using its commercially reasonable efforts to effect a transfer or assignment of Options to a third party on pricing terms reasonably acceptable to Dealer and within a time period reasonably acceptable to Dealer such that no Excess Ownership Position exists, then Dealer may designate any Exchange Business Day as an Early Termination Date with respect to a portion of the Transaction (the "**Terminated Portion**"), to the extent necessary so that following such partial termination no Excess Ownership Position exists. In the event that Dealer so designates an Early Termination Date with respect to a portion of the Transaction, a payment shall be made pursuant to Section 6 of the Agreement as if (1) an Early Termination Date had been designated in respect of a Transaction having terms identical to the Transaction and a Number of Options equal to the number of Options underlying the Terminated Portion, (2) Counterparty were the sole Affected Party with respect to such partial termination and (3) the Terminated Portion were the sole Affected Transaction (and, for the avoidance of doubt, the provisions of Section 9(m) shall apply to any amount that is payable by Dealer to Counterparty pursuant to this sentence as if Counterparty was not the Affected Party). The "**Section 13 Percentage**" as of any day is the fraction, expressed as a percentage, (A) the numerator of which is the number of Underlying Shares that Dealer and any of its affiliates or any other person subject to aggregation with Dealer for purposes of the "beneficial ownership" test under Section 13 of the Exchange Act, or any "group" (within the meaning of Section 13 of the Exchange Act) of which Dealer is or may be deemed to be a part beneficially owns (within the meaning of Section 13 of the Exchange Act), without duplication, on such day (or, to the extent that for any reason the equivalent calculation under Section 16 of the Exchange Act applies with respect to the Shares or Underlying Shares, as applicable, and the rules and regulations thereunder results in a higher number, such higher number) and (B) the denominator of which is the number of Underlying Shares outstanding on such day. The "**Option Equity Percentage**" as of any day is the fraction, expressed as a percentage, (A) the numerator of which is the sum of (1) the product of (x) the Number of Options (y) the Option Entitlement and (z) the number of Underlying Shares represented by one Share and (2) the aggregate number of Underlying Shares underlying any other call option transaction sold by Dealer to Counterparty, and (B) the denominator of which is the number of Underlying Shares outstanding. The "**Share Amount**" as of any day is the number of Underlying Shares that Dealer and any person whose ownership position would be aggregated with that of Dealer (Dealer or any such person, a "**Dealer Person**") under any law, rule, regulation, regulatory order or organizational documents or contracts of Counterparty that are, in each case, applicable to ownership of Underlying Shares ("**Applicable Restrictions**"), owns, beneficially owns, constructively owns, controls, holds the power to vote or otherwise meets a relevant definition of ownership under any Applicable Restriction, as determined by Dealer in its reasonable discretion. The "**Applicable Share Limit**" means a number of Underlying Shares equal to (A) the minimum number of Underlying Shares that could give rise to reporting or registration obligations (except for any filing requirements on Form 13F, Schedule 13D or Schedule 13G under the Exchange Act, in each case, as in effect on the Trade Date) or other requirements (including obtaining prior approval from any person or entity) of a Dealer Person, or could result in an adverse effect on a Dealer Person, under any Applicable Restriction, as determined by Dealer in good faith and in its commercially reasonable discretion, *minus* (B) 1% of the number of Underlying Shares outstanding.
- (iii) Notwithstanding any other provision in this Confirmation to the contrary requiring or allowing Dealer to purchase, sell, receive or deliver any Shares, Underlying Shares or other securities, or make or receive any payment in cash, to or from Counterparty, Dealer may designate any of its affiliates to purchase, sell, receive or deliver such Shares, Underlying Shares or other securities, or to make or receive such payment in cash, and otherwise to perform Dealer's obligations in respect of the Transaction and any such designee may assume such obligations. Dealer shall be discharged of its obligations to Counterparty to the extent of any such performance.



- (f) Staggered Settlement. If upon advice of counsel with respect to applicable legal and regulatory requirements, including any requirements relating to Dealer's hedging activities hereunder, Dealer reasonably determines that it would not be practicable or advisable to deliver, or to acquire Shares to deliver, any or all of the Shares to be delivered by Dealer on any Settlement Date for the Transaction, Dealer may, by notice to Counterparty on or prior to any Settlement Date (a "**Nominal Settlement Date**"), elect to deliver the Shares on two or more dates (each, a "**Staggered Settlement Date**") as follows:
- (i) in such notice, Dealer will specify to Counterparty the related Staggered Settlement Dates (the first of which will be such Nominal Settlement Date and the last of which will be no later than the twentieth (20<sup>th</sup>) Exchange Business Day following such Nominal Settlement Date) and the number of Shares that it will deliver on each Staggered Settlement Date;
  - (ii) the aggregate number of Shares that Dealer will deliver to Counterparty hereunder on all such Staggered Settlement Dates will equal the number of Shares that Dealer would otherwise be required to deliver on such Nominal Settlement Date; and
  - (iii) if the Net Share Settlement terms set forth above were to apply on the Nominal Settlement Date, then the Net Share Settlement terms will apply on each Staggered Settlement Date, except that the Shares otherwise deliverable on such Nominal Settlement Date will be allocated among such Staggered Settlement Dates as specified by Dealer in the notice referred to in clause (i) above.
- (g) Reserved.
- (h) QFC Stay Provisions. The parties agree that (i) to the extent that prior to the date hereof both parties have adhered to the 2018 ISDA U.S. Resolution Stay Protocol (the "**Protocol**"), the terms of the Protocol are incorporated into and form a part of this Confirmation, and for such purposes this 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; (ii) to the extent that prior to the date hereof the parties have executed a separate agreement the effect of which is to amend the qualified financial contracts between them to conform with the requirements of the QFC Stay Rules (the "**Bilateral Agreement**"), the terms of the Bilateral Agreement are incorporated into and form a part of this Confirmation and each party shall be deemed to have the status of "Covered Entity" or "Counterparty Entity" (or other similar term) as applicable to it under the Bilateral Agreement; or (iii) if clause (i) and clause (ii) do not apply, the terms of Section 1 and Section 2 and the related defined terms (together, the "**Bilateral Terms**") of the form of bilateral template entitled "Full-Length Omnibus (for use between U.S. G-SIBs and Corporate Groups)" published by ISDA on November 2, 2018 (currently available on the 2018 ISDA U.S. Resolution Stay Protocol page at [www.isda.org](http://www.isda.org) and, a copy of which is available upon request), the effect of which is to amend the qualified financial contracts between the parties thereto to conform with the requirements of the QFC Stay Rules, are hereby incorporated into and form a part of this Confirmation, and for such purposes this Confirmation shall be deemed a "Covered Agreement," Dealer shall be deemed a "Covered Entity" and Counterparty shall be deemed a "Counterparty Entity." In the event that, after the date of this Confirmation, both parties hereto become adhering parties to the Protocol, the terms of the Protocol will replace the terms of this section. In the event of any inconsistencies between this Confirmation and the terms of the Protocol, the Bilateral Agreement or the Bilateral Terms (each, the "**QFC Stay Terms**"), as applicable, the QFC Stay Terms will govern. Terms used in this paragraph without definition shall have the meanings assigned to them under the QFC Stay Rules. For purposes of this paragraph, references to "this 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**” means 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 FDIC 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.

(i) Additional Termination Events.

- (i) Notwithstanding anything to the contrary in this Confirmation, upon any conversion of a Convertible Note occurring prior to the 45th Scheduled Valid Day immediately prior to the Expiration Date (any such conversion, an “**Early Conversion**”) in respect of which a Conversion Notice that is effective as to Counterparty has been delivered by the relevant converting Holder:
- (A) Counterparty may, within two Scheduled Trading Days of the date on which the Holder (as such term is defined in the Indenture) of such Convertible Note satisfies all of the requirements for conversion thereof as set forth in Section 14.02 of the Indenture (the “**Conversion Date**”) for such Early Conversion, provide written notice (an “**Early Conversion Notice**”) to Dealer specifying the number of Convertible Notes surrendered for conversion on such Conversion Date (such Convertible Notes, the “**Affected Convertible Notes**”), and the giving of such Early Conversion Notice shall constitute an Additional Termination Event as provided in this clause (i) (*provided* that Counterparty acknowledges its responsibilities under applicable securities laws, and in particular Section 9 and Section 10(b) of the Exchange Act and the rules and regulations thereunder, in respect of any Early Conversion Notice);
- (B) upon receipt of any such Early Conversion Notice, Dealer shall designate an Exchange Business Day as an Early Termination Date (which Exchange Business Day shall be no earlier than one Scheduled Trading Day following the Conversion Date for such Early Conversion) with respect to the portion of the Transaction corresponding to a number of Options (the “**Affected Number of Options**”) equal to the lesser of (x) the number of Affected Convertible Notes *minus* the “Affected Number of Options” (as defined in the Base Call Option Transaction Confirmation letter agreement dated January 30, 2019 between Dealer and Counterparty (the “**Base Call Option Confirmation**”)), if any, that relate to such Affected Convertible Notes and (y) the Number of Options as of the Conversion Date for such Early Conversion;
- (C) any payment hereunder with respect to such termination shall be calculated pursuant to Section 6 of the Agreement as if (x) an Early Termination Date had been designated in respect of a Transaction having terms identical to the Transaction and a Number of Options equal to the Affected Number of Options, (y) Counterparty were the sole Affected Party with respect to such Additional Termination Event and (z) the terminated portion of the Transaction were the sole Affected Transaction;

- (D) for the avoidance of doubt, in determining the amount payable in respect of such Affected Transaction pursuant to Section 6 of the Agreement, the Calculation Agent shall assume that (x) the relevant Early Conversion and any conversions, adjustments, agreements, payments, deliveries or acquisitions by or on behalf of Counterparty leading thereto had not occurred, (y) no adjustments to the Conversion Rate have occurred pursuant to any Excluded Provision and (z) the corresponding Convertible Notes remain outstanding; and
  - (E) the Transaction shall remain in full force and effect, except that, as of the Conversion Date for such Early Conversion, the Number of Options shall be reduced by the Affected Number of Options.
- (ii) Notwithstanding anything to the contrary in this Confirmation if an event of default with respect to Counterparty occurs under the terms of the Convertible Notes as set forth in Section 6.01 of the Indenture and such event of default results in the Convertible Notes being accelerated and declared due and payable, then such event of default shall constitute an Additional Termination Event applicable to the Transaction and, with respect to such Additional Termination Event, (A) Counterparty shall be deemed to be the sole Affected Party, (B) the Transaction shall be the sole Affected Transaction and (C) Dealer shall be the party entitled to designate an Early Termination Date pursuant to Section 6(b) of the Agreement (which Early Termination Date shall be on or as promptly as reasonably practicable after Dealer becomes aware of the occurrence of such acceleration).
  - (iii) Notwithstanding anything to the contrary in this Confirmation, the occurrence of an Amendment Event shall constitute an Additional Termination Event applicable to the Transaction and, with respect to such Additional Termination Event, (A) Counterparty shall be deemed to be the sole Affected Party, (B) the Transaction shall be the sole Affected Transaction and (C) Dealer shall be the party entitled to designate an Early Termination Date pursuant to Section 6(b) of the Agreement. “**Amendment Event**” means that Counterparty amends, modifies, supplements, waives or obtains a waiver in respect of any term of the Indenture or the Convertible Notes governing the principal amount, coupon, maturity, repurchase obligation of Counterparty, tax redemption right of Counterparty, any term relating to conversion of the Convertible Notes (including changes to the conversion rate, conversion rate adjustment provisions, conversion settlement dates or conversion conditions), or any term that would require consent of the holders of not less than 100% of the principal amount of the Convertible Notes to amend (other than, in each case, any amendment or supplement (x) pursuant to Section 10.01(i) of the Indenture that, as determined by the Calculation Agent, conforms the Indenture to the description of Convertible Notes in the Offering Memorandum or (y) pursuant to Section 14.07 of the Indenture), in each case, without the consent of Dealer.

(iv) Promptly (but in any event within five Scheduled Trading Days) following any Repurchase Event (as defined below), Counterparty shall notify Dealer of such Repurchase Event and the aggregate principal amount of Convertible Notes subject to such Repurchase Event (any such notice, a “**Convertible Notes Repurchase Notice**”); *provided* that any such Convertible Notes Repurchase Notice shall contain a repetition by Counterparty of the representation set forth in Section 8(f) as of the date of such Convertible Notes Repurchase Notice and an acknowledgment by Counterparty of its responsibilities under applicable securities laws, and in particular Section 9 and Section 10(b) of the Exchange Act and the rules and regulations thereunder, in respect of such Repurchase Event and the delivery of such Convertible Notes Repurchase Notice. Any Convertible Notes Repurchase Notice delivered to Dealer pursuant to the Base Call Option Confirmation shall be deemed to be a Convertible Notes Repurchase Notice pursuant to this Confirmation and the terms of such Convertible Notes Repurchase Notice shall apply, *mutatis mutandis*, to this Confirmation. The receipt by Dealer from Counterparty of any Convertible Notes Repurchase Notice shall constitute an Additional Termination Event as provided in this Section 9(i)(iv). Upon receipt of any such Convertible Notes Repurchase Notice, Dealer shall designate an Exchange Business Day following receipt of such Convertible Notes Repurchase Notice (which Exchange Business Day shall be on or as promptly as reasonably practicable following the settlement date for such Repurchase Event) as an Early Termination Date with respect to the portion of the Transaction corresponding to a number of Options (the “**Repurchase Options**”) equal to the lesser of (A) (x) the aggregate principal amount of such Convertible Notes specified in such Convertible Notes Repurchase Notice, *divided by* USD 1,000 *minus* (y) the “Repurchase Options” (as defined in the Base Call Option Confirmation), if any, that relate to such Convertible Notes and (B) the Number of Options as of the date Dealer designates such Early Termination Date and, as of such date, the Number of Options shall be reduced by the number of Repurchase Options. Any payment hereunder with respect to such termination (the “**Repurchase Unwind Payment**”) shall be calculated pursuant to Section 6 of the Agreement as if (1) an Early Termination Date had been designated in respect of a Transaction having terms identical to the Transaction and a Number of Options equal to the number of Repurchase Options, (2) Counterparty were the sole Affected Party with respect to such Additional Termination Event and (3) the terminated portion of the Transaction were the sole Affected Transaction (and, for the avoidance of doubt, in determining the amount payable in respect of such Affected Transaction pursuant to Section 6 of the Agreement, Dealer shall assume that (x) the relevant Repurchase Event and any conversions, adjustments, agreements, payments, deliveries or acquisitions by or on behalf of Counterparty leading thereto had not occurred, (y) no adjustments to the Conversion Rate have occurred pursuant to any Excluded Provisions and (z) the corresponding Convertible Notes remain outstanding). “**Repurchase Event**” means that (i) any Convertible Notes are repurchased or redeemed (whether pursuant to Section 15.01 of the Indenture, Section 15.02 of the Indenture, Section 16.01 of the Indenture or otherwise) by Counterparty or any of its subsidiaries, (ii) any Convertible Notes are delivered to Counterparty in exchange for delivery of any property or assets of Counterparty or any of its subsidiaries (howsoever described), including for the avoidance of doubt shares or American depository shares of Issuer and/or cash, (iii) any principal of any of the Convertible Notes is repaid prior to the final maturity date of the Convertible Notes (other than upon acceleration of the Convertible Notes described in Section 9(i)(ii)), or (iv) any Convertible Notes are exchanged by or for the benefit of the holders thereof for any other securities of Counterparty or any of its affiliates (or any other property, or any combination thereof) pursuant to any exchange offer or similar transaction; *provided* that any conversion of Convertible Notes pursuant to the terms of the Indenture shall not constitute a Repurchase Event. Counterparty acknowledges and agrees that if an Additional Termination Event has occurred under this Section 9(i)(iv) that any related Convertible Notes subject to a Repurchase Event will be promptly cancelled under the applicable provisions of the Indenture and, in any event, will be deemed to be cancelled and disregarded and no longer outstanding for all purposes hereunder.

(j) Amendments to Equity Definitions.

(i) Solely in respect of adjustments to the Cap Price pursuant to Section 9(y), Section 11.2(e)(vii) of the Equity Definitions is hereby amended by deleting the words “that may have a diluting or concentrative effect on the theoretical value of the relevant Shares” and replacing them with the words “that is the result of a corporate event involving the Underlying Shares Issuer or its securities that has a material economic effect on the Shares and/or the Underlying Shares or options on the Shares and/or the Underlying Shares; *provided* that such event is not based on (a) an observable market, other than the market for the Underlying Shares Issuer’s own stock or (b) an observable index, other than an index calculated and measured solely by reference to the Underlying Shares Issuer’s own operations.”

- (ii) Section 12.6(a)(ii) of the Equity Definitions is hereby amended by (1) inserting “(1)” immediately following the word “means” in the first line thereof and (2) inserting immediately prior to the semi-colon at the end of subsection (B) thereof the following words: “or (2) the occurrence of any of the events specified in Section 5(a)(vii)(1) through (9) of the ISDA Master Agreement with respect to that Issuer” *provided* that the period for dismissal, discharge, stay or restraint therein shall be increased from “within 15 days” to “within 30 days.”
- (iii) Section 12.9(b)(i) of the Equity Definitions is hereby amended by (1) replacing “either party may elect” with “Dealer may elect” and (2) replacing “notice to the other party” with “notice to Counterparty” in the first sentence of such section.
- (k) Setoff. Neither party shall have the right to set off any obligation that it may have to the other party under the Transaction against any obligation such other party may have to it, whether arising under the Agreement, this Confirmation or any other agreement between the parties hereto, by operation of law or otherwise and each party hereby waives any such right to setoff.
- (l) Adjustments. For the avoidance of doubt, whenever the Calculation Agent is called upon to make an adjustment pursuant to the terms of this Confirmation or the Equity Definitions to take into account the effect of an event (other than on adjustments made by reference to the Indenture), the Calculation Agent shall make such adjustment in a commercially reasonable manner by reference to the effect of such event on Dealer, assuming that Dealer maintains a commercially reasonable hedge position
- (m) Alternative Calculations and Payment on Early Termination and on Certain Extraordinary Events. If (a) an Early Termination Date (whether as a result of an Event of Default or a Termination Event) occurs or is designated with respect to the Transaction or (b) the Transaction is cancelled or terminated upon the occurrence of an Extraordinary Event, and if Dealer would owe any amount to Counterparty pursuant to Section 6(d)(ii) of the Agreement or any Cancellation Amount pursuant to Article 12 of the Equity Definitions (any such amount, a “**Payment Obligation**”), Counterparty may request Dealer to satisfy the Payment Obligation by the Share Termination Alternative (as defined below) (except as a result of (i) a Nationalization, Insolvency or Merger Event in which the consideration to be paid to holders of Shares and/or Underlying Shares, as applicable, consists solely of cash, (ii) an Announcement Event, Merger Event or Tender Offer that is within Counterparty’s control, or (iii) an Event of Default in which Counterparty is the Defaulting Party or a Termination Event in which Counterparty is the Affected Party other than an Event of Default of the type described in Section 5(a)(iii), (v), (vi), (vii) or (viii) of the Agreement or a Termination Event of the type described in Section 5(b) of the Agreement, in each case that resulted from an event or events outside Counterparty’s control), as long as Counterparty remakes the representation set forth in Section 8(f) as of the date of such election, and Counterparty shall give irrevocable telephonic notice to Dealer, confirmed in writing within one Scheduled Trading Day, no later than 12:00 p.m. (New York City time) on the date of the Announcement Event, Merger Date, Tender Offer Date, Announcement Date (in the case of a Nationalization, Insolvency or Delisting), Early Termination Date or date of cancellation, as applicable; *provided* that if Counterparty does not validly request Dealer to satisfy the Payment Obligation by the Share Termination Alternative, Dealer shall have the right, in its sole discretion, to satisfy its Payment Obligation by the Share Termination Alternative, notwithstanding Counterparty’s failure to elect or election to the contrary. If such election is not made, then the provisions of Section 12.7 or Section 12.9 of the Equity Definitions, or the provisions of Section 6(d)(ii) and Section 6(e) of the Agreement, as the case may be, shall apply.

Share Termination Alternative:

If applicable, Dealer shall deliver to Counterparty the Share Termination Delivery Property on, or as promptly as commercially reasonably practicable thereafter, the date when the relevant Payment Obligation would otherwise be due pursuant to Section 12.7 or 12.9 of the Equity Definitions or Section 6(d)(ii) and 6(e) of the Agreement, as applicable, in satisfaction of such Payment Obligation in the manner reasonably requested by Counterparty free of payment.

Share Termination Delivery Property:	A number of Share Termination Delivery Units, as calculated by the Calculation Agent, equal to the Payment Obligation divided by the Share Termination Unit Price. The Calculation Agent shall adjust the Share Termination Delivery Property by replacing any fractional portion of a security therein with an amount of cash equal to the value of such fractional security based on the values used to calculate the Share Termination Unit Price.
Share Termination Unit Price:	The value of property contained in one Share Termination Delivery Unit, as determined by the Calculation Agent in its discretion by commercially reasonable means and notified by the Calculation Agent to Dealer at the time of notification of the Payment Obligation.
Share Termination Delivery Unit:	One Share or, if the Shares or Underlying Shares, as applicable, have changed into cash or any other property or the right to receive cash or any other property as the result of a Nationalization, Insolvency or Merger Event (any such cash or other property, the “ <b>Exchange Property</b> ”), a unit consisting of the type and amount of such Exchange Property received by a holder of one Share or Underlying Share, as applicable (without consideration of any requirement to pay cash or other consideration in lieu of fractional amounts of any securities) in such Nationalization, Insolvency or Merger Event, as determined by the Calculation Agent. If such Nationalization, Insolvency, or Merger Event involves a choice of Exchange Property to be received by holders, such holders shall be deemed to have elected to receive the maximum possible amount of cash.
Failure to Deliver:	Applicable
Other applicable provisions:	If Share Termination Alternative is applicable, the provisions of Sections 9.8, 9.9 and 9.11 (as modified above) of the Equity Definitions and the provisions set forth opposite the caption “Representation and Agreement” in Section 2 will be applicable, except that all references in such provisions to “Physically-settled” shall be read as references to “Share Termination Settled” and all references to “Shares” shall be read as references to “Share Termination Delivery Units”. “Share Termination Settled” in relation to the Transaction means that Share Termination Alternative is applicable to the Transaction.

- (n) Waiver of Jury Trial. Each party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any suit, action or proceeding relating to the Transaction. Each party (i) certifies that no representative, agent or attorney of either party has represented, expressly or otherwise, that such other party would not, in the event of such a suit, action or proceeding, seek to enforce the foregoing waiver and (ii) acknowledges that it and the other party have been induced to enter into the Transaction, as applicable, by, among other things, the mutual waivers and certifications provided herein.
- (o) Registration. Counterparty hereby agrees that if, in the good faith reasonable judgment of Dealer, based on the advice of counsel, the Shares and/or Underlying Shares (“**Hedge Shares**”) acquired by Dealer for the purpose of commercially reasonably hedging its obligations pursuant to the Transaction cannot be sold in the public market by Dealer without registration under the Securities Act, Counterparty shall, at its election, either (i) in order to allow Dealer to sell the Hedge Shares in a registered offering, make available to Dealer an effective registration statement under the Securities Act and enter into an agreement, in form and substance reasonably satisfactory to Dealer, substantially in the form of an underwriting agreement customary for a registered secondary offering of a similar size in respect of a similar issuer; *provided, however*, that if Dealer, in its sole reasonable discretion, is not satisfied with access to due diligence materials, the results of its due diligence investigation, or the procedures and documentation for the registered offering referred to above, then clause (ii) or clause (iii) of this paragraph shall apply at the election of Counterparty, (ii) in order to allow Dealer to sell the Hedge Shares in a private placement, use commercially reasonable efforts to enter into a private placement agreement substantially similar to private placement purchase agreements customary for private placements of equity securities of a similar size in respect of a similar issuer, in form and substance satisfactory to Dealer (in which case, the Calculation Agent shall make any adjustments to the terms of the Transaction that are necessary, in its commercially reasonable judgment, to compensate Dealer for any commercially reasonable discount from the public market price of the Shares and/or Underlying Shares incurred on the sale of Hedge Shares in a private placement), or (iii) purchase the Hedge Shares from Dealer at the then-current market price on such Exchange Business Days, and in the amounts and at such time(s), reasonably requested by Dealer.
- (p) Tax Disclosure. Effective from the date of commencement of discussions concerning the Transaction, Counterparty and each of its employees, representatives, or other agents may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the Transaction and all materials of any kind (including opinions or other tax analyses) that are provided to Counterparty relating to such tax treatment and tax structure.
- (q) Right to Extend. Dealer may postpone or add, in whole or in part, any Valid Day or Valid Days during the Settlement Averaging Period or any other date of valuation, payment or delivery by Dealer, with respect to some or all of the Options hereunder, if Dealer reasonably determines, in the case of clause (i) below, in its commercially reasonable judgment or, in the case of clause (ii) below, based on advice of counsel, that such action is reasonably necessary or appropriate (i) to preserve Dealer’s commercially reasonable hedging or hedge unwind activity hereunder in light of existing liquidity conditions in the relevant market or (ii) to enable Dealer to effect transactions with respect to Shares and/or Underlying Shares in connection with its commercially reasonable hedging, hedge unwind or settlement activity hereunder in a manner that would, if Dealer were Counterparty or an affiliated purchaser of Counterparty, be in compliance with applicable legal, regulatory or self-regulatory requirements, or with related policies and procedures adopted by Dealer in good faith so long as such policies and procedures are generally applicable in similar situations and applied in a non-discriminatory manner); *provided* that no such Valid Day or other date of valuation, payment or delivery may be postponed or added more than 40 Valid Days after the original Valid Day or other date of valuation, payment or delivery, as the case may be.

- (r) Status of Claims in Bankruptcy. Dealer acknowledges and agrees that this Confirmation is not intended to convey to Dealer rights against Counterparty with respect to the Transaction that are senior to the claims of common or ordinary shareholders of Counterparty in any United States or Cayman Islands 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 the Transaction; *provided, further* that nothing herein shall limit or shall be deemed to limit Dealer's rights in respect of any transactions other than the Transaction.
- (s) Securities Contract; Swap Agreement. The parties hereto intend for (i) the Transaction to be a "securities contract" and a "swap agreement" as defined in the Bankruptcy Code (Title 11 of the United States Code) (the "**Bankruptcy Code**"), and the parties hereto to be entitled to the protections afforded by, among other Sections, Sections 362(b)(6), 362(b)(17), 546(e), 546(g), 555 and 560 of the Bankruptcy Code, (ii) a party's right to liquidate the Transaction and to exercise any other remedies upon the occurrence of any Event of Default under the Agreement with respect to the other party to constitute a "contractual right" as described in the Bankruptcy Code, and (iii) each payment and delivery of cash, securities or other property hereunder to constitute a "margin payment" or "settlement payment" and a "transfer" as defined in the Bankruptcy Code.
- (t) Notice of Certain Other Events. Counterparty covenants and agrees that:
- (i) promptly following the public announcement of the results of any election by the holders of Shares and/or Underlying Shares, as applicable, with respect to the consideration due upon consummation of any Merger Event, Counterparty shall give Dealer written notice of (x) the weighted average of the types and amounts of consideration that holders of Shares and/or Underlying Shares, as applicable, have elected to receive upon consummation of such Merger Event or (y) if no holders of Shares and/or Underlying Shares, as applicable, affirmatively make such election, the types and amounts of consideration actually received by holders of Shares and/or Underlying Shares, as applicable, (the date of such notification, the "**Consideration Notification Date**"); *provided* that in no event shall the Consideration Notification Date be later than the date on which such Merger Event is consummated;
  - (ii) (A) Counterparty shall give Dealer commercially reasonable advance (but in no event less than one Exchange Business Day) written notice of the section or sections of the Indenture and, if applicable, the formula therein, pursuant to which any adjustment will be made to the Convertible Notes in connection with any Potential Adjustment Event, Merger Event or Tender Offer and (B) promptly following any such adjustment, Counterparty shall give Dealer written notice of the details of such adjustment; and
  - (iii) Counterparty will provide a written notice to Dealer immediately upon becoming aware that Counterparty is not or will no longer be a "foreign private issuer," as such term is defined in Rule 3b-4 under the Exchange Act.
- (u) 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 Confirmation or the Agreement, as applicable, arising from a termination event, force majeure, illegality, increased costs, regulatory change or similar event under this Confirmation, the Equity Definitions incorporated herein, or the Agreement (including, but not limited to, rights arising from Change in Law, Hedging Disruption, an Excess Ownership Position, or Illegality (as defined in the Agreement)).
- (v) Agreements and Acknowledgements Regarding Hedging. Counterparty understands, acknowledges and agrees that: (A) at any time on and prior to the Expiration Date, Dealer and its affiliates may buy or sell Shares, Underlying Shares or other securities or buy or sell options or futures contracts or enter into swaps or other derivative securities in order to adjust its hedge position with respect to the Transaction; (B) Dealer and its affiliates also may be active in the market for Shares and/or Underlying Shares other than in connection with hedging activities in relation to the Transaction; (C) Dealer shall make its own determination as to whether, when or in what manner any hedging or market activities in securities of Issuer and/or Underlying Shares Issuer shall be conducted and shall do so in a manner that it deems appropriate to hedge its price and market risk with respect to the Relevant Prices; and (D) any market activities of Dealer and its affiliates with respect to Shares and/or Underlying Shares may affect the market price and volatility of Shares and/or Underlying Shares, as well as the Relevant Prices, each in a manner that may be adverse to Counterparty.



- (w) Early Unwind. In the event the sale of the “Option Securities” (as defined in the Purchase Agreement) is not consummated with the Initial Purchasers for any reason, or Counterparty fails to deliver to Dealer opinions of counsel as required pursuant to Section 9(a), in each case by 5:00 p.m. (New York City time) on the Premium Payment Date, or such later date as agreed upon by the parties (the Premium Payment Date or such later date the “**Early Unwind Date**”), the Transaction shall automatically terminate (the “**Early Unwind**”), on the Early Unwind Date and (i) the Transaction and all of the respective rights and obligations of Dealer and Counterparty under the Transaction shall be cancelled and terminated and (ii) each party shall be released and discharged by the other party from and agrees not to make any claim against the other party with respect to any obligations or liabilities of the other party arising out of and to be performed in connection with the Transaction either prior to or after the Early Unwind Date. Each of Dealer and Counterparty represents and acknowledges to the other that, upon an Early Unwind, all obligations with respect to the Transaction shall be deemed fully and finally discharged.
- (x) Payment by Counterparty. In the event that, following payment of the Premium, (i) an Early Termination Date occurs or is designated with respect to the Transaction as a result of a Termination Event or an Event of Default (other than an Event of Default arising under Section 5(a)(ii) or 5(a)(iv) of the Agreement) and, as a result, Counterparty owes to Dealer an amount calculated under Section 6(e) of the Agreement, or (ii) Counterparty owes to Dealer, pursuant to Section 12.7 or Section 12.9 of the Equity Definitions, an amount calculated under Section 12.8 of the Equity Definitions, such amount shall be deemed to be zero.
- (y) Other Adjustments Pursuant to the Equity Definitions. Notwithstanding anything to the contrary in this Confirmation, solely for the purpose of adjusting the Cap Price, the terms “Potential Adjustment Event,” “Merger Event,” and “Tender Offer” shall each have the meanings assigned to such term in the Equity Definitions (as amended by Section 9(j)(i) or, if applicable, by the definition of “Announcement Event”), and upon the occurrence of a Merger Date, the occurrence of a Tender Offer Date, or declaration by Counterparty of the terms of any Potential Adjustment Event, respectively, as such terms are defined in the Equity Definitions, the Calculation Agent may, in its sole discretion, adjust the Cap Price to preserve the fair value of the Options; *provided* that in no event shall the Cap Price be less than the Strike Price; *provided further* that any adjustment to the Cap Price made pursuant to this Section 9(y) shall be made without duplication of any other adjustment hereunder (including, for the avoidance of doubt, adjustment made pursuant to the provisions opposite the captions “Method of Adjustment,” “Consequences of Merger Events/Tender Offers” and “Consequence of Announcement Events” in Section 3 above). For the avoidance of doubt, for purposes of this Section 9(y), Section 12.1(d) of the Equity Definitions is hereby amended by replacing “10%” with “20%” in the third line thereof.
- (z) Service of Process. Counterparty irrevocably appoints Law Debenture Corporate Services Inc. as its authorized agent upon which process may be served in any suit, action or proceeding relating to the Transaction, and agrees that service of process in any manner permitted by applicable law upon such agent shall be deemed in every respect effective service of process in any manner permitted by applicable law upon Counterparty in any such suit, action or proceeding. Counterparty further agrees to take any and all action as may be necessary to maintain such designation and appointment of such agent in full force and effect for a period of five and a half years from the date of this Confirmation. If for any reason such agent shall cease to be such agent for service of process, Counterparty shall forthwith appoint a new agent of recognized standing for service of process in the State of New York and deliver to Dealer a copy of the new agent’s acceptance of that appointment within 10 days. Nothing herein shall affect the right of Dealer to serve process in any other manner permitted by law or to commence legal proceedings or otherwise proceed against Counterparty in any other court of competent jurisdiction.

- (aa) Taxes, Foreign Account Tax Compliance Act and HIRE Act. Counterparty is classified as a corporation for the U.S. federal income tax purposes. No income received or to be received under the Agreement will be effectively connected with the conduct of a trade or business by Counterparty in the United States. Counterparty is a “non-U.S. branch of a foreign person” as that term is used in Section 1.1441-4(a)(3)(ii) of the United States Treasury Regulations (the “**Regulations**”), and it is a “foreign person” as that term is used in Section 1.6041-4(a)(4) of the Regulations. The term “Indemnifiable Tax” as defined in Section 14 of the Agreement shall not include any U.S. federal withholding tax imposed or collected pursuant to Sections 1471 through 1474 of the U.S. Internal Revenue Code of 1986, as amended (the “**Code**”), any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b) of the Code, or any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code (a “**FATCA Withholding Tax**”). For the avoidance of doubt, a FATCA Withholding Tax is a Tax the deduction or withholding of which is required by applicable law for the purposes of Section 2(d) of the Agreement. The parties agree that the definitions and provisions contained in the ISDA 2015 Section 871(m) Protocol, as published by the International Swaps and Derivatives Association, Inc. and as may be amended, supplemented, replaced or superseded from time to time (the “**871(m) Protocol**”) shall apply to the Agreement as if the parties had adhered to the 871(m) Protocol as of the Effective Date. If there is any inconsistency between this provision and a provision in any other agreement executed between the parties, this provision shall prevail unless such other agreement expressly overrides the provisions of the 871(m) Protocol. Each of Dealer and Counterparty shall provide to the other party tax forms and documents required to be delivered pursuant to Sections 1471(b) or Section 1472(b)(1) of the Code promptly upon request by the other party and any other tax forms and documents they are legally able to provide that are reasonably requested by the other party.
- (bb) U.S. Tax Forms. Without limiting the generality of the foregoing, Counterparty will provide a US Tax Form W-8BEN-E upon the execution of this Confirmation, promptly upon learning that any such tax form previously provided by it has become obsolete or incorrect and promptly upon reasonable demand by Dealer.

(cc) Additional Definitions and Amendments to Equity Definitions.

(i) For the purposes of this Confirmation the following definitions will apply:

“**Depository**” means, in relation to the Shares, Deutsche Bank Trust Company Americas, or any successor thereto from time to time.

“**Deposit Agreement**” means, (i) that certain Deposit Agreement, dated as of September 11, 2018, by and among Underlying Shares Issuer, Depository and the holders and beneficial owners of the Shares and (ii) the other agreements or other instruments constituting the Shares, as from time to time amended or supplemented in accordance with their terms.

“**DS Amendment**” means, where specified as applicable to a definition or provision, that the following changes shall be made to such definition or provision: (a) all references to “Shares” shall be deleted and replaced with the words “Shares and/or the Underlying Shares, as appropriate”; and (b) all references to “Issuer” shall be deleted and replaced with the words “Issuer or Underlying Shares Issuer, as appropriate”.

“**Replacement DSS**” means depository shares or receipts, other than the Shares, over the same Underlying Shares.

- (ii) The following amendments shall be made to the Equity Definitions:
- (A) The definition of Potential Adjustment Event in Section 11.2(e) of the Equity Definitions shall be amended as follows:
- (i) the DS Amendment shall be applicable, provided that an event under Section 11.2(e)(i) to (vii) of the Equity Definitions in respect of the Underlying Shares shall not constitute a Potential Adjustment Event unless, in the commercially reasonable opinion of the Calculation Agent, such event has a material effect on the theoretical value of the Shares; and
  - (ii) (A) ‘or’ shall be deleted where it appears at the end of subsection (vi);  
(B) ‘.’ shall be deleted where it appears at the end of subsection (vii) and replaced with ‘;’;  
(C) the following shall be inserted as subsection (viii): “(viii) the making of any amendment or supplement to the terms of the Deposit Agreement and/or the Shares; or”; and  
(D) the following shall be inserted as provision (ix): “(ix) any other event as a result of which the Shares represent fewer or more Underlying Shares than, and/or any property or assets in addition to, or as a whole or partial replacement of, in each case, the number of Underlying Shares represented by the Shares prior to such event.”
- (B) In making any adjustment following any Potential Adjustment Event, the Calculation Agent shall have reference to (to the extent necessary or appropriate among other factors) any adjustment made by the Depositary under the Deposit Agreement, any fees and/or expenses of the Depositary and any withholding or deduction of taxes. If the Calculation Agent determines that no adjustment that it could make will produce a commercially reasonable result, it shall notify the parties that the relevant consequence shall be the termination of the relevant Transaction, in which case “Cancellation and Payment (Calculation Agent Determination)” will be deemed to apply and any payment to be made by one party to the other shall be calculated in accordance with Section 12.7 of the Equity Definitions (as amended by this Confirmation).
- (C) If a Potential Adjustment Event occurs under Section 11.2(e)(viii) of the Equity Definitions (as amended by this Confirmation), then the following further amendments shall be deemed to be made to Section 11.2(c) of the Equity Definitions in respect of such Potential Adjustment Event:
- (i) the words “the Calculation Agent will determine whether such Potential Adjustment Event has a material effect on the theoretical value of the relevant Shares, options on the Shares or the Transaction” shall be deleted and replaced with the words “the Calculation Agent will determine whether such Potential Adjustment Event has a material economic effect on such Transaction”; and
  - (ii) the words “as the Calculation Agent determines appropriate to account for that material effect” shall be deleted and replaced with the words “as the Calculation Agent determines appropriate to account for such economic effect on such Transaction”.
- (D) The definitions of “Merger Event”, “Tender Offer”, “Announcement Date”, “Share-for-Share”, “Share-for-Other” and “Share-for-Combined” in Section 12.1 of the Equity Definitions shall be amended in accordance with the DS Amendment.

- (E) In making any adjustment in respect of a Merger Event, Tender Offer or Announcement Event in relation to the Underlying Shares, the Calculation Agent shall in determining any adjustment pursuant to Modified Calculation Adjustment, have reference to (amongst other factors) any adjustment made by the Depositary under the Deposit Agreement, any fees and/or expenses of the Depositary and any withholding or deduction of taxes, as determined by the Calculation Agent in its commercially reasonable discretion.
- (F) The definitions of Nationalization and Insolvency in Section 12.6 of the Equity Definitions shall be amended in accordance with the DS Amendment.
- (G) The consequence of a Nationalization or Insolvency in respect of the Depositary shall be Cancellation and Payment.
- (H) If a Delisting of the Shares occurs or the Depositary announces that the Deposit Agreement is (or will be) terminated, then:
  - (i) Cancellation and Payment will apply as provided in this Confirmation; and
  - (ii) where Cancellation and Payment applies under (H)(i) above in respect of a termination of the Deposit Agreement, the Equity Definitions shall be interpreted as follows: (i) such termination shall be deemed to be an “Extraordinary Event”; (ii) Cancellation and Payment shall apply as defined in Section 12.6(c)(ii) of the Equity Definitions; and (iii) the definition of “Announcement Date” in Section 12.1(l) of the Equity Definitions shall include the following additional clause (vii) at the end of the first sentence thereof: “(vii) in the case of a termination of the Deposit Agreement, the date of the first public announcement by the Depositary that the Deposit Agreement is (or will be) terminated”.
- (I) If Cancellation and Payment applies under Section 9(cc)(ii)(G) or Section 9(cc)(ii)(H) of this Confirmation in respect of a Transaction, then the Determining Party shall be Dealer.
- (J) The definition of “Insolvency Filing” in Section 12.9(a)(iv) of the Equity Definitions shall be amended in accordance with the DS Amendment.
- (K) For the avoidance of doubt, where a provision is amended by this Section 9(cc) in accordance with the DS Amendment, if the event described in such provision occurs in respect of the Underlying Shares or Underlying Shares Issuer, then the consequence of such event shall be interpreted consistently with the DS Amendment and such event.

Please confirm that the foregoing correctly sets forth the terms of our agreement by executing this Confirmation and returning it to Dealer.

Very truly yours,

**MORGAN STANLEY & CO. LLC**

By:           /s/ Authorized Signatory          

Authorized Signatory

Name:



February 26, 2019

To: **NIO Inc.**  
Building 20, No. 56 AnTuo Road, Jiading District  
Shanghai, 201804  
People's Republic of China  
Attention: Louis T. Hsieh, Chief Financial Officer  
Telephone No.: +86 (21) 6908 3306  
Facsimile No.: +86 (21) 3913 0192

From: Credit Suisse Capital LLC  
c/o Credit Suisse Securities (USA) LLC  
Eleven Madison Avenue  
New York, NY 10010

Re: Second Additional Call Option Transaction

The purpose of this letter agreement (this "**Confirmation**") is to confirm the terms and conditions of the call option transaction entered into between Credit Suisse Capital LLC ("**Dealer**") and NIO Inc. ("**Counterparty**") as of the Trade Date specified below (the "**Transaction**"). This letter agreement constitutes a "Confirmation" as referred to in the ISDA Master Agreement specified below. Each party further agrees that this Confirmation together with the Agreement evidence a complete binding agreement between Counterparty and Dealer as to the subject matter and terms of the Transaction to which this Confirmation relates, and shall supersede all prior or contemporaneous written or oral communications with respect thereto.

The definitions and provisions contained in the 2002 ISDA Equity Derivatives Definitions (the "**Equity Definitions**"), as published by the International Swaps and Derivatives Association, Inc. ("**ISDA**") are incorporated into this Confirmation. In the event of any inconsistency between the Equity Definitions and this Confirmation, this Confirmation shall govern. Certain defined terms used herein are based on terms that are defined in the Offering Memorandum dated January 30, 2019 (the "**Offering Memorandum**") relating to the 4.50% Convertible Senior Notes due 2024 (as originally issued by Counterparty, the "**Convertible Notes**" and each USD 1,000 principal amount of Convertible Notes, a "**Convertible Note**") issued by Counterparty in an aggregate initial principal amount of USD 650,000,000 (as increased by an aggregate principal amount of USD 100,000,000 pursuant to the exercise by the Initial Purchasers (as defined herein) of their option to purchase additional Convertible Notes pursuant to the Purchase Agreement (as defined herein)) pursuant to an Indenture dated February 4, 2019 between Counterparty and The Bank of New York Mellon, as trustee (the "**Indenture**"). In the event of any inconsistency between the terms defined in the Offering Memorandum, the Indenture and this Confirmation, this Confirmation shall govern. The parties acknowledge that this Confirmation is entered into on the date hereof with the understanding that (i) definitions set forth in the Indenture which are also defined herein by reference to the Indenture and (ii) sections of the Indenture that are referred to herein will conform to the descriptions thereof in the Offering Memorandum. If any such definitions in the Indenture or any such sections of the Indenture differ from the descriptions thereof in the Offering Memorandum, the descriptions thereof in the Offering Memorandum will govern for purposes of this Confirmation. The parties further acknowledge that the Indenture section numbers used herein are based on the Indenture as executed. Subject to the foregoing, references to the Indenture herein are references to the Indenture as in effect on the date of its execution, and if the Indenture is amended or supplemented following such date (other than any amendment or supplement (x) pursuant to Section 10.01(i) of the Indenture that, as determined by the Calculation Agent, conforms the Indenture to the description of Convertible Notes in the Offering Memorandum, and (y) pursuant to Section 14.07(a) of the Indenture, subject, in the case of this clause (y), to the second paragraph under "Method of Adjustment" in Section 3), any such amendment or supplement will be disregarded for purposes of this Confirmation (other than as provided in Section 9(i)(iii) below) unless the parties agree otherwise in writing. For the avoidance of doubt, adjustments pursuant to any Dilution Adjustment Provision shall not constitute amendment, modification, supplement, or waiver in respect of any term of the Indenture or the Convertible Notes for any purpose under this paragraph and under Section 9(i)(iii).

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

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1. This Confirmation evidences a complete and binding agreement between Dealer and Counterparty as to the terms of the Transaction to which this Confirmation relates. This Confirmation shall supplement, form a part of, and be subject to an agreement in the form of the 2002 ISDA Master Agreement (the “**Agreement**”) as if Dealer and Counterparty had executed an agreement in such form (but without any Schedule except for (i) the election of the laws of the State of New York as the governing law (without reference to choice of law doctrine) and (ii) the agreement of the parties hereto that, following the payment of the Premium and the delivery to Dealer of the opinions of counsel as required pursuant to Section 9(a), the condition precedent in Section 2(a)(iii) of the Agreement shall not apply to a payment or delivery owing by Dealer to Counterparty (it being understood that such condition precedent will continue to apply and this clause (ii) will have no effect with respect to a Potential Event of Default, Event of Default and/or Early Termination Date arising under, or with respect to, Section 5(a)(ii) or 5(a)(iv) of the Agreement)) on the Trade Date.

In the event of any inconsistency between provisions of the Agreement and this Confirmation, this Confirmation will prevail for the purpose of the Transaction to which this Confirmation relates. The parties hereby agree that no transaction other than the Transaction to which this Confirmation relates shall be governed by the Agreement. If there exists any ISDA Master Agreement between Dealer and Counterparty or any confirmation or other agreement between Dealer and Counterparty pursuant to which an ISDA Master Agreement is deemed to exist between Dealer and Counterparty, then notwithstanding anything to the contrary in such ISDA Master Agreement, such confirmation or agreement or any other agreement to which Dealer and Counterparty are parties, the Transaction shall not be considered a Transaction under, or otherwise governed by, such existing or deemed ISDA Master Agreement.

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

General Terms.

Trade Date:	February 26, 2019
Effective Date:	The Trade Date.
Option Style:	“Modified American”, as described under “Procedures for Exercise” below
Option Type:	Call
Buyer:	Counterparty
Seller:	Dealer
Shares:	The American Depositary Shares of Counterparty issued or deemed issued under the Deposit Agreement (as defined below) (Symbol: “NIO”), each representing as of the date hereof one Underlying Share.
Underlying Shares:	The Class A ordinary shares of Counterparty, nominal value USD \$0.00025 per Underlying Share.
Number of Options:	48,227. For the avoidance of doubt, the Number of Options shall be reduced by any Options exercised by Counterparty. In no event will the Number of Options be less than zero.
Underlying Shares Issuer:	Counterparty
Applicable Percentage:	30%
Option Entitlement:	A number equal to the product of the Applicable Percentage and 105.1359.
Strike Price:	USD 9.5115



Cap Price: USD 14.9200  
Premium: USD 1,689,874.08  
Premium Payment Date: February 28, 2019  
Exchange: The New York Stock Exchange  
Related Exchange(s): All Exchanges  
Excluded Provisions: Section 14.04(h) and Section 14.03 of the Indenture.

Procedures for Exercise.

Expiration Time: The Valuation Time  
Expiration Date: February 1, 2024, subject to earlier exercise.  
Multiple Exercise: Applicable, as described under “Automatic Exercise” below.

Automatic Exercise: Notwithstanding Section 3.4 of the Equity Definitions, all Options then outstanding as of 5:00 p.m. New York City time on the Expiration Date will be deemed to be automatically exercised; *provided* that, for the avoidance of doubt, no such automatic exercise pursuant to this paragraph will occur if the Relevant Price for each Valid Day during the applicable Settlement Averaging Period is less than or equal to the Strike Price.

Notwithstanding the foregoing, in no event shall the number of Options that are exercised or deemed exercised hereunder exceed the Number of Options.

Valuation Time: At the close of trading of the regular trading session on the Exchange; *provided* that if the principal trading session is extended, the Calculation Agent shall determine the Valuation Time in its reasonable discretion.

Market Disruption Event: Section 6.3(a) of the Equity Definitions is hereby replaced in its entirety by the following:

“‘Market Disruption Event’ means, in respect of a Share, (i) a failure by the primary United States national or regional securities exchange or market on which the Shares are 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 Valid Day for the Shares 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 Shares or in any options contracts or futures contracts relating to the Shares.”

Settlement Terms.

Settlement Method Election:

Applicable; *provided* that (i) Section 7.1 of the Equity Definitions is hereby amended by deleting the word “Physical” in the sixth line thereof and replacing it with the words “Net Share”; and (ii) as of such notice delivery date, Counterparty shall be deemed to have made the following representations:

(A) Counterparty is not aware of any material non-public information with respect to Counterparty, the Underlying Shares Issuer (if other than Counterparty), the Underlying Shares or the Shares;

(B) Counterparty is electing Cash Settlement in good faith and not as part of a plan or scheme to evade compliance with the U.S. federal securities laws; Counterparty is not electing Cash Settlement to create actual or apparent trading activity in the Shares and/or Underlying Shares (or any security convertible into or exchangeable for the Shares and/or Underlying Shares) or to raise or depress or otherwise manipulate the price of the Shares and/or Underlying Shares (or any security convertible into or exchangeable for the Shares and/or Underlying Shares) or otherwise in violation of the Exchange Act; and Counterparty has not entered into or altered any hedging transaction relating to the Shares or the Underlying Shares corresponding to or offsetting the Transaction;

(C) such election and performance of its obligations under this Confirmation do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets; and

(D) any transaction that Dealer makes with respect to the Shares and/or the Underlying Shares during the period beginning at the time that Counterparty delivers such notice and ending at the close of business on the final day of the Settlement Averaging Period shall be made by Dealer at Dealer’s sole discretion for Dealer’s own account and Counterparty shall not have, and shall not attempt to exercise, any influence over how, when, whether or at what price Dealer effects such transactions, including, without limitation, the prices paid or received by Dealer per Share or Underlying Share pursuant to such transactions, or whether such transactions are made on any securities exchange or privately.

Default Settlement Method:

Net Share Settlement

Settlement Method Election Date:

The third Scheduled Trading Day immediately preceding the first Scheduled Valid Day of the Settlement Averaging Period.

Net Share Settlement:	Dealer will deliver to Counterparty, on the relevant Settlement Date, a number of Shares equal to the Net Shares in respect of any Option exercised or deemed exercised hereunder. In no event will the Net Shares be less than zero.
Net Shares:	<p>In respect of any Option exercised or deemed exercised, a number of Shares equal to the sum of the quotients, for each Valid Day during the Settlement Averaging Period for such Option, of (i) (A) the Daily Option Value for such Valid Day, <i>divided by</i> (B) the Relevant Price on such Valid Day, <i>divided by</i> (ii) the number of Valid Days in the Settlement Averaging Period.</p> <p>Dealer will pay cash in lieu of delivering any fractional Shares to be delivered with respect to any Net Shares valued at the Relevant Price for the last Valid Day of the Settlement Averaging Period.</p>
Cash Settlement:	If Cash Settlement is applicable to any Option exercised or deemed exercised hereunder, in lieu of Section 8.1 of the Equity Definitions, Dealer will pay to Counterparty, on the relevant Settlement Date for each such Option, an amount of cash (the “ <b>Cash Settlement Amount</b> ”) equal to the sum, for each Valid Day during the Settlement Averaging Period for such Option, of (i) the Daily Option Value for such Valid Day, <i>divided by</i> (ii) the number of Valid Days in the Settlement Averaging Period.
Daily Option Value:	For any Valid Day, an amount equal to (i) the Option Entitlement on such Valid Day, <i>multiplied by</i> (ii) (A) the lesser of the Relevant Price on such Valid Day and the Cap Price, <i>less</i> (B) the Strike Price on such Valid Day; <i>provided</i> that if the calculation contained in clause (ii) above results in a negative number, the Daily Option Value for such Valid Day shall be deemed to be zero. In no event will the Daily Option Value be less than zero.
Valid Day:	A day on which (i) there is no Market Disruption Event and (ii) trading in the Shares generally occurs on the Exchange or, if the Shares are not then listed on the Exchange, on the principal other United States national or regional securities exchange on which the Shares are then listed or, if the Shares are not then listed on a United States national or regional securities exchange, on the principal other market on which the Shares are then listed or admitted for trading. If the Shares are not so listed or admitted for trading, “Valid Day” means a Business Day.
Scheduled Valid Day:	A day that is scheduled to be a Valid Day on the principal United States national or regional securities exchange or market on which the Shares are listed or admitted for trading. If the Shares are not so listed or admitted for trading, “Scheduled Valid Day” means a Business Day.
Business Day:	Any day other than a Saturday, a Sunday or a day on which the Federal Reserve Bank of New York is authorized or required by law or executive order to close or be closed.

Relevant Price:	On any Valid Day, the per Share volume-weighted average price as displayed under the heading “Bloomberg VWAP” on Bloomberg page “NIO <equity> AQR” (or its equivalent successor if such page is not available) in respect of the period from the scheduled opening time of the Exchange to the Scheduled Closing Time of the Exchange on such Valid Day (or if such volume-weighted average price is unavailable at such time, the market value of one Share on such Valid Day, as determined by the Calculation Agent using, if practicable, a volume-weighted average method). The Relevant Price will be determined without regard to after-hours trading or any other trading outside of the regular trading session trading hours.
Settlement Averaging Period:	For any Option being exercised hereunder, the 40 consecutive Valid Days commencing on, and including, the 41st Scheduled Valid Day immediately prior to the Expiration Date.
Settlement Date:	For any Option, the second Business Day immediately following the final Valid Day of the Settlement Averaging Period for such Option.
Settlement Currency:	USD
Other Applicable Provisions:	The provisions of Sections 9.1(c), 9.8, 9.9 and 9.11 of the Equity Definitions will be applicable, except that all references in such provisions to “Physically-settled” shall be read as references to “Net Share Settled”. “Net Share Settled” in relation to any Option means that Net Share Settlement is applicable to that Option.
Representation and Agreement:	Notwithstanding anything to the contrary in the Equity Definitions (including, but not limited to, Section 9.11 thereof), the parties acknowledge that (i) any Shares delivered to Counterparty shall be, upon delivery, subject to restrictions and limitations arising from Counterparty’s status as issuer of the Underlying Shares under applicable securities laws, (ii) Dealer may deliver any Shares required to be delivered hereunder in certificated form or restricted book-entry form, in each case, in lieu of delivery through the Clearance System and (iii) any Shares delivered to Counterparty may be “restricted securities” (as defined in Rule 144 under the Securities Act of 1933, as amended (the “ <b>Securities Act</b> ”)).

3. **Additional Terms applicable to the Transaction.**

Adjustments applicable to the Transaction:

Potential Adjustment Events:

Notwithstanding Section 11.2(e) of the Equity Definitions (which Section shall not apply for the purposes of the Transaction, except as provided in Section 9(y) below), a “Potential Adjustment Event” means an occurrence of any event or condition, as set forth in any Dilution Adjustment Provision, that requires an adjustment to be made under the Indenture to the “Conversion Rate” or the composition of a “unit of Reference Property” or to any “Last Reported Sale Price” (each as defined in the Indenture). For the avoidance of doubt, Dealer shall not have any delivery or payment obligation hereunder, and no adjustment shall be made to the terms of the Transaction, on account of (x) any distribution of cash, property or securities by Counterparty to holders of the Convertible Notes (upon conversion or otherwise) or (y) any other transaction in which holders of the Convertible Notes participate, in each case, in lieu of an adjustment under the Indenture of the type referred to in the immediately preceding sentence (including, without limitation, pursuant to the fourth sentence of the first paragraph of Section 14.04(c) of the Indenture or the fourth sentence of Section 14.04(d) of the Indenture).

Method of Adjustment:

Calculation Agent Adjustment, which means that, notwithstanding Section 11.2(c) of the Equity Definitions, (which Section shall not apply for the purposes of the Transaction, except as provided in Section 9(y) below) upon any Potential Adjustment Event, the Calculation Agent shall make an adjustment to any one or more of the Strike Price, Number of Options, Option Entitlement and any other variable relevant to the exercise, settlement or payment for the Transaction corresponding to the adjustment required to be made pursuant to the Indenture.

Notwithstanding the foregoing and “Consequences of Merger Events / Tender Offers” below:

- (i) if the Calculation Agent in good faith disagrees with any adjustment to the Convertible Notes that involves an exercise of discretion by Counterparty or its board of directors (including, without limitation, pursuant to Section 14.05 of the Indenture, Section 14.07 of the Indenture or any supplemental indenture entered into thereunder or in connection with any proportional adjustment or the determination of the fair value of any securities, property, rights or other assets), then in each such case, the Calculation Agent will determine in good faith and in a commercially reasonable manner, the adjustment to be made to any one or more of the Strike Price, Number of Options, Option Entitlement and any other variable relevant to the exercise, settlement or payment for the Transaction in a commercially reasonable manner; *provided* that, notwithstanding the foregoing, if any Potential Adjustment Event occurs during the Settlement Averaging Period but no adjustment was made to any Convertible Note under the Indenture because the relevant Holder (as such term is defined in the Indenture) was deemed to be a record owner of the underlying Shares on the related Conversion Date (as such term is defined in the Indenture), then the Calculation Agent shall make a commercially reasonable adjustment, as determined by it, to the terms hereof in order to account for such Potential Adjustment Event;

- (ii) in connection with any Potential Adjustment Event as a result of an event or condition set forth in Section 14.04(b) of the Indenture or Section 14.04(c) of the Indenture where, in either case, the period for determining “Y” (as such term is used in Section 14.04(b) of the Indenture) or “SP<sub>0</sub>” (as such term is used in Section 14.04(c) of the Indenture), as the case may be, begins before Counterparty has publicly announced the event or condition giving rise to such Potential Adjustment Event, then the Calculation Agent shall have the right to adjust any variable relevant to the exercise, settlement or payment for the Transaction as appropriate to reflect the costs (to account solely for hedging mismatches and market losses) and expenses incurred by Dealer in connection with its hedging activities, with such adjustments made assuming that Dealer maintains commercially reasonable hedge positions, as a result of such event or condition not having been publicly announced prior to the beginning of such period; and
  
- (iii) if any Potential Adjustment Event is declared and (a) the event or condition giving rise to such Potential Adjustment Event is subsequently amended, modified, cancelled or abandoned, (b) the “Conversion Rate” (as defined in the Indenture) is otherwise not adjusted at the time or in the manner contemplated by the relevant Dilution Adjustment Provision based on such declaration or (c) the “Conversion Rate” (as defined in the Indenture) is adjusted as a result of such Potential Adjustment Event and subsequently re-adjusted (each of clauses (a), (b) and (c), a “**Potential Adjustment Event Change**”) then, in each case, the Calculation Agent shall have the right to adjust any variable relevant to the exercise, settlement or payment for the Transaction as appropriate to reflect the costs (to account solely for hedging mismatches and market losses) and expenses incurred by Dealer in connection with its hedging activities, with such adjustments made assuming that Dealer maintains commercially reasonable hedge positions, as a result of such Potential Adjustment Event Change.

Dilution Adjustment Provisions:	Sections 14.04(a), (b), (c), (d) and (e) and Section 14.05 of the Indenture.
Extraordinary Events applicable to the Transaction:	
Merger Events:	Applicable; <i>provided</i> that notwithstanding Section 12.1(b) of the Equity Definitions, a “Merger Event” means the occurrence of any event or condition set forth in the definition of “Merger Event” in Section 14.07 of the Indenture.
Tender Offers:	Applicable; <i>provided</i> that notwithstanding Section 12.1(d) of the Equity Definitions, a “Tender Offer” means the occurrence of any event or condition set forth in Section 14.04(e) of the Indenture.
Consequences of Merger Events/ Tender Offers:	Notwithstanding Section 12.2 and Section 12.3 of the Equity Definitions, upon the occurrence of a Merger Event or a Tender Offer, the Calculation Agent shall make a corresponding adjustment in respect of any adjustment under the Indenture to any one or more of the nature of the Shares (in the case of a Merger Event), Strike Price, Number of Options, Option Entitlement and any other variable relevant to the exercise, settlement or payment for the Transaction to the extent that an analogous adjustment is required to be made pursuant to the Indenture in respect of such Merger Event or Tender Offer, subject to the second paragraph under “Method of Adjustment”; <i>provided, however</i> , that such adjustment shall be made without regard to any adjustment to the Conversion Rate pursuant to any Excluded Provision; <i>provided further</i> that if, with respect to a Merger Event or a Tender Offer, (i) the consideration for the Shares or Underlying Shares, as applicable, includes (or, at the option of a holder of Shares, or Underlying Shares, as applicable, may include) shares of an entity or person that is not (1) a corporation or an entity that is treated as a corporation for U.S. federal income tax purposes or (2) organized under the laws of the Cayman Islands or (ii) the Counterparty to the Transaction following such Merger Event or Tender Offer will not be a corporation or an entity that is treated as a corporation for U.S. federal income tax purposes organized under the laws of the Cayman Islands, and/or will not be the Underlying Shares Issuer then, in any case, Cancellation and Payment (Calculation Agent Determination) may apply at Dealer’s commercially reasonable election; <i>provided further</i> that, for the avoidance of doubt, adjustments shall be made pursuant to the provisions set forth above regardless of whether any Merger Event or Tender Offer gives rise to an Early Conversion (as defined below).

Consequences of Announcement Events:

If an Announcement Event occurs, the Calculation Agent shall determine the cumulative economic effect of such Announcement Event (it being understood that the Calculation Agent may take into account any changes to volatility in connection with such Announcement Event within a commercially reasonable (as determined by the Calculation Agent) period of time prior to or after such Announcement Event) on the Transaction on the earliest to occur of (i) the date on which the transaction described in such Announcement Event (as amended) is consummated or otherwise results in a Merger Date or Tender Offer Date, as applicable, (ii) the Valuation Date, or (iii) any earlier date of termination or cancellation with respect to any Option, and if the Calculation Agent determines that such economic effect is material and that making the relevant adjustment would be commercially reasonable, the Calculation Agent shall adjust the Cap Price to reflect such economic effect (but, for the avoidance of doubt, taking into account, and without duplication of, any other adjustment made pursuant to this “Consequences of Announcement Events” provision or pursuant to the provisions opposite the captions “Method of Adjustment”, “Consequences of Merger Events” or “Consequences of Tender Offers” above in respect of the transaction or intention giving rise to such Announcement Event).

Announcement Event:

(i) The public announcement by (x) any entity of any transaction or event that the Calculation Agent determines is reasonably likely to be completed and that, if completed, would constitute a Merger Event or Tender Offer (it being understood that Calculation Agent may make such determination by reference to the impact of such announcement on the market for the Shares and/or Underlying Shares or options relating to the Shares and/or Underlying Shares), (y) Underlying Shares Issuer or any subsidiary thereof of any potential acquisition or disposal by the Underlying Shares Issuer and/or its subsidiaries where the aggregate consideration payable or receivable exceeds 25% of the market capitalization of the Underlying Shares Issuer as of the date of such announcement (a “**Transformative Transaction**”) or (z) Underlying Shares Issuer, any subsidiary of the Underlying Shares Issuer or any Valid Third Party Entity of the intention to enter into a Merger Event or Tender Offer or a Transformative Transaction (in the case of a Valid Third-Party Entity, that the Calculation Agent determines is a bona fide intention, it being understood that the Calculation Agent may make such determination by reference to the impact of such announcement on the market for the Shares and/or Underlying Shares or options relating to the Shares and/or Underlying Shares), (ii) the public announcement by the Underlying Shares Issuer of an intention to solicit or enter into, or to explore strategic alternatives or other similar undertaking that may include, a Merger Event or Tender Offer or a Transformative Transaction or (iii) any subsequent public announcement by any entity of a change to a transaction or intention that is the subject of an announcement of the type described in clause (i) or (ii) of this sentence (including, without limitation, a new announcement, whether or not by the same party, relating to such a transaction or intention or the announcement of a withdrawal from, or the abandonment or discontinuation of, such a transaction or intention), as determined by the Calculation Agent. For the avoidance of doubt, the occurrence of an Announcement Event with respect to any transaction or intention shall not preclude the occurrence of a later Announcement Event with respect to such transaction or intention. For purposes of this definition of “Announcement Event,” (A) “Merger Event” shall mean such term as defined under Section 12.1(b) of the Equity Definitions (but, for the avoidance of doubt, the remainder of the definition of “Merger Event” in Section 12.1(b) of the Equity Definitions following the definition of “Reverse Merger” therein shall be disregarded) and (B) “Tender Offer” shall mean such term as defined under Section 12.1(d) of the Equity Definitions; *provided* that Section 12.1(d) of the Equity Definitions is hereby amended by replacing “10%” with “20%” in the third line thereof.



Valid Third Party Entity:

In respect of any transaction or intention, any third party (i) whose announcement is reasonably determined by the Calculation Agent to have had a material economic effect on the Shares and/or Underlying Shares and/or options on the Shares and/or Underlying Shares and (ii) that is the entity, or an affiliate of the entity, that is, or would be, a party to the relevant transaction or event.

Nationalization, Insolvency or Delisting:

Cancellation and Payment (Calculation Agent Determination); *provided* that, in addition to the provisions of Section 12.6(a)(iii) of the Equity Definitions, it will also constitute a Delisting if the 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 of the New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or their respective successors), such exchange or quotation system shall thereafter be deemed to be the Exchange.

Section 12.1 of the Equity Definitions is hereby amended by deleting subsection (v) thereof in its entirety and replacing it with “(v) in the case of an Insolvency, the date of (A) the institution of a proceeding or presentation of a petition or the passing of a resolution (or the convening of a meeting to pass a resolution or the proposing of a written resolution) (in each case the occurrence of which shall be deemed its announcement) that leads to an Insolvency within the meaning of subsection (A) of the definition thereof, (B) the first public announcement of the institution of a proceeding or presentation of a petition or passing of a resolution (or other analogous procedure in any jurisdiction) that leads to the Insolvency or (C) the occurrence of any of the events specified in Section 5(a)(vii)(1) through (9) of the ISDA Master Agreement with respect to that Issuer”.

Section 12.6(a)(ii) of the Equity Definitions is hereby amended by (1) inserting “(A)” after “means” in the first line thereof and replacing “(A)” and “(B)” in the third and fourth lines thereof with “(1)” and “(2)” respectively, (2) deleting from the fourth line thereof the word “or” after the word “official” and inserting a comma therefor, (3) inserting at the end of renumbered subsection (2) thereof the following wording, “or, under the laws of the Cayman Islands, any other jurisdiction or otherwise, any other impediment to or restriction on the transfer of any Share arises or becomes applicable including, without limitation, where (x) any transfer of a Share or alteration of the status of the members of the Issuer would be void unless a court of the Cayman Islands or any other jurisdiction orders otherwise or (y) any transfer of a Share not being a transfer with the sanction of a liquidator, and any alteration in the status of the Issuer’s members, would be void” and (4) deleting the semi-colon at the end of renumbered subsection (2) thereof and inserting the following words therefor “or (B) at Dealer’s option, the occurrence of any of the events specified in Section 5(a)(vii)(1) through (9) of the ISDA Master Agreement with respect to that Issuer.”

Additional Disruption Events:

Change in Law:

Applicable; *provided* that Section 12.9(a)(ii) of the Equity Definitions is hereby amended by (i) replacing the phrase “the interpretation” in the third line thereof with the phrase “, or public announcement of, the formal or informal interpretation”, (ii) replacing the word “Shares” where it appears in clause (X) thereof with the words “Hedge Position,” (iii) replacing the parenthetical beginning after the word “regulation” in the second line thereof with the words “(including, for the avoidance of doubt and without limitation, (x) any tax law or (y) adoption, effectiveness or promulgation of new regulations authorized or mandated by existing statute)” and (iv) adding the words “*provided* that, in the case of clause (Y) hereof where such determination is based on Dealer’s policies and procedures, such policies and procedures have been adopted by Dealer in good faith and are generally applicable in similar situations and applied in a non-discriminatory manner;” after the semi-colon in the last line thereof.

Failure to Deliver:	Applicable
Hedging Disruption:	Applicable; <i>provided</i> that:  Section 12.9(b)(iii) of the Equity Definitions is hereby amended by inserting in the third line thereof, after the words “to terminate the Transaction”, the words “or a portion of the Transaction affected by such Hedging Disruption”.
Increased Cost of Hedging:	Not Applicable
Hedging Party:	For all applicable Additional Disruption Events, Dealer.
Determining Party:	For all applicable Extraordinary Events, Dealer; <i>provided</i> that when making any determination or calculation as “Determining Party,” Dealer shall make such determinations or calculations in good faith and in a commercially reasonable manner.  Following any determination or calculation by Determining Party hereunder, the Determining Party will, upon written request from Counterparty, promptly (but in any event within five Scheduled Trading Days) provide to Counterparty a report (in a commonly used file format for the storage and manipulation of financial data) displaying in reasonable detail the basis for such determination or calculation (including any assumptions used in making such determination or calculation), it being understood that in no event will the Determining Party be obligated to share with Counterparty any proprietary or confidential data or information or any proprietary or confidential models used by it in making such determination or calculation or any information that is subject to an obligation not to disclose such information.
Non-Reliance:	Applicable
Agreements and Acknowledgments Regarding Hedging Activities:	Applicable
Additional Acknowledgments:	Applicable

**4. Calculation Agent.**

Dealer; *provided* that, following the occurrence and during the continuance of an Event of Default under Section 5(a)(vii) of the Agreement with respect to which Dealer is the Defaulting Party, Counterparty shall have the right to designate a nationally recognized independent equity derivatives 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 adjustment, determination or calculation by the Calculation Agent hereunder, the Calculation Agent will, upon written request from Counterparty, promptly (but in any event within five Scheduled Trading Days) provide to Counterparty by email a report (in a commonly used file format for the storage and manipulation of financial data) displaying in reasonable detail the basis for such adjustment, determination or calculation (including any assumptions used in making such adjustment, determination or calculation), it being understood that in no event will the Calculation Agent be obligated to share with Counterparty any proprietary or confidential data or information or any proprietary or confidential models used by it in making such adjustment, determination or calculation or any information that is subject to an obligation not to disclose such information.

All calculations and determinations by the Calculation Agent shall be made in good faith and in a commercially reasonable manner.

**5. Account Details.**

- (a) Account for payments to Counterparty:

To be provided.

Account for delivery of Shares to Counterparty:

To be provided.

- (b) Account for payments to Dealer:

To be provided.

Account for delivery of Shares from Dealer:

To be provided.

**6. Offices.**

- (a) The Office of Counterparty for the Transaction is: Inapplicable, Counterparty is not a Multibranch Party.

- (b) The Office of Dealer for the Transaction is: New York

**7. Notices.**

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

NIO Inc.  
Building 20, No. 56 AnTuo Road, Jiading District  
Shanghai, 201804  
People's Republic of China  
Attention: Louis T. Hsieh, Chief Financial Officer  
Telephone No.: +86 (21) 6908 3306  
Facsimile No.: +86 (21) 3913 0192

with a copy to:

Nick Wang  
VP of Finance

Telephone No.: +86 (21) 6908-2002  
Email: Nick.Wang@nio.com

with a copy to:

Fang Liu  
General Counsel  
Telephone No.: +86 (21) 6908-2277  
Email: Fang.Liu@nio.com

with a copy to:

Sabrina Shi  
Senior Corporate Counsel  
Telephone No.: +86 (21) 6908-3391  
Email: Danting.Shi@nio.com

(b) Address for notices or communications to Dealer:

Credit Suisse Capital LLC  
c/o Credit Suisse Securities (USA) LLC  
Eleven Madison Avenue  
New York, NY 10010  
Attention: Tucker Martin  
Telephone: (212) 325-9182  
Facsimile: (212) 743-3661  
Email: tucker.martin@credit-suisse.com

With a copy to:  
Credit Suisse Securities (USA) LLC  
1 Madison Avenue, 9th Floor  
New York, New York 10010  
Attn: Senior Legal Officer  
Telephone: (212) 538-2616  
Facsimile: (212) 325-8036  
Email: stephen.gray@credit-suisse.com

For payments and deliveries:  
Facsimile No.: (212) 325 8175  
Telephone No.: (212) 325 8678 / (212) 325 3213

For all other communications:

Telephone: (212) 538-6040  
Facsimile: (917) 326-8603

**8. Representations and Warranties of Counterparty.**

Each of the representations and warranties of Counterparty set forth in Section 2 of the Purchase Agreement (the “**Purchase Agreement**”) dated as of January 30, 2019, between Counterparty and Credit Suisse Securities (USA) LLC, J.P. Morgan Securities LLC, Morgan Stanley & Co. LLC, and Goldman Sachs (Asia) LLC, as representatives of the Initial Purchasers party thereto (the “**Initial Purchasers**”), are true and correct and are hereby deemed to be repeated to Dealer as if set forth herein. Counterparty hereby further represents and warrants to Dealer on the date hereof and on and as of the Premium Payment Date, that:

- (a) Counterparty (i) is duly incorporated and validly existing as an exempted company with limited liability under the laws of the Cayman Islands and is in good standing under such laws, and (ii) has all necessary corporate power and authority to execute, deliver and perform its obligations and exercise its rights in respect of the Transaction; such execution, delivery, performance and exercise have been duly authorized by all necessary corporate action on Counterparty's part; and this Confirmation has been duly and validly executed and delivered by Counterparty and constitutes its valid and binding obligation, enforceable against Counterparty in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity) and except that rights to indemnification and contribution hereunder may be limited by federal or state securities laws or public policy relating thereto.
- (b) Neither the execution and delivery of this Confirmation nor the incurrence or performance of obligations nor the exercise of rights of Counterparty hereunder will conflict with or result in a breach of the memorandum and articles of association or by-laws (or any equivalent documents) of Counterparty, or any applicable law or regulation, or any order, writ, injunction or decree of any court or governmental authority or agency, or any agreement or instrument to which Counterparty or any of its subsidiaries is a party or by which Counterparty or any of its subsidiaries is bound or to which Counterparty or any of its subsidiaries is subject, or constitute a default under, or result in the creation of any lien under, any such agreement or instrument.
- (c) No consent, approval, authorization, or order of, or filing with, any governmental agency or body or any court is required in connection with the execution, delivery or performance by Counterparty of this Confirmation, except such as have been obtained or made and such as may be required under the Securities Act or state securities laws.
- (d) Counterparty is not and, after consummation of the transactions contemplated hereby, will not be required to register as an "investment company" as such term is defined in the Investment Company Act of 1940, as amended.
- (e) Counterparty is an "eligible contract participant" (as such term is defined in Section 1a(18) of the Commodity Exchange Act, as amended, other than a person that is an eligible contract participant under Section 1a(18)(C) of the Commodity Exchange Act).
- (f) Counterparty is not, on the date hereof, aware of any material non-public information with respect to Counterparty, the Underlying Shares Issuer (if other than Counterparty), the Underlying Shares or the Shares.
- (g) To the knowledge of Counterparty, no state or local (including any non-U.S. jurisdiction's) law, rule, regulation or regulatory order applicable to the Shares and/or Underlying 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 and/or Underlying Shares (except for filings of Form 13F, Schedule 13D or Schedule 13G under the Exchange Act); *provided* that Counterparty makes no representation or warranty regarding any such requirement that is applicable generally to the ownership of equity securities by Dealer or any of its affiliates solely as a result of it or any of such affiliates being a financial institution or broker-dealer.
- (h) Counterparty (A) is capable of evaluating investment risks independently, both in general and with regard to all transactions and investment strategies involving a security or securities; (B) will exercise independent judgment in evaluating the recommendations of any broker-dealer or its associated persons, unless it has otherwise notified the broker-dealer in writing; (C) has total assets of at least USD 50 million; and (D) is acting for its own account, and it has made its own independent decisions to enter into the Transaction and as to whether the Transaction is appropriate or proper for it (including as to any legal, regulatory, tax, accounting or economic consequences arising from the Transaction) based upon its own judgment and upon advice from such advisers as it has deemed necessary (including legal, financial and accounting advisors).

- (i) Counterparty as of and immediately after the Trade Date and the Premium Payment Date (x) is not, and shall not be after giving effect to the transactions contemplated hereby, “insolvent” (as such term is defined in Section 101(32) of the Bankruptcy Code, (y) would be able to purchase 100,536,150 Shares and the Underlying Shares represented by such number of Shares in compliance with the laws of the jurisdiction of Counterparty’s incorporation or organization, and (z), for the purposes of Cayman Islands law, is able to pay its debts.
- (j) Counterparty’s board of directors (the “**Board**”) has concluded that (A) the Transaction is suitable for Counterparty, for its commercial benefit and in its best interests, in light of its own investment objectives, financial condition and expertise and (B) the Transaction has been duly approved and authorized by the Board after due consideration by the Board of the foregoing matters and those referred to in subparagraph (h)(D) above.

**9. Other Provisions.**

- (a) *Deliverables.* Counterparty shall deliver to Dealer (A) an opinion of U.S. counsel and (B) an opinion of Cayman counsel, each dated as of the Premium Payment Date, with respect to, among other things, the matters set forth in Sections 8(a) through (c) of this Confirmation, it being understood that such opinions of counsel shall be limited to the federal laws of the United States and the laws of the State of New York (in the case of clause (A) above) and the laws Cayman Islands (in the case of clause (B) above) and may contain customary limitations, exceptions and qualifications for transactions of the same type as the Transaction. Delivery of such opinions to Dealer shall be a condition precedent for the purpose of Section 2(a)(iii) of the Agreement with respect to each obligation of Dealer under Section 2(a)(i) of the Agreement; (C) a resolution of the Board authorizing the Transaction; and (D) on or before the Premium Payment Date, a solvency certificate with respect to Counterparty signed by a member of the Board, the chief executive officer or the chief financial officer of the Counterparty certifying the solvency of Counterparty as of and immediately after the Premium Payment Date (after giving effect to Counterparty’s payment of amounts required to be paid by Counterparty on such date under the Transaction and the other transactions described under “Use of Proceeds” in the Offering Memorandum related to the offering of the Convertible Notes), which solvency certificate is reasonably satisfactory to Dealer.

- (b) Repurchase Notices. Counterparty shall, on or prior to the date that is one Scheduled Trading Day following any date on which Counterparty effects any repurchase of Shares and/or Underlying Shares, promptly give Dealer a written notice of such repurchase (a “**Repurchase Notice**”) on such day if following such repurchase, the number of outstanding Underlying Shares as determined on such day is (i) less than 727.2 million (in the case of the first such notice) or (ii) thereafter more than 37.8 million less than the number of Underlying Shares included in the immediately preceding Repurchase Notice; *provided* that Counterparty may provide Dealer advance notice on or prior to any such day including the maximum number of Shares and/or Underlying Shares that may be repurchased under a repurchase program entered into in reliance on Rule 10b5-1(c) and the approximate periods during which such repurchases may occur, to the extent it expects that repurchases effected on such day may result in an obligation to deliver a Repurchase Notice (and in such case, any such advance notice shall be deemed a Repurchase Notice to the maximum extent of repurchases set forth in such advance notice as if Counterparty had executed such repurchases). Counterparty agrees that, if Counterparty ceases to qualify as a “foreign private issuer” as defined in Rule 3b-4 under the Exchange Act or the Shares or Underlying Shares, as applicable, otherwise become subject to the requirements of Section 16 of the Exchange Act, Counterparty will indemnify and hold harmless Dealer and its affiliates and their respective officers, directors, employees, affiliates, advisors, agents and controlling persons (each, an “**Indemnified Person**”) from and against any and all losses (including losses relating to Dealer’s hedging activities as a consequence of becoming, or of the risk of becoming, a Section 16 “insider”, including without limitation, any forbearance from hedging activities or cessation of hedging activities and any losses in connection therewith with respect to the Transaction), claims, damages, judgments, liabilities and reasonable and documented out-of-pocket expenses (including reasonable attorney’s fees of one outside counsel in each relevant jurisdiction), joint or several, which an Indemnified Person may become subject to, in each case, as a result of Counterparty’s failure to provide Dealer with a Repurchase Notice on the day and in the manner specified in this paragraph, and to reimburse, within 30 days, upon written request, each of such Indemnified Persons for any reasonable legal or other out-of-pocket expenses (to the extent supported by invoices or other documentation setting forth in reasonable detail such expenses) incurred in connection with investigating, preparing for, providing testimony or other evidence in connection with or defending any of the foregoing. If any suit, action, proceeding (including any governmental or regulatory investigation), claim or demand shall be brought or asserted against the Indemnified Person as a result of Counterparty’s failure to provide Dealer with a Repurchase Notice in accordance with this paragraph, such Indemnified Person shall promptly notify Counterparty in writing, and Counterparty, upon request of the Indemnified Person, shall retain counsel reasonably satisfactory to the Indemnified Person to represent the Indemnified Person and any others Counterparty may designate in such proceeding and shall pay the reasonable fees and expenses of such counsel related to such proceeding. Counterparty shall not be liable to the extent that the Indemnified Person fails to notify Counterparty within a commercially reasonable period of time after any action is commenced against it in respect of which indemnity may be sought hereunder. In addition, Counterparty shall not have liability for any settlement of any such proceeding contemplated by this paragraph that is effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, Counterparty agrees to indemnify any Indemnified Person from and against any loss or liability by reason of such settlement or judgment. Counterparty shall not, without the prior written consent of the Indemnified Person, effect any settlement of any pending or threatened proceeding contemplated by this paragraph in respect of which any Indemnified Person is or could have been a party and indemnity could have been sought hereunder by such Indemnified Person, unless such settlement includes an unconditional release of such Indemnified Person from all liability on claims that are the subject matter of such proceeding on terms reasonably satisfactory to such Indemnified Person. If the indemnification provided for in this paragraph is unavailable to an Indemnified Person or insufficient in respect of any losses, claims, damages or liabilities referred to therein, then Counterparty hereunder, in lieu of indemnifying such Indemnified Person thereunder, shall contribute to the amount paid or payable by such Indemnified Person as a result of such losses, claims, damages or liabilities. The remedies provided for in this paragraph (b) are not exclusive and shall not limit any rights or remedies which may otherwise be available to any Indemnified Person at law or in equity. The indemnity and contribution agreements contained in this paragraph shall remain operative and in full force and effect regardless of the termination of the Transaction.
- (c) Regulation M. Counterparty is not on the Trade Date engaged in a distribution, as such term is used in Regulation M under the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), of any securities of Counterparty, other than a distribution meeting the requirements of the exception set forth in Rules 101(b)(10) and 102(b)(7) of Regulation M. Counterparty shall not, until the second Scheduled Trading Day immediately following the Effective Date, engage in any such distribution.
- (d) No Manipulation. Counterparty is not entering into the Transaction to create actual or apparent trading activity in the Shares and/or Underlying Shares (or any security convertible into or exchangeable for the Shares and/or Underlying Shares) or to raise or depress or otherwise manipulate the price of the Shares and/or Underlying Shares (or any security convertible into or exchangeable for the Shares and/or Underlying Shares) or otherwise in violation of the Exchange Act.



(e) Transfer or Assignment.

- (i) Counterparty shall have the right to transfer or assign all or any of its rights and obligations hereunder with respect to all, or any, of the Options hereunder (such Options, the “**Transfer Options**”) with the prior written consent of Dealer, such consent not to be unreasonably withheld; *provided* that withholding of such consent by Dealer shall not be considered unreasonable if such transfer or assignment does not meet any of the following conditions:
- (A) With respect to any Transfer Options, Counterparty shall not be released from its notice and indemnification obligations pursuant to Section 9(b) of this Confirmation;
  - (B) Such transfer or assignment shall be effected on terms, including any reasonable undertakings by such third party (including, but not limited to, an undertaking with respect to compliance with applicable securities laws in a manner that, in the reasonable judgment of Dealer, will not expose Dealer to material risks under applicable securities laws) and execution of any documentation and delivery of legal opinions with respect to securities laws and other matters by such third party and Counterparty, as are reasonably requested and reasonably satisfactory to Dealer;
  - (C) Under the applicable law effective on the date of such transfer or assignment, (1) Dealer will not, as a result of such transfer or assignment, be required to pay the transferee or assignee on any payment date or delivery date an amount or a number of Shares, as applicable, under Section 2(d)(i)(4) of the Agreement greater than the amount or the number of Shares, as applicable, that Dealer would have been required to pay to Counterparty in the absence of such transfer or assignment and (2) Dealer will not, as a result of such transfer or assignment, receive from the transferee or assignee on any payment date an amount under Section 2(d)(i)(4) of the Agreement that is less than the amount that Dealer would have received from Counterparty in the absence of such transfer or assignment;
  - (D) No Event of Default, Potential Event of Default or Termination Event will occur as a result of such transfer and assignment;
  - (E) Counterparty shall cause the transferee to make such tax representations and to provide such tax documentation as may be reasonably requested by Dealer to permit Dealer to determine that results described in clauses (C) and (D) will not occur upon or after such transfer and assignment, including but not limited to providing tax documentation specified in Section 9(bb) of this Confirmation and making the tax representations specified in Section 9(aa) of this Confirmation on or prior to such transfer and at the other times specified in such Sections; and
  - (F) Counterparty shall be responsible for all reasonable and documented costs and expenses, including reasonable counsel fees, incurred by Dealer in connection with such transfer or assignment.

- (ii) Dealer may, without Counterparty's consent, transfer or assign all or any part of its rights or obligations under the Transaction to any affiliate of Dealer (1) that has a long-term issuer rating that is equal to or better than Dealer's credit rating at the time of such transfer or assignment, or (2) whose obligations hereunder will be guaranteed, pursuant to the terms of a customary guarantee in a form used by Dealer generally for similar transactions, by Dealer; *provided* that, in the case of any such transfer or assignment, under the applicable law effective on the date of such transfer or assignment, (I) Counterparty will not, as a result of such transfer or assignment, be required to pay the transferee or assignee on any payment date an amount under Section 2(d)(i)(4) of the Agreement greater than the amount that Counterparty would have been required to pay to Dealer in the absence of such transfer or assignment; (II) Counterparty will not, as a result of such transfer or assignment, receive from the transferee or assignee on any payment or delivery date an amount or a number of Shares, as applicable, under Section 2(d)(i)(4) of the Agreement that is less than the amount or the number of Shares that Counterparty would have received from Dealer in the absence of such transfer or assignment; (III) Dealer shall cause the transferee or assignee to make such tax representations and to provide such tax documentation as may be reasonably requested by Counterparty to permit Counterparty to determine that events described in clauses (I) and (II) of this proviso will not occur upon or after such transfer or assignment; and (IV) no Event of Default, Potential Event of Default or Termination Event will occur as a result of such transfer and assignment. If at any time at which (A) the Section 13 Percentage exceeds 8.5%, (B) the Option Equity Percentage exceeds 14.5%, or (C) the Share Amount exceeds the Applicable Share Limit (if any applies) (any such condition described in clauses (A), (B) or (C), an "**Excess Ownership Position**"), Dealer is unable after using its commercially reasonable efforts to effect a transfer or assignment of Options to a third party on pricing terms reasonably acceptable to Dealer and within a time period reasonably acceptable to Dealer such that no Excess Ownership Position exists, then Dealer may designate any Exchange Business Day as an Early Termination Date with respect to a portion of the Transaction (the "**Terminated Portion**"), to the extent necessary so that following such partial termination no Excess Ownership Position exists. In the event that Dealer so designates an Early Termination Date with respect to a portion of the Transaction, a payment shall be made pursuant to Section 6 of the Agreement as if (1) an Early Termination Date had been designated in respect of a Transaction having terms identical to the Transaction and a Number of Options equal to the number of Options underlying the Terminated Portion, (2) Counterparty were the sole Affected Party with respect to such partial termination and (3) the Terminated Portion were the sole Affected Transaction (and, for the avoidance of doubt, the provisions of Section 9(m) shall apply to any amount that is payable by Dealer to Counterparty pursuant to this sentence as if Counterparty was not the Affected Party). The "**Section 13 Percentage**" as of any day is the fraction, expressed as a percentage, (A) the numerator of which is the number of Underlying Shares that Dealer and any of its affiliates or any other person subject to aggregation with Dealer for purposes of the "beneficial ownership" test under Section 13 of the Exchange Act, or any "group" (within the meaning of Section 13 of the Exchange Act) of which Dealer is or may be deemed to be a part beneficially owns (within the meaning of Section 13 of the Exchange Act), without duplication, on such day (or, to the extent that for any reason the equivalent calculation under Section 16 of the Exchange Act applies with respect to the Shares or Underlying Shares, as applicable, and the rules and regulations thereunder results in a higher number, such higher number) and (B) the denominator of which is the number of Underlying Shares outstanding on such day. The "**Option Equity Percentage**" as of any day is the fraction, expressed as a percentage, (A) the numerator of which is the sum of (1) the product of (x) the Number of Options (y) the Option Entitlement and (z) the number of Underlying Shares represented by one Share and (2) the aggregate number of Underlying Shares underlying any other call option transaction sold by Dealer to Counterparty, and (B) the denominator of which is the number of Underlying Shares outstanding. The "**Share Amount**" as of any day is the number of Underlying Shares that Dealer and any person whose ownership position would be aggregated with that of Dealer (Dealer or any such person, a "**Dealer Person**") under any law, rule, regulation, regulatory order or organizational documents or contracts of Counterparty that are, in each case, applicable to ownership of Underlying Shares ("**Applicable Restrictions**"), owns, beneficially owns, constructively owns, controls, holds the power to vote or otherwise meets a relevant definition of ownership under any Applicable Restriction, as determined by Dealer in its reasonable discretion. The "**Applicable Share Limit**" means a number of Underlying Shares equal to (A) the minimum number of Underlying Shares that could give rise to reporting or registration obligations (except for any filing requirements on Form 13F, Schedule 13D or Schedule 13G under the Exchange Act, in each case, as in effect on the Trade Date) or other requirements (including obtaining prior approval from any person or entity) of a Dealer Person, or could result in an adverse effect on a Dealer Person, under any Applicable Restriction, as determined by Dealer in good faith and in its commercially reasonable discretion, *minus* (B) 1% of the number of Underlying Shares outstanding.

- (iii) Notwithstanding any other provision in this Confirmation to the contrary requiring or allowing Dealer to purchase, sell, receive or deliver any Shares, Underlying Shares or other securities, or make or receive any payment in cash, to or from Counterparty, Dealer may designate any of its affiliates to purchase, sell, receive or deliver such Shares, Underlying Shares or other securities, or to make or receive such payment in cash, and otherwise to perform Dealer's obligations in respect of the Transaction and any such designee may assume such obligations. Dealer shall be discharged of its obligations to Counterparty to the extent of any such performance.
- (f) Staggered Settlement. If upon advice of counsel with respect to applicable legal and regulatory requirements, including any requirements relating to Dealer's hedging activities hereunder, Dealer reasonably determines that it would not be practicable or advisable to deliver, or to acquire Shares to deliver, any or all of the Shares to be delivered by Dealer on any Settlement Date for the Transaction, Dealer may, by notice to Counterparty on or prior to any Settlement Date (a "**Nominal Settlement Date**"), elect to deliver the Shares on two or more dates (each, a "**Staggered Settlement Date**") as follows:
  - (i) in such notice, Dealer will specify to Counterparty the related Staggered Settlement Dates (the first of which will be such Nominal Settlement Date and the last of which will be no later than the twentieth (20<sup>th</sup>) Exchange Business Day following such Nominal Settlement Date) and the number of Shares that it will deliver on each Staggered Settlement Date;
  - (ii) the aggregate number of Shares that Dealer will deliver to Counterparty hereunder on all such Staggered Settlement Dates will equal the number of Shares that Dealer would otherwise be required to deliver on such Nominal Settlement Date; and
  - (iii) if the Net Share Settlement terms set forth above were to apply on the Nominal Settlement Date, then the Net Share Settlement terms will apply on each Staggered Settlement Date, except that the Shares otherwise deliverable on such Nominal Settlement Date will be allocated among such Staggered Settlement Dates as specified by Dealer in the notice referred to in clause (i) above.
- (g) Role of Agent. As a broker-dealer registered with the U.S. Securities and Exchange Commission ("SEC"), Credit Suisse Securities (USA) LLC in its capacity as Agent will be responsible for (i) effecting the Transaction, (ii) issuing all required confirmations and statements to Dealer and Counterparty, (iii) maintaining books and records relating to the Transaction as required by Rules 17a-3 and 17a-4 under the Exchange Act and (iv) unless otherwise requested by Counterparty, receiving, delivering, and safeguarding Counterparty's funds and any securities in connection with each Transaction, in compliance with Rule 15c3-3 under the Exchange Act.

Credit Suisse Securities (USA) LLC is acting in connection with the Transaction solely in its capacity as Agent for Dealer and Counterparty pursuant to instructions from Dealer and Counterparty. Credit Suisse Securities (USA) LLC shall have no responsibility or personal liability to Dealer or Counterparty arising from any failure by Dealer or Counterparty to pay or perform any obligations hereunder, or to monitor or enforce compliance by Dealer or Counterparty with any obligation hereunder, including without limitation, any obligations to maintain collateral. Each of Dealer and Counterparty agrees to proceed solely against the other to collect or recover any securities or monies owing to it in connection with or as a result of the Transaction. Credit Suisse Securities (USA) LLC shall otherwise have no liability in respect of the Transaction, except for its gross negligence or willful misconduct in performing its duties as Agent.

Any and all notices, demands, or communications of any kind relating to this Transaction between Dealer and Counterparty shall be transmitted exclusively through Agent at the following address:

Credit Suisse Capital LLC  
c/o Credit Suisse Securities (USA) LLC  
Eleven Madison Avenue  
New York, NY 10010  
Attention: Tucker Martin  
Telephone: (212) 325-9182  
Facsimile: (212) 743-3661  
Email: tucker.martin@credit-suisse.com

With a copy to:

Credit Suisse Securities (USA) LLC  
1 Madison Avenue, 9th Floor  
New York, New York 10010  
Attn: Senior Legal Officer  
Telephone: (212) 538-2616  
Facsimile: (212) 325-8036  
Email: stephen.gray@credit-suisse.com

For payments and deliveries:

Facsimile No.: (212) 325 8175  
Telephone No.: (212) 325 8678 / (212) 325 3213

For all other communications:

Telephone: (212) 538-6040  
Facsimile: (917) 326-8603

The date and time of the Transaction evidenced hereby will be furnished by the Agent to Dealer and Counterparty upon written request.

The Agent will furnish to Counterparty upon written request a statement as to the source and amount of any remuneration received or to be received by the Agent in connection with the Transaction evidenced hereby.

Dealer is not a member of the SIPC (Securities Investor Protection Corporation).

Dealer represents that it is an "OTC derivatives dealer" as such term is defined in the Exchange Act and is an affiliate of a broker-dealer that is registered with and fully-regulated by the SEC, Credit Suisse Securities (USA) LLC.

- (h) QFC Stay Provisions. To the extent that the QFC Stay Rules are applicable hereto, then the parties agree that (i) to the extent that prior to the date hereof both parties have adhered to the 2018 ISDA U.S. Resolution Stay Protocol (the “**Protocol**”), the terms of the Protocol are incorporated into and form a part of this Confirmation, and for such purposes this 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; (ii) to the extent that prior to the date hereof the parties have executed a separate agreement the effect of which is to amend the qualified financial contracts between them to conform with the requirements of the QFC Stay Rules (the “Bilateral Agreement”), the terms of the Bilateral Agreement are incorporated into and form a part of this Confirmation and each party shall be deemed to have the status of “Covered Entity” or “Counterparty Entity” (or other similar term) as applicable to it under the Bilateral Agreement; or (iii) if clause (i) and clause (ii) do not apply, the terms of Section 1 and Section 2 and the related defined terms (together, the “**Bilateral Terms**”) of the form of bilateral template entitled “Full-Length Omnibus (for use between U.S. G-SIBs and Corporate Groups)” published by ISDA on November 2, 2018 (currently available on the 2018 ISDA U.S. Resolution Stay Protocol page at [www.isda.org](http://www.isda.org) and, a copy of which is available upon request), the effect of which is to amend the qualified financial contracts between the parties thereto to conform with the requirements of the QFC Stay Rules, are hereby incorporated into and form a part of this Confirmation, and for such purposes this Confirmation shall be deemed a “Covered Agreement,” Dealer shall be deemed a “Covered Entity” and Counterparty shall be deemed a “Counterparty Entity.” In the event that, after the date of this Confirmation, both parties hereto become adhering parties to the Protocol, the terms of the Protocol will replace the terms of this paragraph. In the event of any inconsistencies between this Confirmation and the terms of the Protocol, the Bilateral Agreement or the Bilateral Terms (each, the “**QFC Stay Terms**”), as applicable, the QFC Stay Terms will govern. Terms used in this paragraph without definition shall have the meanings assigned to them under the QFC Stay Rules. For purposes of this paragraph, references to “this 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**” means 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 FDIC 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.

(i) Additional Termination Events.

- (i) Notwithstanding anything to the contrary in this Confirmation, upon any conversion of a Convertible Note occurring prior to the 45th Scheduled Valid Day immediately prior to the Expiration Date (any such conversion, an “**Early Conversion**”) in respect of which a Conversion Notice that is effective as to Counterparty has been delivered by the relevant converting Holder:
- (A) Counterparty may, within two Scheduled Trading Days of the date on which the Holder (as such term is defined in the Indenture) of such Convertible Note satisfies all of the requirements for conversion thereof as set forth in Section 14.02 of the Indenture (the “**Conversion Date**”) for such Early Conversion, provide written notice (an “**Early Conversion Notice**”) to Dealer specifying the number of Convertible Notes surrendered for conversion on such Conversion Date (such Convertible Notes, the “**Affected Convertible Notes**”), and the giving of such Early Conversion Notice shall constitute an Additional Termination Event as provided in this clause (i) (*provided* that Counterparty acknowledges its responsibilities under applicable securities laws, and in particular Section 9 and Section 10(b) of the Exchange Act and the rules and regulations thereunder, in respect of any Early Conversion Notice);

- (B) upon receipt of any such Early Conversion Notice, Dealer shall designate an Exchange Business Day as an Early Termination Date (which Exchange Business Day shall be no earlier than one Scheduled Trading Day following the Conversion Date for such Early Conversion) with respect to the portion of the Transaction corresponding to a number of Options (the “**Affected Number of Options**”) equal to the lesser of (x) the number of Affected Convertible Notes *minus* the “**Affected Number of Options**” (as defined in the Base Call Option Transaction Confirmation letter agreement dated January 30, 2019 between Dealer and Counterparty (the “**Base Call Option Confirmation**”)), if any, that relate to such Affected Convertible Notes *minus* the “**Affected Number of Options**” (as defined in the Additional Call Option Transaction Confirmation dated February 13, 2019 between Dealer and Counterparty (the “**First Additional Call Option Confirmation**”)), if any, that relate to such Affected Convertible Notes and (y) the Number of Options as of the Conversion Date for such Early Conversion;
  - (C) any payment hereunder with respect to such termination shall be calculated pursuant to Section 6 of the Agreement as if (x) an Early Termination Date had been designated in respect of a Transaction having terms identical to the Transaction and a Number of Options equal to the Affected Number of Options, (y) Counterparty were the sole Affected Party with respect to such Additional Termination Event and (z) the terminated portion of the Transaction were the sole Affected Transaction;
  - (D) for the avoidance of doubt, in determining the amount payable in respect of such Affected Transaction pursuant to Section 6 of the Agreement, the Calculation Agent shall assume that (x) the relevant Early Conversion and any conversions, adjustments, agreements, payments, deliveries or acquisitions by or on behalf of Counterparty leading thereto had not occurred, (y) no adjustments to the Conversion Rate have occurred pursuant to any Excluded Provision and (z) the corresponding Convertible Notes remain outstanding; and
  - (E) the Transaction shall remain in full force and effect, except that, as of the Conversion Date for such Early Conversion, the Number of Options shall be reduced by the Affected Number of Options.
- (ii) Notwithstanding anything to the contrary in this Confirmation if an event of default with respect to Counterparty occurs under the terms of the Convertible Notes as set forth in Section 6.01 of the Indenture and such event of default results in the Convertible Notes being accelerated and declared due and payable, then such event of default shall constitute an Additional Termination Event applicable to the Transaction and, with respect to such Additional Termination Event, (A) Counterparty shall be deemed to be the sole Affected Party, (B) the Transaction shall be the sole Affected Transaction and (C) Dealer shall be the party entitled to designate an Early Termination Date pursuant to Section 6(b) of the Agreement (which Early Termination Date shall be on or as promptly as reasonably practicable after Dealer becomes aware of the occurrence of such acceleration).
  - (iii) Notwithstanding anything to the contrary in this Confirmation, the occurrence of an Amendment Event shall constitute an Additional Termination Event applicable to the Transaction and, with respect to such Additional Termination Event, (A) Counterparty shall be deemed to be the sole Affected Party, (B) the Transaction shall be the sole Affected Transaction and (C) Dealer shall be the party entitled to designate an Early Termination Date pursuant to Section 6(b) of the Agreement. “**Amendment Event**” means that Counterparty amends, modifies, supplements, waives or obtains a waiver in respect of any term of the Indenture or the Convertible Notes governing the principal amount, coupon, maturity, repurchase obligation of Counterparty, tax redemption right of Counterparty, any term relating to conversion of the Convertible Notes (including changes to the conversion rate, conversion rate adjustment provisions, conversion settlement dates or conversion conditions), or any term that would require consent of the holders of not less than 100% of the principal amount of the Convertible Notes to amend (other than, in each case, any amendment or supplement (x) pursuant to Section 10.01(i) of the Indenture that, as determined by the Calculation Agent, conforms the Indenture to the description of Convertible Notes in the Offering Memorandum or (y) pursuant to Section 14.07 of the Indenture), in each case, without the consent of Dealer.

- (iv) Promptly (but in any event within five Scheduled Trading Days) following any Repurchase Event (as defined below), Counterparty shall notify Dealer of such Repurchase Event and the aggregate principal amount of Convertible Notes subject to such Repurchase Event (any such notice, a “**Convertible Notes Repurchase Notice**”); *provided* that any such Convertible Notes Repurchase Notice shall contain a repetition by Counterparty of the representation set forth in Section 8(f) as of the date of such Convertible Notes Repurchase Notice and an acknowledgment by Counterparty of its responsibilities under applicable securities laws, and in particular Section 9 and Section 10(b) of the Exchange Act and the rules and regulations thereunder, in respect of such Repurchase Event and the delivery of such Convertible Notes Repurchase Notice. Any Convertible Notes Repurchase Notice delivered to Dealer pursuant to the Base Call Option Confirmation shall be deemed to be a Convertible Notes Repurchase Notice pursuant to this Confirmation and the terms of such Convertible Notes Repurchase Notice shall apply, *mutatis mutandis*, to this Confirmation. The receipt by Dealer from Counterparty of any Convertible Notes Repurchase Notice shall constitute an Additional Termination Event as provided in this Section 9(i)(iv). Upon receipt of any such Convertible Notes Repurchase Notice, Dealer shall designate an Exchange Business Day following receipt of such Convertible Notes Repurchase Notice (which Exchange Business Day shall be on or as promptly as reasonably practicable following the settlement date for such Repurchase Event) as an Early Termination Date with respect to the portion of the Transaction corresponding to a number of Options (the “**Repurchase Options**”) equal to the lesser of (A) (x) the aggregate principal amount of such Convertible Notes specified in such Convertible Notes Repurchase Notice, *divided by* USD 1,000 *minus* (y) the “Repurchase Options” (as defined in the Base Call Option Confirmation), if any, that relate to such Convertible Notes *minus* (z) the “Repurchase Options” (as defined in the First Additional Call Option Confirmation), if any, that relate to such Convertible Notes and (B) the Number of Options as of the date Dealer designates such Early Termination Date and, as of such date, the Number of Options shall be reduced by the number of Repurchase Options. Any payment hereunder with respect to such termination (the “**Repurchase Unwind Payment**”) shall be calculated pursuant to Section 6 of the Agreement as if (1) an Early Termination Date had been designated in respect of a Transaction having terms identical to the Transaction and a Number of Options equal to the number of Repurchase Options, (2) Counterparty were the sole Affected Party with respect to such Additional Termination Event and (3) the terminated portion of the Transaction were the sole Affected Transaction (and, for the avoidance of doubt, in determining the amount payable in respect of such Affected Transaction pursuant to Section 6 of the Agreement, Dealer shall assume that (x) the relevant Repurchase Event and any conversions, adjustments, agreements, payments, deliveries or acquisitions by or on behalf of Counterparty leading thereto had not occurred, (y) no adjustments to the Conversion Rate have occurred pursuant to any Excluded Provisions and (z) the corresponding Convertible Notes remain outstanding). “**Repurchase Event**” means that (i) any Convertible Notes are repurchased or redeemed (whether pursuant to Section 15.01 of the Indenture, Section 15.02 of the Indenture, Section 16.01 of the Indenture or otherwise) by Counterparty or any of its subsidiaries, (ii) any Convertible Notes are delivered to Counterparty in exchange for delivery of any property or assets of Counterparty or any of its subsidiaries (howsoever described), including for the avoidance of doubt shares or American depositary shares of Issuer and/or cash, (iii) any principal of any of the Convertible Notes is repaid prior to the final maturity date of the Convertible Notes (other than upon acceleration of the Convertible Notes described in Section 9(i)(ii)), or (iv) any Convertible Notes are exchanged by or for the benefit of the holders thereof for any other securities of Counterparty or any of its affiliates (or any other property, or any combination thereof) pursuant to any exchange offer or similar transaction; *provided* that any conversion of Convertible Notes pursuant to the terms of the Indenture shall not constitute a Repurchase Event. Counterparty acknowledges and agrees that if an Additional Termination Event has occurred under this Section 9(i)(iv) that any related Convertible Notes subject to a Repurchase Event will be promptly cancelled under the applicable provisions of the Indenture and, in any event, will be deemed to be cancelled and disregarded and no longer outstanding for all purposes hereunder.

- (j) Amendments to Equity Definitions.
- (i) Solely in respect of adjustments to the Cap Price pursuant to Section 9(y), Section 11.2(e)(vii) of the Equity Definitions is hereby amended by deleting the words “that may have a diluting or concentrative effect on the theoretical value of the relevant Shares” and replacing them with the words “that is the result of a corporate event involving the Underlying Shares Issuer or its securities that has a material economic effect on the Shares and/or the Underlying Shares or options on the Shares and/or the Underlying Shares; *provided* that such event is not based on (a) an observable market, other than the market for the Underlying Shares Issuer’s own stock or (b) an observable index, other than an index calculated and measured solely by reference to the Underlying Shares Issuer’s own operations.”
  - (ii) Section 12.6(a)(ii) of the Equity Definitions is hereby amended by (1) inserting “(1)” immediately following the word “means” in the first line thereof and (2) inserting immediately prior to the semi-colon at the end of subsection (B) thereof the following words: “or (2) the occurrence of any of the events specified in Section 5(a)(vii)(1) through (9) of the ISDA Master Agreement with respect to that Issuer” *provided* that the period for dismissal, discharge, stay or restraint therein shall be increased from “within 15 days” to “within 30 days.”
  - (iii) Section 12.9(b)(i) of the Equity Definitions is hereby amended by (1) replacing “either party may elect” with “Dealer may elect” and (2) replacing “notice to the other party” with “notice to Counterparty” in the first sentence of such section.
- (k) Setoff. Neither party shall have the right to set off any obligation that it may have to the other party under the Transaction against any obligation such other party may have to it, whether arising under the Agreement, this Confirmation or any other agreement between the parties hereto, by operation of law or otherwise and each party hereby waives any such right to setoff.
- (l) Adjustments. For the avoidance of doubt, whenever the Calculation Agent is called upon to make an adjustment pursuant to the terms of this Confirmation or the Equity Definitions to take into account the effect of an event (other than on adjustments made by reference to the Indenture), the Calculation Agent shall make such adjustment in a commercially reasonable manner by reference to the effect of such event on Dealer, assuming that Dealer maintains a commercially reasonable hedge position



(m) Alternative Calculations and Payment on Early Termination and on Certain Extraordinary Events. If (a) an Early Termination Date (whether as a result of an Event of Default or a Termination Event) occurs or is designated with respect to the Transaction or (b) the Transaction is cancelled or terminated upon the occurrence of an Extraordinary Event, and if Dealer would owe any amount to Counterparty pursuant to Section 6(d)(ii) of the Agreement or any Cancellation Amount pursuant to Article 12 of the Equity Definitions (any such amount, a “**Payment Obligation**”), Counterparty may request Dealer to satisfy the Payment Obligation by the Share Termination Alternative (as defined below) (except as a result of (i) a Nationalization, Insolvency or Merger Event in which the consideration to be paid to holders of Shares and/or Underlying Shares, as applicable, consists solely of cash, (ii) an Announcement Event, Merger Event or Tender Offer that is within Counterparty’s control, or (iii) an Event of Default in which Counterparty is the Defaulting Party or a Termination Event in which Counterparty is the Affected Party other than an Event of Default of the type described in Section 5(a)(iii), (v), (vi), (vii) or (viii) of the Agreement or a Termination Event of the type described in Section 5(b) of the Agreement, in each case that resulted from an event or events outside Counterparty’s control), as long as Counterparty remakes the representation set forth in Section 8(f) as of the date of such election, and Counterparty shall give irrevocable telephonic notice to Dealer, confirmed in writing within one Scheduled Trading Day, no later than 12:00 p.m. (New York City time) on the date of the Announcement Event, Merger Date, Tender Offer Date, Announcement Date (in the case of a Nationalization, Insolvency or Delisting), Early Termination Date or date of cancellation, as applicable; *provided* that if Counterparty does not validly request Dealer to satisfy the Payment Obligation by the Share Termination Alternative, Dealer shall have the right, in its sole discretion, to satisfy its Payment Obligation by the Share Termination Alternative, notwithstanding Counterparty’s failure to elect or election to the contrary. If such election is not made, then the provisions of Section 12.7 or Section 12.9 of the Equity Definitions, or the provisions of Section 6(d)(ii) and Section 6(e) of the Agreement, as the case may be, shall apply.

Share Termination Alternative:

If applicable, Dealer shall deliver to Counterparty the Share Termination Delivery Property on, or as promptly as commercially reasonably practicable thereafter, the date when the relevant Payment Obligation would otherwise be due pursuant to Section 12.7 or 12.9 of the Equity Definitions or Section 6(d)(ii) and 6(e) of the Agreement, as applicable, in satisfaction of such Payment Obligation in the manner reasonably requested by Counterparty free of payment.

Share Termination Delivery Property:

A number of Share Termination Delivery Units, as calculated by the Calculation Agent, equal to the Payment Obligation divided by the Share Termination Unit Price. The Calculation Agent shall adjust the Share Termination Delivery Property by replacing any fractional portion of a security therein with an amount of cash equal to the value of such fractional security based on the values used to calculate the Share Termination Unit Price.

Share Termination Unit Price:

The value of property contained in one Share Termination Delivery Unit, as determined by the Calculation Agent in its discretion by commercially reasonable means and notified by the Calculation Agent to Dealer at the time of notification of the Payment Obligation.

Share Termination Delivery Unit:

One Share or, if the Shares or Underlying Shares, as applicable, have changed into cash or any other property or the right to receive cash or any other property as the result of a Nationalization, Insolvency or Merger Event (any such cash or other property, the “**Exchange Property**”), a unit consisting of the type and amount of such Exchange Property received by a holder of one Share or Underlying Share, as applicable (without consideration of any requirement to pay cash or other consideration in lieu of fractional amounts of any securities) in such Nationalization, Insolvency or Merger Event, as determined by the Calculation Agent. If such Nationalization, Insolvency, or Merger Event involves a choice of Exchange Property to be received by holders, such holders shall be deemed to have elected to receive the maximum possible amount of cash.

Failure to Deliver:

Applicable

Other applicable provisions:

If Share Termination Alternative is applicable, the provisions of Sections 9.8, 9.9 and 9.11 (as modified above) of the Equity Definitions and the provisions set forth opposite the caption "Representation and Agreement" in Section 2 will be applicable, except that all references in such provisions to "Physically-settled" shall be read as references to "Share Termination Settled" and all references to "Shares" shall be read as references to "Share Termination Delivery Units". "Share Termination Settled" in relation to the Transaction means that Share Termination Alternative is applicable to the Transaction.

- (n) Waiver of Jury Trial. Each party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any suit, action or proceeding relating to the Transaction. Each party (i) certifies that no representative, agent or attorney of either party has represented, expressly or otherwise, that such other party would not, in the event of such a suit, action or proceeding, seek to enforce the foregoing waiver and (ii) acknowledges that it and the other party have been induced to enter into the Transaction, as applicable, by, among other things, the mutual waivers and certifications provided herein.
- (o) Registration. Counterparty hereby agrees that if, in the good faith reasonable judgment of Dealer, based on the advice of counsel, the Shares and/or Underlying Shares ("**Hedge Shares**") acquired by Dealer for the purpose of commercially reasonably hedging its obligations pursuant to the Transaction cannot be sold in the public market by Dealer without registration under the Securities Act, Counterparty shall, at its election, either (i) in order to allow Dealer to sell the Hedge Shares in a registered offering, make available to Dealer an effective registration statement under the Securities Act and enter into an agreement, in form and substance reasonably satisfactory to Dealer, substantially in the form of an underwriting agreement customary for a registered secondary offering of a similar size in respect of a similar issuer; *provided, however*, that if Dealer, in its sole reasonable discretion, is not satisfied with access to due diligence materials, the results of its due diligence investigation, or the procedures and documentation for the registered offering referred to above, then clause (ii) or clause (iii) of this paragraph shall apply at the election of Counterparty, (ii) in order to allow Dealer to sell the Hedge Shares in a private placement, use commercially reasonable efforts to enter into a private placement agreement substantially similar to private placement purchase agreements customary for private placements of equity securities of a similar size in respect of a similar issuer, in form and substance satisfactory to Dealer (in which case, the Calculation Agent shall make any adjustments to the terms of the Transaction that are necessary, in its commercially reasonable judgment, to compensate Dealer for any commercially reasonable discount from the public market price of the Shares and/or Underlying Shares incurred on the sale of Hedge Shares in a private placement), or (iii) purchase the Hedge Shares from Dealer at the then-current market price on such Exchange Business Days, and in the amounts and at such time(s), reasonably requested by Dealer.

- (p) Tax Disclosure. Effective from the date of commencement of discussions concerning the Transaction, Counterparty and each of its employees, representatives, or other agents may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the Transaction and all materials of any kind (including opinions or other tax analyses) that are provided to Counterparty relating to such tax treatment and tax structure.
- (q) Right to Extend. Dealer may postpone or add, in whole or in part, any Valid Day or Valid Days during the Settlement Averaging Period or any other date of valuation, payment or delivery by Dealer, with respect to some or all of the Options hereunder, if Dealer reasonably determines, in the case of clause (i) below, in its commercially reasonable judgment or, in the case of clause (ii) below, based on advice of counsel, that such action is reasonably necessary or appropriate (i) to preserve Dealer's commercially reasonable hedging or hedge unwind activity hereunder in light of existing liquidity conditions in the relevant market or (ii) to enable Dealer to effect transactions with respect to Shares and/or Underlying Shares in connection with its commercially reasonable hedging, hedge unwind or settlement activity hereunder in a manner that would, if Dealer were Counterparty or an affiliated purchaser of Counterparty, be in compliance with applicable legal, regulatory or self-regulatory requirements, or with related policies and procedures adopted by Dealer in good faith so long as such policies and procedures are generally applicable in similar situations and applied in a non-discriminatory manner); *provided* that no such Valid Day or other date of valuation, payment or delivery may be postponed or added more than 40 Valid Days after the original Valid Day or other date of valuation, payment or delivery, as the case may be.
- (r) Status of Claims in Bankruptcy. Dealer acknowledges and agrees that this Confirmation is not intended to convey to Dealer rights against Counterparty with respect to the Transaction that are senior to the claims of common or ordinary shareholders of Counterparty in any United States or Cayman Islands 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 the Transaction; *provided, further* that nothing herein shall limit or shall be deemed to limit Dealer's rights in respect of any transactions other than the Transaction.
- (s) Securities Contract; Swap Agreement. The parties hereto intend for (i) the Transaction to be a "securities contract" and a "swap agreement" as defined in the Bankruptcy Code (Title 11 of the United States Code) (the "**Bankruptcy Code**"), and the parties hereto to be entitled to the protections afforded by, among other Sections, Sections 362(b)(6), 362(b)(17), 546(e), 546(g), 555 and 560 of the Bankruptcy Code, (ii) a party's right to liquidate the Transaction and to exercise any other remedies upon the occurrence of any Event of Default under the Agreement with respect to the other party to constitute a "contractual right" as described in the Bankruptcy Code, and (iii) each payment and delivery of cash, securities or other property hereunder to constitute a "margin payment" or "settlement payment" and a "transfer" as defined in the Bankruptcy Code.
- (t) Notice of Certain Other Events. Counterparty covenants and agrees that:
- (i) promptly following the public announcement of the results of any election by the holders of Shares and/or Underlying Shares, as applicable, with respect to the consideration due upon consummation of any Merger Event, Counterparty shall give Dealer written notice of (x) the weighted average of the types and amounts of consideration that holders of Shares and/or Underlying Shares, as applicable, have elected to receive upon consummation of such Merger Event or (y) if no holders of Shares and/or Underlying Shares, as applicable, affirmatively make such election, the types and amounts of consideration actually received by holders of Shares and/or Underlying Shares, as applicable, (the date of such notification, the "**Consideration Notification Date**"); *provided* that in no event shall the Consideration Notification Date be later than the date on which such Merger Event is consummated;
  - (ii) (A) Counterparty shall give Dealer commercially reasonable advance (but in no event less than one Exchange Business Day) written notice of the section or sections of the Indenture and, if applicable, the formula therein, pursuant to which any adjustment will be made to the Convertible Notes in connection with any Potential Adjustment Event, Merger Event or Tender Offer and (B) promptly following any such adjustment, Counterparty shall give Dealer written notice of the details of such adjustment; and

- (iii) Counterparty will provide a written notice to Dealer immediately upon becoming aware that Counterparty is not or will no longer be a “foreign private issuer,” as such term is defined in Rule 3b-4 under the Exchange Act.
- (u) 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 Confirmation or the Agreement, as applicable, arising from a termination event, force majeure, illegality, increased costs, regulatory change or similar event under this Confirmation, the Equity Definitions incorporated herein, or the Agreement (including, but not limited to, rights arising from Change in Law, Hedging Disruption, an Excess Ownership Position, or Illegality (as defined in the Agreement)).
- (v) Agreements and Acknowledgements Regarding Hedging. Counterparty understands, acknowledges and agrees that: (A) at any time on and prior to the Expiration Date, Dealer and its affiliates may buy or sell Shares, Underlying Shares or other securities or buy or sell options or futures contracts or enter into swaps or other derivative securities in order to adjust its hedge position with respect to the Transaction; (B) Dealer and its affiliates also may be active in the market for Shares and/or Underlying Shares other than in connection with hedging activities in relation to the Transaction; (C) Dealer shall make its own determination as to whether, when or in what manner any hedging or market activities in securities of Issuer and/or Underlying Shares Issuer shall be conducted and shall do so in a manner that it deems appropriate to hedge its price and market risk with respect to the Relevant Prices; and (D) any market activities of Dealer and its affiliates with respect to Shares and/or Underlying Shares may affect the market price and volatility of Shares and/or Underlying Shares, as well as the Relevant Prices, each in a manner that may be adverse to Counterparty.
- (w) Early Unwind. In the event the sale of the “Option Securities” (as defined in the Purchase Agreement) is not consummated with the Initial Purchasers for any reason, or Counterparty fails to deliver to Dealer opinions of counsel as required pursuant to Section 9(a), in each case by 5:00 p.m. (New York City time) on the Premium Payment Date, or such later date as agreed upon by the parties (the Premium Payment Date or such later date the “**Early Unwind Date**”), the Transaction shall automatically terminate (the “**Early Unwind**”), on the Early Unwind Date and (i) the Transaction and all of the respective rights and obligations of Dealer and Counterparty under the Transaction shall be cancelled and terminated and (ii) each party shall be released and discharged by the other party from and agrees not to make any claim against the other party with respect to any obligations or liabilities of the other party arising out of and to be performed in connection with the Transaction either prior to or after the Early Unwind Date. Each of Dealer and Counterparty represents and acknowledges to the other that, upon an Early Unwind, all obligations with respect to the Transaction shall be deemed fully and finally discharged.
- (x) Payment by Counterparty. In the event that, following payment of the Premium, (i) an Early Termination Date occurs or is designated with respect to the Transaction as a result of a Termination Event or an Event of Default (other than an Event of Default arising under Section 5(a)(ii) or 5(a)(iv) of the Agreement) and, as a result, Counterparty owes to Dealer an amount calculated under Section 6(e) of the Agreement, or (ii) Counterparty owes to Dealer, pursuant to Section 12.7 or Section 12.9 of the Equity Definitions, an amount calculated under Section 12.8 of the Equity Definitions, such amount shall be deemed to be zero.

- (y) Other Adjustments Pursuant to the Equity Definitions. Notwithstanding anything to the contrary in this Confirmation, solely for the purpose of adjusting the Cap Price, the terms “Potential Adjustment Event,” “Merger Event,” and “Tender Offer” shall each have the meanings assigned to such term in the Equity Definitions (as amended by Section 9(j)(i) or, if applicable, by the definition of “Announcement Event”), and upon the occurrence of a Merger Date, the occurrence of a Tender Offer Date, or declaration by Counterparty of the terms of any Potential Adjustment Event, respectively, as such terms are defined in the Equity Definitions, the Calculation Agent may, in its sole discretion, adjust the Cap Price to preserve the fair value of the Options; *provided* that in no event shall the Cap Price be less than the Strike Price; *provided further* that any adjustment to the Cap Price made pursuant to this Section 9(y) shall be made without duplication of any other adjustment hereunder (including, for the avoidance of doubt, adjustment made pursuant to the provisions opposite the captions “Method of Adjustment,” “Consequences of Merger Events/Tender Offers” and “Consequence of Announcement Events” in Section 3 above). For the avoidance of doubt, for purposes of this Section 9(y), Section 12.1(d) of the Equity Definitions is hereby amended by replacing “10%” with “20%” in the third line thereof.
- (z) Service of Process. Counterparty irrevocably appoints Law Debenture Corporate Services Inc. as its authorized agent upon which process may be served in any suit, action or proceeding relating to the Transaction, and agrees that service of process in any manner permitted by applicable law upon such agent shall be deemed in every respect effective service of process in any manner permitted by applicable law upon Counterparty in any such suit, action or proceeding. Counterparty further agrees to take any and all action as may be necessary to maintain such designation and appointment of such agent in full force and effect for a period of five and a half years from the date of this Confirmation. If for any reason such agent shall cease to be such agent for service of process, Counterparty shall forthwith appoint a new agent of recognized standing for service of process in the State of New York and deliver to Dealer a copy of the new agent’s acceptance of that appointment within 10 days. Nothing herein shall affect the right of Dealer to serve process in any other manner permitted by law or to commence legal proceedings or otherwise proceed against Counterparty in any other court of competent jurisdiction.
- (aa) Taxes, Foreign Account Tax Compliance Act and HIRE Act. Counterparty is classified as a corporation for the U.S. federal income tax purposes. No income received or to be received under the Agreement will be effectively connected with the conduct of a trade or business by Counterparty in the United States. Counterparty is a “non-U.S. branch of a foreign person” as that term is used in Section 1.1441-4(a)(3)(ii) of the United States Treasury Regulations (the “**Regulations**”), and it is a “foreign person” as that term is used in Section 1.6041-4(a)(4) of the Regulations. The term “Indemnifiable Tax” as defined in Section 14 of the Agreement shall not include any U.S. federal withholding tax imposed or collected pursuant to Sections 1471 through 1474 of the U.S. Internal Revenue Code of 1986, as amended (the “**Code**”), any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b) of the Code, or any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code (a “**FATCA Withholding Tax**”). For the avoidance of doubt, a FATCA Withholding Tax is a Tax the deduction or withholding of which is required by applicable law for the purposes of Section 2(d) of the Agreement. The parties agree that the definitions and provisions contained in the ISDA 2015 Section 871(m) Protocol, as published by the International Swaps and Derivatives Association, Inc. and as may be amended, supplemented, replaced or superseded from time to time (the “**871(m) Protocol**”) shall apply to the Agreement as if the parties had adhered to the 871(m) Protocol as of the Effective Date. If there is any inconsistency between this provision and a provision in any other agreement executed between the parties, this provision shall prevail unless such other agreement expressly overrides the provisions of the 871(m) Protocol. Each of Dealer and Counterparty shall provide to the other party tax forms and documents required to be delivered pursuant to Sections 1471(b) or Section 1472(b)(1) of the Code promptly upon request by the other party and any other tax forms and documents they are legally able to provide that are reasonably requested by the other party.
- (bb) U.S. Tax Forms. Without limiting the generality of the foregoing, Counterparty will provide a US Tax Form W-8BEN-E upon the execution of this Confirmation, promptly upon learning that any such tax form previously provided by it has become obsolete or incorrect and promptly upon reasonable demand by Dealer.

(cc) Additional Definitions and Amendments to Equity Definitions.

(i) For the purposes of this Confirmation the following definitions will apply:

**“Depositary”** means, in relation to the Shares, Deutsche Bank Trust Company Americas, or any successor thereto from time to time.

**“Deposit Agreement”** means, (i) that certain Deposit Agreement, dated as of September 11, 2018, by and among Underlying Shares Issuer, Depositary and the holders and beneficial owners of the Shares and (ii) the other agreements or other instruments constituting the Shares, as from time to time amended or supplemented in accordance with their terms.

**“DS Amendment”** means, where specified as applicable to a definition or provision, that the following changes shall be made to such definition or provision: (a) all references to “Shares” shall be deleted and replaced with the words “Shares and/or the Underlying Shares, as appropriate”; and (b) all references to “Issuer” shall be deleted and replaced with the words “Issuer or Underlying Shares Issuer, as appropriate”.

**“Replacement DSs”** means depositary shares or receipts, other than the Shares, over the same Underlying Shares.

(ii) The following amendments shall be made to the Equity Definitions:

(A) The definition of Potential Adjustment Event in Section 11.2(e) of the Equity Definitions shall be amended as follows:

(i) the DS Amendment shall be applicable, provided that an event under Section 11.2(e)(i) to (vii) of the Equity Definitions in respect of the Underlying Shares shall not constitute a Potential Adjustment Event unless, in the commercially reasonable opinion of the Calculation Agent, such event has a material effect on the theoretical value of the Shares; and

(ii) (A) ‘or’ shall be deleted where it appears at the end of subsection (vi);

(B) ‘.’ shall be deleted where it appears at the end of subsection (vii) and replaced with ‘;’;

(C) the following shall be inserted as subsection (viii): “(viii) the making of any amendment or supplement to the terms of the Deposit Agreement and/or the Shares; or”; and

(D) the following shall be inserted as provision (ix): “(ix) any other event as a result of which the Shares represent fewer or more Underlying Shares than, and/or any property or assets in addition to, or as a whole or partial replacement of, in each case, the number of Underlying Shares represented by the Shares prior to such event.”

(B) In making any adjustment following any Potential Adjustment Event, the Calculation Agent shall have reference to (to the extent necessary or appropriate among other factors) any adjustment made by the Depositary under the Deposit Agreement, any fees and/or expenses of the Depositary and any withholding or deduction of taxes. If the Calculation Agent determines that no adjustment that it could make will produce a commercially reasonable result, it shall notify the parties that the relevant consequence shall be the termination of the relevant Transaction, in which case “Cancellation and Payment (Calculation Agent Determination)” will be deemed to apply and any payment to be made by one party to the other shall be calculated in accordance with Section 12.7 of the Equity Definitions (as amended by this Confirmation).

- (C) If a Potential Adjustment Event occurs under Section 11.2(e)(viii) of the Equity Definitions (as amended by this Confirmation), then the following further amendments shall be deemed to be made to Section 11.2(c) of the Equity Definitions in respect of such Potential Adjustment Event:
- (i) the words “the Calculation Agent will determine whether such Potential Adjustment Event has a material effect on the theoretical value of the relevant Shares, options on the Shares or the Transaction” shall be deleted and replaced with the words “the Calculation Agent will determine whether such Potential Adjustment Event has a material economic effect on such Transaction”; and
  - (ii) the words “as the Calculation Agent determines appropriate to account for that material effect” shall be deleted and replaced with the words “as the Calculation Agent determines appropriate to account for such economic effect on such Transaction”.
- (D) The definitions of “Merger Event”, “Tender Offer”, “Announcement Date”, “Share-for-Share”, “Share-for-Other” and “Share-for-Combined” in Section 12.1 of the Equity Definitions shall be amended in accordance with the DS Amendment.
- (E) In making any adjustment in respect of a Merger Event, Tender Offer or Announcement Event in relation to the Underlying Shares, the Calculation Agent shall in determining any adjustment pursuant to Modified Calculation Adjustment, have reference to (amongst other factors) any adjustment made by the Depository under the Deposit Agreement, any fees and/or expenses of the Depository and any withholding or deduction of taxes, as determined by the Calculation Agent in its commercially reasonable discretion.
- (F) The definitions of Nationalization and Insolvency in Section 12.6 of the Equity Definitions shall be amended in accordance with the DS Amendment.
- (G) The consequence of a Nationalization or Insolvency in respect of the Depository shall be Cancellation and Payment.
- (H) If a Delisting of the Shares occurs or the Depository announces that the Deposit Agreement is (or will be) terminated, then:
- (i) Cancellation and Payment will apply as provided in this Confirmation; and
  - (ii) where Cancellation and Payment applies under (H)(i) above in respect of a termination of the Deposit Agreement, the Equity Definitions shall be interpreted as follows: (i) such termination shall be deemed to be an “Extraordinary Event”; (ii) Cancellation and Payment shall apply as defined in Section 12.6(c)(ii) of the Equity Definitions; and (iii) the definition of “Announcement Date” in Section 12.1(l) of the Equity Definitions shall include the following additional clause (vii) at the end of the first sentence thereof: “(vii) in the case of a termination of the Deposit Agreement, the date of the first public announcement by the Depository that the Deposit Agreement is (or will be) terminated”.
- (I) If Cancellation and Payment applies under Section 9(cc)(ii)(G) or Section 9(cc)(ii)(H) of this Confirmation in respect of a Transaction, then the Determining Party shall be Dealer.
- (J) The definition of “Insolvency Filing” in Section 12.9(a)(iv) of the Equity Definitions shall be amended in accordance with the DS Amendment.

- (K) For the avoidance of doubt, where a provision is amended by this Section 9(cc) in accordance with the DS Amendment, if the event described in such provision occurs in respect of the Underlying Shares or Underlying Shares Issuer, then the consequence of such event shall be interpreted consistently with the DS Amendment and such event.
- (dd) *Incorporation of ISDA 2015 Section 871(m) Protocol*. The parties to this Confirmation agree that the amendments set out in the Attachment to the ISDA 2015 Section 871(m) Protocol published by ISDA on November 2, 2015 and available on the ISDA website ([www.isda.org](http://www.isda.org)) shall apply to this Confirmation. The parties further agree that this Confirmation will be deemed to be a Covered Master Agreement and that the Implementation Date shall be the effective date of this Confirmation as amended by the parties for the purposes of such Protocol amendments regardless of the definitions of such terms in the Protocol.
- (ee) *Incorporation of ISDA 2012 FATCA Protocol*. The parties to this Confirmation agree that the amendments set out in the Attachment to the ISDA 2012 FATCA Protocol published by ISDA on August 15, 2012 and available on the ISDA website ([www.isda.org](http://www.isda.org)) shall apply to this Confirmation. The parties further agree that this Confirmation will be deemed to be a Covered Master Agreement and that the Implementation Date shall be the effective date of this Confirmation as amended by the parties for the purposes of such Protocol amendments regardless of the definitions of such terms in the Protocol.



Please confirm that the foregoing correctly sets forth the terms of our agreement by executing this Confirmation and returning it to Dealer.

Very truly yours,

**CREDIT SUISSE CAPITAL LLC**

By:           /s/ Authorized Signatory            
Authorized Signatory  
Name:

By:           /s/ Authorized Signatory            
Authorized Signatory  
Name:

**CREDIT SUISSE SECURITIES (USA) LLC, as agent**

By:           /s/ Authorized Signatory            
Authorized Signatory  
Name:

Accepted and confirmed  
as of the Trade Date:

**NIO Inc.**

By:           /s/ Authorized Signatory            
Authorized Signatory  
Name:

**Goldman Sachs International | Peterborough Court | 133 Fleet Street | London EC4A 2BB | Tel: 020-7774-1000 | Telex: 887902 | Cable: GOLDSACHS LONDON | Registered in England No. 2263951 | Registered Office as Above | Authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority**

February 26, 2019

To: **NIO Inc.**

Building 20, No. 56 AnTuo Road, Jiading District  
Shanghai, 201804

People's Republic of China

Attention: Louis T. Hsieh, Chief Financial Officer

Telephone No.: +86 (21) 6908 3306

Facsimile No.: +86 (21) 3913 0192

**From:** Goldman Sachs International

**A/C:** [ \_\_\_\_\_ ]

Re: Second Additional Call Option Transaction

The purpose of this letter agreement (this "**Confirmation**") is to confirm the terms and conditions of the call option transaction entered into between Goldman Sachs International ("**Dealer**") and NIO Inc. ("**Counterparty**") as of the Trade Date specified below (the "**Transaction**"). This letter agreement constitutes a "Confirmation" as referred to in the ISDA Master Agreement specified below. Each party further agrees that this Confirmation together with the Agreement evidence a complete binding agreement between Counterparty and Dealer as to the subject matter and terms of the Transaction to which this Confirmation relates, and shall supersede all prior or contemporaneous written or oral communications with respect thereto.

The definitions and provisions contained in the 2002 ISDA Equity Derivatives Definitions (the "**Equity Definitions**"), as published by the International Swaps and Derivatives Association, Inc. ("**ISDA**") are incorporated into this Confirmation. In the event of any inconsistency between the Equity Definitions and this Confirmation, this Confirmation shall govern. Certain defined terms used herein are based on terms that are defined in the Offering Memorandum dated January 30, 2019 (the "**Offering Memorandum**") relating to the 4.50% Convertible Senior Notes due 2024 (as originally issued by Counterparty, the "**Convertible Notes**" and each USD 1,000 principal amount of Convertible Notes, a "**Convertible Note**") issued by Counterparty in an aggregate initial principal amount of USD 650,000,000 (as increased by an aggregate principal amount of USD 100,000,000 pursuant to the exercise by the Initial Purchasers (as defined herein) of their option to purchase additional Convertible Notes pursuant to the Purchase Agreement (as defined herein)) pursuant to an Indenture dated February 4, 2019 between Counterparty and The Bank of New York Mellon, as trustee (the "**Indenture**"). In the event of any inconsistency between the terms defined in the Offering Memorandum, the Indenture and this Confirmation, this Confirmation shall govern. The parties acknowledge that this Confirmation is entered into on the date hereof with the understanding that (i) definitions set forth in the Indenture which are also defined herein by reference to the Indenture and (ii) sections of the Indenture that are referred to herein will conform to the descriptions thereof in the Offering Memorandum. If any such definitions in the Indenture or any such sections of the Indenture differ from the descriptions thereof in the Offering Memorandum, the descriptions thereof in the Offering Memorandum will govern for purposes of this Confirmation. The parties further acknowledge that the Indenture section numbers used herein are based on the Indenture as executed. Subject to the foregoing, references to the Indenture herein are references to the Indenture as in effect on the date of its execution, and if the Indenture is amended or supplemented following such date (other than any amendment or supplement (x) pursuant to Section 10.01(i) of the Indenture that, as determined by the Calculation Agent, conforms the Indenture to the description of Convertible Notes in the Offering Memorandum, and (y) pursuant to Section 14.07(a) of the Indenture, subject, in the case of this clause (y), to the second paragraph under "Method of Adjustment" in Section 3), any such amendment or supplement will be disregarded for purposes of this Confirmation (other than as provided in Section 9(i)(iii) below) unless the parties agree otherwise in writing. For the avoidance of doubt, adjustments pursuant to any Dilution Adjustment Provision shall not constitute amendment, modification, supplement, or waiver in respect of any term of the Indenture or the Convertible Notes for any purpose under this paragraph and under Section 9(i)(iii).

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

1. This Confirmation evidences a complete and binding agreement between Dealer and Counterparty as to the terms of the Transaction to which this Confirmation relates. This Confirmation shall supplement, form a part of, and be subject to an agreement in the form of the 2002 ISDA Master Agreement (the "Agreement") as if Dealer and Counterparty had executed an agreement in such form (but without any Schedule except for (i) the election of the laws of the State of New York as the governing law (without reference to choice of law doctrine) and (ii) the agreement of the parties hereto that, following the payment of the Premium and the delivery to Dealer of the opinions of counsel as required pursuant to Section 9(a), the condition precedent in Section 2(a)(iii) of the Agreement shall not apply to a payment or delivery owing by Dealer to Counterparty (it being understood that such condition precedent will continue to apply and this clause (ii) will have no effect with respect to a Potential Event of Default, Event of Default and/or Early Termination Date arising under, or with respect to, Section 5(a)(ii) or 5(a)(iv) of the Agreement)) on the Trade Date.

In the event of any inconsistency between provisions of the Agreement and this Confirmation, this Confirmation will prevail for the purpose of the Transaction to which this Confirmation relates. The parties hereby agree that no transaction other than the Transaction to which this Confirmation relates shall be governed by the Agreement. If there exists any ISDA Master Agreement between Dealer and Counterparty or any confirmation or other agreement between Dealer and Counterparty pursuant to which an ISDA Master Agreement is deemed to exist between Dealer and Counterparty, then notwithstanding anything to the contrary in such ISDA Master Agreement, such confirmation or agreement or any other agreement to which Dealer and Counterparty are parties, the Transaction shall not be considered a Transaction under, or otherwise governed by, such existing or deemed ISDA Master Agreement.

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

General Terms.

Trade Date:	February 26, 2019
Effective Date:	The Trade Date.
Option Style:	"Modified American", as described under "Procedures for Exercise" below
Option Type:	Call
Buyer:	Counterparty
Seller:	Dealer
Shares:	The American Depositary Shares of Counterparty issued or deemed issued under the Deposit Agreement (as defined below) (Symbol: "NIO"), each representing as of the date hereof one Underlying Share.
Underlying Shares:	The Class A ordinary shares of Counterparty, nominal value USD \$0.00025 per Underlying Share.
Number of Options:	48,227. For the avoidance of doubt, the Number of Options shall be reduced by any Options exercised by Counterparty. In no event will the Number of Options be less than zero.
Underlying Shares Issuer:	Counterparty

Applicable Percentage: 50%

Option Entitlement: A number equal to the product of the Applicable Percentage and 105.1359.

Strike Price: USD 9.5115

Cap Price: USD 14.9200

Premium: USD 2,816,456.80

Premium Payment Date: February 28, 2019

Exchange: The New York Stock Exchange

Related Exchange(s): All Exchanges

Excluded Provisions: Section 14.04(h) and Section 14.03 of the Indenture.

Procedures for Exercise.

Expiration Time: The Valuation Time

Expiration Date: February 1, 2024, subject to earlier exercise.

Multiple Exercise: Applicable, as described under “Automatic Exercise” below.

Automatic Exercise: Notwithstanding Section 3.4 of the Equity Definitions, all Options then outstanding as of 5:00 p.m. New York City time on the Expiration Date will be deemed to be automatically exercised; *provided* that, for the avoidance of doubt, no such automatic exercise pursuant to this paragraph will occur if the Relevant Price for each Valid Day during the applicable Settlement Averaging Period is less than or equal to the Strike Price.

Notwithstanding the foregoing, in no event shall the number of Options that are exercised or deemed exercised hereunder exceed the Number of Options.

Valuation Time: At the close of trading of the regular trading session on the Exchange; *provided* that if the principal trading session is extended, the Calculation Agent shall determine the Valuation Time in its reasonable discretion.

Market Disruption Event: Section 6.3(a) of the Equity Definitions is hereby replaced in its entirety by the following:

“‘Market Disruption Event’ means, in respect of a Share, (i) a failure by the primary United States national or regional securities exchange or market on which the Shares are 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 Valid Day for the Shares 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 Shares or in any options contracts or futures contracts relating to the Shares.”

Settlement Terms.

Settlement Method Election:

Applicable; *provided* that (i) Section 7.1 of the Equity Definitions is hereby amended by deleting the word “Physical” in the sixth line thereof and replacing it with the words “Net Share”; and (ii) as of such notice delivery date, Counterparty shall be deemed to have made the following representations:

(A) Counterparty is not aware of any material non-public information with respect to Counterparty, the Underlying Shares Issuer (if other than Counterparty), the Underlying Shares or the Shares;

(B) Counterparty is electing Cash Settlement in good faith and not as part of a plan or scheme to evade compliance with the U.S. federal securities laws; Counterparty is not electing Cash Settlement to create actual or apparent trading activity in the Shares and/or Underlying Shares (or any security convertible into or exchangeable for the Shares and/or Underlying Shares) or to raise or depress or otherwise manipulate the price of the Shares and/or Underlying Shares (or any security convertible into or exchangeable for the Shares and/or Underlying Shares) or otherwise in violation of the Exchange Act; and Counterparty has not entered into or altered any hedging transaction relating to the Shares or the Underlying Shares corresponding to or offsetting the Transaction;

(C) such election and performance of its obligations under this Confirmation do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets; and

(D) any transaction that Dealer makes with respect to the Shares and/or the Underlying Shares during the period beginning at the time that Counterparty delivers such notice and ending at the close of business on the final day of the Settlement Averaging Period shall be made by Dealer at Dealer’s sole discretion for Dealer’s own account and Counterparty shall not have, and shall not attempt to exercise, any influence over how, when, whether or at what price Dealer effects such transactions, including, without limitation, the prices paid or received by Dealer per Share or Underlying Share pursuant to such transactions, or whether such transactions are made on any securities exchange or privately.

Default Settlement Method:	Net Share Settlement
Settlement Method Election Date:	The third Scheduled Trading Day immediately preceding the first Scheduled Valid Day of the Settlement Averaging Period.
Net Share Settlement:	Dealer will deliver to Counterparty, on the relevant Settlement Date, a number of Shares equal to the Net Shares in respect of any Option exercised or deemed exercised hereunder. In no event will the Net Shares be less than zero.
Net Shares:	<p>In respect of any Option exercised or deemed exercised, a number of Shares equal to the sum of the quotients, for each Valid Day during the Settlement Averaging Period for such Option, of (i) (A) the Daily Option Value for such Valid Day, <i>divided by</i> (B) the Relevant Price on such Valid Day, <i>divided by</i> (ii) the number of Valid Days in the Settlement Averaging Period.</p> <p>Dealer will pay cash in lieu of delivering any fractional Shares to be delivered with respect to any Net Shares valued at the Relevant Price for the last Valid Day of the Settlement Averaging Period.</p>
Cash Settlement:	If Cash Settlement is applicable to any Option exercised or deemed exercised hereunder, in lieu of Section 8.1 of the Equity Definitions, Dealer will pay to Counterparty, on the relevant Settlement Date for each such Option, an amount of cash (the “ <b>Cash Settlement Amount</b> ”) equal to the sum, for each Valid Day during the Settlement Averaging Period for such Option, of (i) the Daily Option Value for such Valid Day, <i>divided by</i> (ii) the number of Valid Days in the Settlement Averaging Period.
Daily Option Value:	For any Valid Day, an amount equal to (i) the Option Entitlement on such Valid Day, <i>multiplied by</i> (ii) (A) the lesser of the Relevant Price on such Valid Day and the Cap Price, <i>less</i> (B) the Strike Price on such Valid Day; <i>provided</i> that if the calculation contained in clause (ii) above results in a negative number, the Daily Option Value for such Valid Day shall be deemed to be zero. In no event will the Daily Option Value be less than zero.
Valid Day:	A day on which (i) there is no Market Disruption Event and (ii) trading in the Shares generally occurs on the Exchange or, if the Shares are not then listed on the Exchange, on the principal other United States national or regional securities exchange on which the Shares are then listed or, if the Shares are not then listed on a United States national or regional securities exchange, on the principal other market on which the Shares are then listed or admitted for trading. If the Shares are not so listed or admitted for trading, “Valid Day” means a Business Day.

Scheduled Valid Day:	A day that is scheduled to be a Valid Day on the principal United States national or regional securities exchange or market on which the Shares are listed or admitted for trading. If the Shares are not so listed or admitted for trading, "Scheduled Valid Day" means a Business Day.
Business Day:	Any day other than a Saturday, a Sunday or a day on which the Federal Reserve Bank of New York is authorized or required by law or executive order to close or be closed.
Relevant Price:	On any Valid Day, the per Share volume-weighted average price as displayed under the heading "Bloomberg VWAP" on Bloomberg page "NIO <equity> AQR" (or its equivalent successor if such page is not available) in respect of the period from the scheduled opening time of the Exchange to the Scheduled Closing Time of the Exchange on such Valid Day (or if such volume-weighted average price is unavailable at such time, the market value of one Share on such Valid Day, as determined by the Calculation Agent using, if practicable, a volume-weighted average method). The Relevant Price will be determined without regard to after-hours trading or any other trading outside of the regular trading session trading hours.
Settlement Averaging Period:	For any Option being exercised hereunder, the 40 consecutive Valid Days commencing on, and including, the 41st Scheduled Valid Day immediately prior to the Expiration Date.
Settlement Date:	For any Option, the second Business Day immediately following the final Valid Day of the Settlement Averaging Period for such Option.
Settlement Currency:	USD
Other Applicable Provisions:	The provisions of Sections 9.1(c), 9.8, 9.9 and 9.11 of the Equity Definitions will be applicable, except that all references in such provisions to "Physically-settled" shall be read as references to "Net Share Settled". "Net Share Settled" in relation to any Option means that Net Share Settlement is applicable to that Option.
Representation and Agreement:	Notwithstanding anything to the contrary in the Equity Definitions (including, but not limited to, Section 9.11 thereof), the parties acknowledge that (i) any Shares delivered to Counterparty shall be, upon delivery, subject to restrictions and limitations arising from Counterparty's status as issuer of the Underlying Shares under applicable securities laws, (ii) Dealer may deliver any Shares required to be delivered hereunder in certificated form or restricted book-entry form, in each case, in lieu of delivery through the Clearance System and (iii) any Shares delivered to Counterparty may be "restricted securities" (as defined in Rule 144 under the Securities Act of 1933, as amended (the "Securities Act")).



3. **Additional Terms applicable to the Transaction.**

Adjustments applicable to the Transaction:

Potential Adjustment Events:

Notwithstanding Section 11.2(e) of the Equity Definitions (which Section shall not apply for the purposes of the Transaction, except as provided in Section 9(y) below), a “Potential Adjustment Event” means an occurrence of any event or condition, as set forth in any Dilution Adjustment Provision, that requires an adjustment to be made under the Indenture to the “Conversion Rate” or the composition of a “unit of Reference Property” or to any “Last Reported Sale Price” (each as defined in the Indenture). For the avoidance of doubt, Dealer shall not have any delivery or payment obligation hereunder, and no adjustment shall be made to the terms of the Transaction, on account of (x) any distribution of cash, property or securities by Counterparty to holders of the Convertible Notes (upon conversion or otherwise) or (y) any other transaction in which holders of the Convertible Notes participate, in each case, in lieu of an adjustment under the Indenture of the type referred to in the immediately preceding sentence (including, without limitation, pursuant to the fourth sentence of the first paragraph of Section 14.04(c) of the Indenture or the fourth sentence of Section 14.04(d) of the Indenture).

Method of Adjustment:

Calculation Agent Adjustment, which means that, notwithstanding Section 11.2(c) of the Equity Definitions, (which Section shall not apply for the purposes of the Transaction, except as provided in Section 9(y) below) upon any Potential Adjustment Event, the Calculation Agent shall make an adjustment to any one or more of the Strike Price, Number of Options, Option Entitlement and any other variable relevant to the exercise, settlement or payment for the Transaction corresponding to the adjustment required to be made pursuant to the Indenture.

Notwithstanding the foregoing and “Consequences of Merger Events / Tender Offers” below:

- (i) if the Calculation Agent in good faith disagrees with any adjustment to the Convertible Notes that involves an exercise of discretion by Counterparty or its board of directors (including, without limitation, pursuant to Section 14.05 of the Indenture, Section 14.07 of the Indenture or any supplemental indenture entered into thereunder or in connection with any proportional adjustment or the determination of the fair value of any securities, property, rights or other assets), then in each such case, the Calculation Agent will determine in good faith and in a commercially reasonable manner, the adjustment to be made to any one or more of the Strike Price, Number of Options, Option Entitlement and any other variable relevant to the exercise, settlement or payment for the Transaction in a commercially reasonable manner; *provided* that, notwithstanding the foregoing, if any Potential Adjustment Event occurs during the Settlement Averaging Period but no adjustment was made to any Convertible Note under the Indenture because the relevant Holder (as such term is defined in the Indenture) was deemed to be a record owner of the underlying Shares on the related Conversion Date (as such term is defined in the Indenture), then the Calculation Agent shall make a commercially reasonable adjustment, as determined by it, to the terms hereof in order to account for such Potential Adjustment Event;

- (ii) in connection with any Potential Adjustment Event as a result of an event or condition set forth in Section 14.04(b) of the Indenture or Section 14.04(c) of the Indenture where, in either case, the period for determining “Y” (as such term is used in Section 14.04(b) of the Indenture) or “SP<sub>0</sub>” (as such term is used in Section 14.04(c) of the Indenture), as the case may be, begins before Counterparty has publicly announced the event or condition giving rise to such Potential Adjustment Event, then the Calculation Agent shall have the right to adjust any variable relevant to the exercise, settlement or payment for the Transaction as appropriate to reflect the costs (to account solely for hedging mismatches and market losses) and expenses incurred by Dealer in connection with its hedging activities, with such adjustments made assuming that Dealer maintains commercially reasonable hedge positions, as a result of such event or condition not having been publicly announced prior to the beginning of such period; and
- (iii) if any Potential Adjustment Event is declared and (a) the event or condition giving rise to such Potential Adjustment Event is subsequently amended, modified, cancelled or abandoned, (b) the “Conversion Rate” (as defined in the Indenture) is otherwise not adjusted at the time or in the manner contemplated by the relevant Dilution Adjustment Provision based on such declaration or (c) the “Conversion Rate” (as defined in the Indenture) is adjusted as a result of such Potential Adjustment Event and subsequently re-adjusted (each of clauses (a), (b) and (c), a “**Potential Adjustment Event Change**”) then, in each case, the Calculation Agent shall have the right to adjust any variable relevant to the exercise, settlement or payment for the Transaction as appropriate to reflect the costs (to account solely for hedging mismatches and market losses) and expenses incurred by Dealer in connection with its hedging activities, with such adjustments made assuming that Dealer maintains commercially reasonable hedge positions, as a result of such Potential Adjustment Event Change.

Dilution Adjustment Provisions:	Sections 14.04(a), (b), (c), (d) and (e) and Section 14.05 of the Indenture.
Extraordinary Events applicable to the Transaction:	
Merger Events:	Applicable; <i>provided</i> that notwithstanding Section 12.1(b) of the Equity Definitions, a “Merger Event” means the occurrence of any event or condition set forth in the definition of “Merger Event” in Section 14.07 of the Indenture.
Tender Offers:	Applicable; <i>provided</i> that notwithstanding Section 12.1(d) of the Equity Definitions, a “Tender Offer” means the occurrence of any event or condition set forth in Section 14.04(e) of the Indenture.
Consequences of Merger Events/ Tender Offers:	Notwithstanding Section 12.2 and Section 12.3 of the Equity Definitions, upon the occurrence of a Merger Event or a Tender Offer, the Calculation Agent shall make a corresponding adjustment in respect of any adjustment under the Indenture to any one or more of the nature of the Shares (in the case of a Merger Event), Strike Price, Number of Options, Option Entitlement and any other variable relevant to the exercise, settlement or payment for the Transaction to the extent that an analogous adjustment is required to be made pursuant to the Indenture in respect of such Merger Event or Tender Offer, subject to the second paragraph under “Method of Adjustment”; <i>provided, however</i> , that such adjustment shall be made without regard to any adjustment to the Conversion Rate pursuant to any Excluded Provision; <i>provided further</i> that if, with respect to a Merger Event or a Tender Offer, (i) the consideration for the Shares or Underlying Shares, as applicable, includes (or, at the option of a holder of Shares, or Underlying Shares, as applicable, may include) shares of an entity or person that is not (1) a corporation or an entity that is treated as a corporation for U.S. federal income tax purposes or (2) organized under the laws of the Cayman Islands or (ii) the Counterparty to the Transaction following such Merger Event or Tender Offer will not be a corporation or an entity that is treated as a corporation for U.S. federal income tax purposes organized under the laws of the Cayman Islands, and/or will not be the Underlying Shares Issuer then, in any case, Cancellation and Payment (Calculation Agent Determination) may apply at Dealer’s commercially reasonable election; <i>provided further</i> that, for the avoidance of doubt, adjustments shall be made pursuant to the provisions set forth above regardless of whether any Merger Event or Tender Offer gives rise to an Early Conversion (as defined below).

Consequences of Announcement Events:

If an Announcement Event occurs, the Calculation Agent shall determine the cumulative economic effect of such Announcement Event (it being understood that the Calculation Agent may take into account any changes to volatility in connection with such Announcement Event within a commercially reasonable (as determined by the Calculation Agent) period of time prior to or after such Announcement Event) on the Transaction on the earliest to occur of (i) the date on which the transaction described in such Announcement Event (as amended) is consummated or otherwise results in a Merger Date or Tender Offer Date, as applicable, (ii) the Valuation Date, or (iii) any earlier date of termination or cancellation with respect to any Option, and if the Calculation Agent determines that such economic effect is material and that making the relevant adjustment would be commercially reasonable, the Calculation Agent shall adjust the Cap Price to reflect such economic effect (but, for the avoidance of doubt, taking into account, and without duplication of, any other adjustment made pursuant to this “Consequences of Announcement Events” provision or pursuant to the provisions opposite the captions “Method of Adjustment”, “Consequences of Merger Events” or “Consequences of Tender Offers” above in respect of the transaction or intention giving rise to such Announcement Event).

Announcement Event:

(i) The public announcement by (x) any entity of any transaction or event that the Calculation Agent determines is reasonably likely to be completed and that, if completed, would constitute a Merger Event or Tender Offer (it being understood that Calculation Agent may make such determination by reference to the impact of such announcement on the market for the Shares and/or Underlying Shares or options relating to the Shares and/or Underlying Shares), (y) Underlying Shares Issuer or any subsidiary thereof of any potential acquisition or disposal by the Underlying Shares Issuer and/or its subsidiaries where the aggregate consideration payable or receivable exceeds 25% of the market capitalization of the Underlying Shares Issuer as of the date of such announcement (a “**Transformative Transaction**”) or (z) Underlying Shares Issuer, any subsidiary of the Underlying Shares Issuer or any Valid Third Party Entity of the intention to enter into a Merger Event or Tender Offer or a Transformative Transaction (in the case of a Valid Third-Party Entity, that the Calculation Agent determines is a bona fide intention, it being understood that the Calculation Agent may make such determination by reference to the impact of such announcement on the market for the Shares and/or Underlying Shares or options relating to the Shares and/or Underlying Shares), (ii) the public announcement by the Underlying Shares Issuer of an intention to solicit or enter into, or to explore strategic alternatives or other similar undertaking that may include, a Merger Event or Tender Offer or a Transformative Transaction or (iii) any subsequent public announcement by any entity of a change to a transaction or intention that is the subject of an announcement of the type described in clause (i) or (ii) of this sentence (including, without limitation, a new announcement, whether or not by the same party, relating to such a transaction or intention or the announcement of a withdrawal from, or the abandonment or discontinuation of, such a transaction or intention), as determined by the Calculation Agent. For the avoidance of doubt, the occurrence of an Announcement Event with respect to any transaction or intention shall not preclude the occurrence of a later Announcement Event with respect to such transaction or intention. For purposes of this definition of “Announcement Event,” (A) “Merger Event” shall mean such term as defined under Section 12.1(b) of the Equity Definitions (but, for the avoidance of doubt, the remainder of the definition of “Merger Event” in Section 12.1(b) of the Equity Definitions following the definition of “Reverse Merger” therein shall be disregarded) and (B) “Tender Offer” shall mean such term as defined under Section 12.1(d) of the Equity Definitions; *provided* that Section 12.1(d) of the Equity Definitions is hereby amended by replacing “10%” with “20%” in the third line thereof.

Valid Third Party Entity:

In respect of any transaction or intention, any third party (i) whose announcement is reasonably determined by the Calculation Agent to have had a material economic effect on the Shares and/or Underlying Shares and/or options on the Shares and/or Underlying Shares and (ii) that is the entity, or an affiliate of the entity, that is, or would be, a party to the relevant transaction or event.

Nationalization, Insolvency or Delisting:

Cancellation and Payment (Calculation Agent Determination); *provided* that, in addition to the provisions of Section 12.6(a)(iii) of the Equity Definitions, it will also constitute a Delisting if the 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 of the New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or their respective successors), such exchange or quotation system shall thereafter be deemed to be the Exchange.

Section 12.1 of the Equity Definitions is hereby amended by deleting subsection (v) thereof in its entirety and replacing it with “(v) in the case of an Insolvency, the date of (A) the institution of a proceeding or presentation of a petition or the passing of a resolution (or the convening of a meeting to pass a resolution or the proposing of a written resolution) (in each case the occurrence of which shall be deemed its announcement) that leads to an Insolvency within the meaning of subsection (A) of the definition thereof, (B) the first public announcement of the institution of a proceeding or presentation of a petition or passing of a resolution (or other analogous procedure in any jurisdiction) that leads to the Insolvency or (C) the occurrence of any of the events specified in Section 5(a)(vii)(1) through (9) of the ISDA Master Agreement with respect to that Issuer”.

Section 12.6(a)(ii) of the Equity Definitions is hereby amended by (1) inserting “(A)” after “means” in the first line thereof and replacing “(A)” and “(B)” in the third and fourth lines thereof with “(1)” and “(2)” respectively, (2) deleting from the fourth line thereof the word “or” after the word “official” and inserting a comma therefor, (3) inserting at the end of renumbered subsection (2) thereof the following wording, “or, under the laws of the Cayman Islands, any other jurisdiction or otherwise, any other impediment to or restriction on the transfer of any Share arises or becomes applicable including, without limitation, where (x) any transfer of a Share or alteration of the status of the members of the Issuer would be void unless a court of the Cayman Islands or any other jurisdiction orders otherwise or (y) any transfer of a Share not being a transfer with the sanction of a liquidator, and any alteration in the status of the Issuer’s members, would be void” and (4) deleting the semi-colon at the end of renumbered subsection (2) thereof and inserting the following words therefor “or (B) at Dealer’s option, the occurrence of any of the events specified in Section 5(a)(vii)(1) through (9) of the ISDA Master Agreement with respect to that Issuer.”

Additional Disruption Events:

Change in Law:

Applicable; *provided* that Section 12.9(a)(ii) of the Equity Definitions is hereby amended by (i) replacing the phrase “the interpretation” in the third line thereof with the phrase “, or public announcement of, the formal or informal interpretation”, (ii) replacing the word “Shares” where it appears in clause (X) thereof with the words “Hedge Position,” (iii) replacing the parenthetical beginning after the word “regulation” in the second line thereof with the words “(including, for the avoidance of doubt and without limitation, (x) any tax law or (y) adoption, effectiveness or promulgation of new regulations authorized or mandated by existing statute)” and (iv) adding the words “*provided* that, in the case of clause (Y) hereof where such determination is based on Dealer’s policies and procedures, such policies and procedures have been adopted by Dealer in good faith and are generally applicable in similar situations and applied in a non-discriminatory manner;” after the semi-colon in the last line thereof.

Failure to Deliver:	Applicable
Hedging Disruption:	Applicable; <i>provided that</i> :  Section 12.9(b)(iii) of the Equity Definitions is hereby amended by inserting in the third line thereof, after the words “to terminate the Transaction”, the words “or a portion of the Transaction affected by such Hedging Disruption”.
Increased Cost of Hedging:	Not Applicable
Hedging Party:	For all applicable Additional Disruption Events, Dealer.
Determining Party:	For all applicable Extraordinary Events, Dealer; <i>provided that</i> when making any determination or calculation as “Determining Party,” Dealer shall make such determinations or calculations in good faith and in a commercially reasonable manner.  Following any determination or calculation by Determining Party hereunder, the Determining Party will, upon written request from Counterparty, promptly (but in any event within five Scheduled Trading Days) provide to Counterparty a report (in a commonly used file format for the storage and manipulation of financial data) displaying in reasonable detail the basis for such determination or calculation (including any assumptions used in making such determination or calculation), it being understood that in no event will the Determining Party be obligated to share with Counterparty any proprietary or confidential data or information or any proprietary or confidential models used by it in making such determination or calculation or any information that is subject to an obligation not to disclose such information.
Non-Reliance:	Applicable
Agreements and Acknowledgments Regarding Hedging Activities:	Applicable
Additional Acknowledgments:	Applicable

4. **Calculation Agent.**

Dealer; *provided* that, following the occurrence and during the continuance of an Event of Default under Section 5(a)(vii) of the Agreement with respect to which Dealer is the Defaulting Party, Counterparty shall have the right to designate a nationally recognized independent equity derivatives 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 adjustment, determination or calculation by the Calculation Agent hereunder, the Calculation Agent will, upon written request from Counterparty, promptly (but in any event within five Scheduled Trading Days) provide to Counterparty by email a report (in a commonly used file format for the storage and manipulation of financial data) displaying in reasonable detail the basis for such adjustment, determination or calculation (including any assumptions used in making such adjustment, determination or calculation), it being understood that in no event will the Calculation Agent be obligated to share with Counterparty any proprietary or confidential data or information or any proprietary or confidential models used by it in making such adjustment, determination or calculation or any information that is subject to an obligation not to disclose such information.

All calculations and determinations by the Calculation Agent shall be made in good faith and in a commercially reasonable manner.

5. **Account Details.**

- (a) Account for payments to Counterparty:

To be provided.

Account for delivery of Shares to Counterparty:

To be provided.

- (b) Account for payments to Dealer:

To be provided.

Account for delivery of Shares from Dealer:

To be provided.

6. **Offices.**

- (a) The Office of Counterparty for the Transaction is: Inapplicable, Counterparty is not a Multibranch Party.

- (b) The Office of Dealer for the Transaction is: London

7. **Notices.**

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

NIO Inc.  
Building 20, No. 56 AnTuo Road, Jiading District  
Shanghai, 201804  
People's Republic of China  
Attention: Louis T. Hsieh, Chief Financial Officer  
Telephone No.: +86 (21) 6908 3306  
Facsimile No.: +86 (21) 3913 0192



with a copy to:

Nick Wang  
VP of Finance  
Telephone No.: +86 (21) 6908-2002  
Email: Nick.Wang@nio.com

with a copy to:

Fang Liu  
General Counsel  
Telephone No.: +86 (21) 6908-2277  
Email: Fang.Liu@nio.com

with a copy to:

Sabrina Shi  
Senior Corporate Counsel  
Telephone No.: +86 (21) 6908-3391  
Email: Danting.Shi@nio.com

(b) Address for notices or communications to Dealer:

Goldman Sachs International  
Peterborough Court  
133 Fleet Street  
London, UK, EC4A 2BB  
Attention: Derivatives Legal

With a copy to:

Goldman, Sachs & Co.  
200 West Street  
New York, NY 10282-2198  
Attention: Beesham Seecharan  
Phone: +1-212-357-6337  
Email: beesham.seecharan@ny.email.gs.com

Attention: Peter Petraro  
Phone: +1-212-855-9818  
Email: peter.petraro@ny.email.gs.com

And email notification to the following address:

ps-eq-structuring@gs.com

## 8. Representations and Warranties of Counterparty.

Each of the representations and warranties of Counterparty set forth in Section 2 of the Purchase Agreement (the “**Purchase Agreement**”) dated as of January 30, 2019, between Counterparty and Credit Suisse Securities (USA) LLC, J.P. Morgan Securities LLC, Morgan Stanley & Co. LLC, and Goldman Sachs (Asia) LLC, as representatives of the Initial Purchasers party thereto (the “**Initial Purchasers**”), are true and correct and are hereby deemed to be repeated to Dealer as if set forth herein. Counterparty hereby further represents and warrants to Dealer on the date hereof and on and as of the Premium Payment Date, that:

- (a) Counterparty (i) is duly incorporated and validly existing as an exempted company with limited liability under the laws of the Cayman Islands and is in good standing under such laws, and (ii) has all necessary corporate power and authority to execute, deliver and perform its obligations and exercise its rights in respect of the Transaction; such execution, delivery, performance and exercise have been duly authorized by all necessary corporate action on Counterparty’s part; and this Confirmation has been duly and validly executed and delivered by Counterparty and constitutes its valid and binding obligation, enforceable against Counterparty in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar laws affecting creditors’ rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity) and except that rights to indemnification and contribution hereunder may be limited by federal or state securities laws or public policy relating thereto.
- (b) Neither the execution and delivery of this Confirmation nor the incurrence or performance of obligations nor the exercise of rights of Counterparty hereunder will conflict with or result in a breach of the memorandum and articles of association or by-laws (or any equivalent documents) of Counterparty, or any applicable law or regulation, or any order, writ, injunction or decree of any court or governmental authority or agency, or any agreement or instrument to which Counterparty or any of its subsidiaries is a party or by which Counterparty or any of its subsidiaries is bound or to which Counterparty or any of its subsidiaries is subject, or constitute a default under, or result in the creation of any lien under, any such agreement or instrument.
- (c) No consent, approval, authorization, or order of, or filing with, any governmental agency or body or any court is required in connection with the execution, delivery or performance by Counterparty of this Confirmation, except such as have been obtained or made and such as may be required under the Securities Act or state securities laws.
- (d) Counterparty is not and, after consummation of the transactions contemplated hereby, will not be required to register as an “investment company” as such term is defined in the Investment Company Act of 1940, as amended.
- (e) Counterparty is an “eligible contract participant” (as such term is defined in Section 1a(18) of the Commodity Exchange Act, as amended, other than a person that is an eligible contract participant under Section 1a(18)(C) of the Commodity Exchange Act).
- (f) Counterparty is not, on the date hereof, aware of any material non-public information with respect to Counterparty, the Underlying Shares Issuer (if other than Counterparty), the Underlying Shares or the Shares.
- (g) To the knowledge of Counterparty, no state or local (including any non-U.S. jurisdiction’s) law, rule, regulation or regulatory order applicable to the Shares and/or Underlying 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 and/or Underlying Shares (except for filings of Form 13F, Schedule 13D or Schedule 13G under the Exchange Act); *provided* that Counterparty makes no representation or warranty regarding any such requirement that is applicable generally to the ownership of equity securities by Dealer or any of its affiliates solely as a result of it or any of such affiliates being a financial institution or broker-dealer.
- (h) Counterparty (A) is capable of evaluating investment risks independently, both in general and with regard to all transactions and investment strategies involving a security or securities; (B) will exercise independent judgment in evaluating the recommendations of any broker-dealer or its associated persons, unless it has otherwise notified the broker-dealer in writing; (C) has total assets of at least USD 50 million; and (D) is acting for its own account, and it has made its own independent decisions to enter into the Transaction and as to whether the Transaction is appropriate or proper for it (including as to any legal, regulatory, tax, accounting or economic consequences arising from the Transaction) based upon its own judgment and upon advice from such advisers as it has deemed necessary (including legal, financial and accounting advisors).

- (i) Counterparty as of and immediately after the Trade Date and the Premium Payment Date (x) is not, and shall not be after giving effect to the transactions contemplated hereby, “insolvent” (as such term is defined in Section 101(32) of the Bankruptcy Code, (y) would be able to purchase 100,536,150 Shares and the Underlying Shares represented by such number of Shares in compliance with the laws of the jurisdiction of Counterparty’s incorporation or organization, and (z), for the purposes of Cayman Islands law, is able to pay its debts.
- (j) Counterparty’s board of directors (the “**Board**”) has concluded that (A) the Transaction is suitable for Counterparty, for its commercial benefit and in its best interests, in light of its own investment objectives, financial condition and expertise and (B) the Transaction has been duly approved and authorized by the Board after due consideration by the Board of the foregoing matters and those referred to in subparagraph (h)(D) above.

**9. Other Provisions.**

- (a) Deliverables. Counterparty shall deliver to Dealer (A) an opinion of U.S. counsel and (B) an opinion of Cayman counsel, each dated as of the Premium Payment Date, with respect to, among other things, the matters set forth in Sections 8(a) through (c) of this Confirmation, it being understood that such opinions of counsel shall be limited to the federal laws of the United States and the laws of the State of New York (in the case of clause (A) above) and the laws Cayman Islands (in the case of clause (B) above) and may contain customary limitations, exceptions and qualifications for transactions of the same type as the Transaction. Delivery of such opinions to Dealer shall be a condition precedent for the purpose of Section 2(a)(iii) of the Agreement with respect to each obligation of Dealer under Section 2(a)(i) of the Agreement; (C) a resolution of the Board authorizing the Transaction; and (D) on or before the Premium Payment Date, a solvency certificate with respect to Counterparty signed by a member of the Board, the chief executive officer or the chief financial officer of the Counterparty certifying the solvency of Counterparty as of and immediately after the Premium Payment Date (after giving effect to Counterparty’s payment of amounts required to be paid by Counterparty on such date under the Transaction and the other transactions described under “Use of Proceeds” in the Offering Memorandum related to the offering of the Convertible Notes), which solvency certificate is reasonably satisfactory to Dealer.

- (b) Repurchase Notices. Counterparty shall, on or prior to the date that is one Scheduled Trading Day following any date on which Counterparty effects any repurchase of Shares and/or Underlying Shares, promptly give Dealer a written notice of such repurchase (a “**Repurchase Notice**”) on such day if following such repurchase, the number of outstanding Underlying Shares as determined on such day is (i) less than 727.2 million (in the case of the first such notice) or (ii) thereafter more than 37.8 million less than the number of Underlying Shares included in the immediately preceding Repurchase Notice; *provided* that Counterparty may provide Dealer advance notice on or prior to any such day including the maximum number of Shares and/or Underlying Shares that may be repurchased under a repurchase program entered into in reliance on Rule 10b5-1(c) and the approximate periods during which such repurchases may occur, to the extent it expects that repurchases effected on such day may result in an obligation to deliver a Repurchase Notice (and in such case, any such advance notice shall be deemed a Repurchase Notice to the maximum extent of repurchases set forth in such advance notice as if Counterparty had executed such repurchases). Counterparty agrees that, if Counterparty ceases to qualify as a “foreign private issuer” as defined in Rule 3b-4 under the Exchange Act or the Shares or Underlying Shares, as applicable, otherwise become subject to the requirements of Section 16 of the Exchange Act, Counterparty will indemnify and hold harmless Dealer and its affiliates and their respective officers, directors, employees, affiliates, advisors, agents and controlling persons (each, an “**Indemnified Person**”) from and against any and all losses (including losses relating to Dealer’s hedging activities as a consequence of becoming, or of the risk of becoming, a Section 16 “insider”, including without limitation, any forbearance from hedging activities or cessation of hedging activities and any losses in connection therewith with respect to the Transaction), claims, damages, judgments, liabilities and reasonable and documented out-of-pocket expenses (including reasonable attorney’s fees of one outside counsel in each relevant jurisdiction), joint or several, which an Indemnified Person may become subject to, in each case, as a result of Counterparty’s failure to provide Dealer with a Repurchase Notice on the day and in the manner specified in this paragraph, and to reimburse, within 30 days, upon written request, each of such Indemnified Persons for any reasonable legal or other out-of-pocket expenses (to the extent supported by invoices or other documentation setting forth in reasonable detail such expenses) incurred in connection with investigating, preparing for, providing testimony or other evidence in connection with or defending any of the foregoing. If any suit, action, proceeding (including any governmental or regulatory investigation), claim or demand shall be brought or asserted against the Indemnified Person as a result of Counterparty’s failure to provide Dealer with a Repurchase Notice in accordance with this paragraph, such Indemnified Person shall promptly notify Counterparty in writing, and Counterparty, upon request of the Indemnified Person, shall retain counsel reasonably satisfactory to the Indemnified Person to represent the Indemnified Person and any others Counterparty may designate in such proceeding and shall pay the reasonable fees and expenses of such counsel related to such proceeding. Counterparty shall not be liable to the extent that the Indemnified Person fails to notify Counterparty within a commercially reasonable period of time after any action is commenced against it in respect of which indemnity may be sought hereunder. In addition, Counterparty shall not have liability for any settlement of any such proceeding contemplated by this paragraph that is effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, Counterparty agrees to indemnify any Indemnified Person from and against any loss or liability by reason of such settlement or judgment. Counterparty shall not, without the prior written consent of the Indemnified Person, effect any settlement of any pending or threatened proceeding contemplated by this paragraph in respect of which any Indemnified Person is or could have been a party and indemnity could have been sought hereunder by such Indemnified Person, unless such settlement includes an unconditional release of such Indemnified Person from all liability on claims that are the subject matter of such proceeding on terms reasonably satisfactory to such Indemnified Person. If the indemnification provided for in this paragraph is unavailable to an Indemnified Person or insufficient in respect of any losses, claims, damages or liabilities referred to therein, then Counterparty hereunder, in lieu of indemnifying such Indemnified Person thereunder, shall contribute to the amount paid or payable by such Indemnified Person as a result of such losses, claims, damages or liabilities. The remedies provided for in this paragraph (b) are not exclusive and shall not limit any rights or remedies which may otherwise be available to any Indemnified Person at law or in equity. The indemnity and contribution agreements contained in this paragraph shall remain operative and in full force and effect regardless of the termination of the Transaction.
- (c) Regulation M. Counterparty is not on the Trade Date engaged in a distribution, as such term is used in Regulation M under the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), of any securities of Counterparty, other than a distribution meeting the requirements of the exception set forth in Rules 101(b)(10) and 102(b)(7) of Regulation M. Counterparty shall not, until the second Scheduled Trading Day immediately following the Effective Date, engage in any such distribution.
- (d) No Manipulation. Counterparty is not entering into the Transaction to create actual or apparent trading activity in the Shares and/or Underlying Shares (or any security convertible into or exchangeable for the Shares and/or Underlying Shares) or to raise or depress or otherwise manipulate the price of the Shares and/or Underlying Shares (or any security convertible into or exchangeable for the Shares and/or Underlying Shares) or otherwise in violation of the Exchange Act.

(e) Transfer or Assignment.

- (i) Counterparty shall have the right to transfer or assign all or any of its rights and obligations hereunder with respect to all, or any, of the Options hereunder (such Options, the “**Transfer Options**”) with the prior written consent of Dealer, such consent not to be unreasonably withheld; *provided* that withholding of such consent by Dealer shall not be considered unreasonable if such transfer or assignment does not meet any of the following conditions:
- (A) With respect to any Transfer Options, Counterparty shall not be released from its notice and indemnification obligations pursuant to Section 9(b) of this Confirmation;
  - (B) Such transfer or assignment shall be effected on terms, including any reasonable undertakings by such third party (including, but not limited to, an undertaking with respect to compliance with applicable securities laws in a manner that, in the reasonable judgment of Dealer, will not expose Dealer to material risks under applicable securities laws) and execution of any documentation and delivery of legal opinions with respect to securities laws and other matters by such third party and Counterparty, as are reasonably requested and reasonably satisfactory to Dealer;
  - (C) Under the applicable law effective on the date of such transfer or assignment, (1) Dealer will not, as a result of such transfer or assignment, be required to pay the transferee or assignee on any payment date or delivery date an amount or a number of Shares, as applicable, under Section 2(d)(i)(4) of the Agreement greater than the amount or the number of Shares, as applicable, that Dealer would have been required to pay to Counterparty in the absence of such transfer or assignment and (2) Dealer will not, as a result of such transfer or assignment, receive from the transferee or assignee on any payment date an amount under Section 2(d)(i)(4) of the Agreement that is less than the amount that Dealer would have received from Counterparty in the absence of such transfer or assignment;
  - (D) No Event of Default, Potential Event of Default or Termination Event will occur as a result of such transfer and assignment;
  - (E) Counterparty shall cause the transferee to make such tax representations and to provide such tax documentation as may be reasonably requested by Dealer to permit Dealer to determine that results described in clauses (C) and (D) will not occur upon or after such transfer and assignment, including but not limited to providing tax documentation specified in Section 9(bb) of this Confirmation and making the tax representations specified in Section 9(aa) of this Confirmation on or prior to such transfer and at the other times specified in such Sections; and
  - (F) Counterparty shall be responsible for all reasonable and documented costs and expenses, including reasonable counsel fees, incurred by Dealer in connection with such transfer or assignment.

- (ii) Dealer may, without Counterparty's consent, transfer or assign all or any part of its rights or obligations under the Transaction to any affiliate of Dealer (1) that has a long-term issuer rating that is equal to or better than Dealer's credit rating at the time of such transfer or assignment, or (2) whose obligations hereunder will be guaranteed, pursuant to the terms of a customary guarantee in a form used by Dealer generally for similar transactions, by Dealer or The Goldman Sachs Group, Inc.; *provided* that, in the case of any such transfer or assignment, under the applicable law effective on the date of such transfer or assignment, (I) Counterparty will not, as a result of such transfer or assignment, be required to pay the transferee or assignee on any payment date an amount under Section 2(d)(i)(4) of the Agreement greater than the amount that Counterparty would have been required to pay to Dealer in the absence of such transfer or assignment; (II) Counterparty will not, as a result of such transfer or assignment, receive from the transferee or assignee on any payment or delivery date an amount or a number of Shares, as applicable, under Section 2(d)(i)(4) of the Agreement that is less than the amount or the number of Shares that Counterparty would have received from Dealer in the absence of such transfer or assignment; (III) Dealer shall cause the transferee or assignee to make such tax representations and to provide such tax documentation as may be reasonably requested by Counterparty to permit Counterparty to determine that events described in clauses (I) and (II) of this proviso will not occur upon or after such transfer or assignment; and (IV) no Event of Default, Potential Event of Default or Termination Event will occur as a result of such transfer and assignment. If at any time at which (A) the Section 13 Percentage exceeds 8.5%, (B) the Option Equity Percentage exceeds 14.5%, or (C) the Share Amount exceeds the Applicable Share Limit (if any applies) (any such condition described in clauses (A), (B) or (C), an "**Excess Ownership Position**"), Dealer is unable after using its commercially reasonable efforts to effect a transfer or assignment of Options to a third party on pricing terms reasonably acceptable to Dealer and within a time period reasonably acceptable to Dealer such that no Excess Ownership Position exists, then Dealer may designate any Exchange Business Day as an Early Termination Date with respect to a portion of the Transaction (the "**Terminated Portion**"), to the extent necessary so that following such partial termination no Excess Ownership Position exists. In the event that Dealer so designates an Early Termination Date with respect to a portion of the Transaction, a payment shall be made pursuant to Section 6 of the Agreement as if (1) an Early Termination Date had been designated in respect of a Transaction having terms identical to the Transaction and a Number of Options equal to the number of Options underlying the Terminated Portion, (2) Counterparty were the sole Affected Party with respect to such partial termination and (3) the Terminated Portion were the sole Affected Transaction (and, for the avoidance of doubt, the provisions of Section 9(m) shall apply to any amount that is payable by Dealer to Counterparty pursuant to this sentence as if Counterparty was not the Affected Party). The "**Section 13 Percentage**" as of any day is the fraction, expressed as a percentage, (A) the numerator of which is the number of Underlying Shares that Dealer and any of its affiliates or any other person subject to aggregation with Dealer for purposes of the "beneficial ownership" test under Section 13 of the Exchange Act, or any "group" (within the meaning of Section 13 of the Exchange Act) of which Dealer is or may be deemed to be a part beneficially owns (within the meaning of Section 13 of the Exchange Act), without duplication, on such day (or, to the extent that for any reason the equivalent calculation under Section 16 of the Exchange Act applies with respect to the Shares or Underlying Shares, as applicable, and the rules and regulations thereunder results in a higher number, such higher number) and (B) the denominator of which is the number of Underlying Shares outstanding on such day. The "**Option Equity Percentage**" as of any day is the fraction, expressed as a percentage, (A) the numerator of which is the sum of (1) the product of (x) the Number of Options (y) the Option Entitlement and (z) the number of Underlying Shares represented by one Share and (2) the aggregate number of Underlying Shares underlying any other call option transaction sold by Dealer to Counterparty, and (B) the denominator of which is the number of Underlying Shares outstanding. The "**Share Amount**" as of any day is the number of Underlying Shares that Dealer and any person whose ownership position would be aggregated with that of Dealer (Dealer or any such person, a "**Dealer Person**") under any law, rule, regulation, regulatory order or organizational documents or contracts of Counterparty that are, in each case, applicable to ownership of Underlying Shares ("**Applicable Restrictions**"), owns, beneficially owns, constructively owns, controls, holds the power to vote or otherwise meets a relevant definition of ownership under any Applicable Restriction, as determined by Dealer in its reasonable discretion. The "**Applicable Share Limit**" means a number of Underlying Shares equal to (A) the minimum number of Underlying Shares that could give rise to reporting or registration obligations (except for any filing requirements on Form 13F, Schedule 13D or Schedule 13G under the Exchange Act, in each case, as in effect on the Trade Date) or other requirements (including obtaining prior approval from any person or entity) of a Dealer Person, or could result in an adverse effect on a Dealer Person, under any Applicable Restriction, as determined by Dealer in good faith and in its commercially reasonable discretion, *minus* (B) 1% of the number of Underlying Shares outstanding.

- (iii) Notwithstanding any other provision in this Confirmation to the contrary requiring or allowing Dealer to purchase, sell, receive or deliver any Shares, Underlying Shares or other securities, or make or receive any payment in cash, to or from Counterparty, Dealer may designate any of its affiliates to purchase, sell, receive or deliver such Shares, Underlying Shares or other securities, or to make or receive such payment in cash, and otherwise to perform Dealer's obligations in respect of the Transaction and any such designee may assume such obligations. Dealer shall be discharged of its obligations to Counterparty to the extent of any such performance.
- (f) Staggered Settlement. If upon advice of counsel with respect to applicable legal and regulatory requirements, including any requirements relating to Dealer's hedging activities hereunder, Dealer reasonably determines that it would not be practicable or advisable to deliver, or to acquire Shares to deliver, any or all of the Shares to be delivered by Dealer on any Settlement Date for the Transaction, Dealer may, by notice to Counterparty on or prior to any Settlement Date (a "**Nominal Settlement Date**"), elect to deliver the Shares on two or more dates (each, a "**Staggered Settlement Date**") as follows:
  - (i) in such notice, Dealer will specify to Counterparty the related Staggered Settlement Dates (the first of which will be such Nominal Settlement Date and the last of which will be no later than the twentieth (20<sup>th</sup>) Exchange Business Day following such Nominal Settlement Date) and the number of Shares that it will deliver on each Staggered Settlement Date;
  - (ii) the aggregate number of Shares that Dealer will deliver to Counterparty hereunder on all such Staggered Settlement Dates will equal the number of Shares that Dealer would otherwise be required to deliver on such Nominal Settlement Date; and
  - (iii) if the Net Share Settlement terms set forth above were to apply on the Nominal Settlement Date, then the Net Share Settlement terms will apply on each Staggered Settlement Date, except that the Shares otherwise deliverable on such Nominal Settlement Date will be allocated among such Staggered Settlement Dates as specified by Dealer in the notice referred to in clause (i) above.
- (g) Reserved.
- (h) QFC Stay Provisions. (i) (A) In the event that Dealer becomes subject to a proceeding under (i) the Federal Deposit Insurance Act and the regulations promulgated thereunder or (ii) Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the regulations promulgated thereunder (a "U.S. Special Resolution Regime") the transfer from Dealer of this Confirmation, and any interest and obligation in or under, and any property securing, this Confirmation, will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if this Confirmation, and any interest and obligation in or under, and any property securing, this Confirmation were governed by the laws of the United States or a state of the United States. (B) In the event that Dealer or an Affiliate becomes subject to a proceeding under a U.S. Special Resolution Regime, any Default Rights (as defined in 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable ("Default Right")) under this Confirmation that may be exercised against Dealer 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 Confirmation were governed by the laws of the United States or a state of the United States.

(ii) Notwithstanding anything to the contrary in this Confirmation, the Parties expressly acknowledge and agree that: (A) Counterparty shall not be permitted to exercise any Default Right with respect to this Confirmation or any Affiliate Credit Enhancement that is related, directly or indirectly, to an Affiliate of Dealer becoming subject to receivership, insolvency, liquidation, resolution, or similar proceeding (an “**Insolvency Proceeding**”), except to the extent that the exercise of such Default Right would be permitted under the provisions of 12 C.F.R. 252.84, 12 C.F.R. 47.5 or 12 C.F.R. 382.4, as applicable; and (B) Nothing in this Confirmation shall prohibit the transfer of any Affiliate Credit Enhancement, any interest or obligation in or under such Affiliate Credit Enhancement, or any property securing such Affiliate Credit Enhancement, to a transferee upon or following an Affiliate of Dealer becoming subject to an Insolvency Proceeding, unless the transfer would result in the Counterparty being the beneficiary of such Affiliate Credit Enhancement in violation of any law applicable to the Counterparty.

(iii) If Counterparty has previously adhered to, or subsequently adheres to, the ISDA 2018 U.S. Resolution Stay Protocol as published by the International Swaps and Derivatives Association, Inc. as of July 31, 2018 (the “**ISDA U.S. Protocol**”), the terms of such protocol shall be incorporated into and form a part of this Confirmation and the terms of the ISDA U.S. Protocol shall supersede and replace the terms of this Section 9(h). For purposes of incorporating the ISDA U.S. Protocol, Dealer shall be deemed to be a Regulated Entity, Counterparty shall be deemed to be an Adhering Party, and this Confirmation shall be deemed to be a Protocol Covered Agreement. Capitalized terms used but not defined in this paragraph shall have the meanings given to them in the ISDA U.S. Protocol.

(iv) Dealer and Counterparty agree that to the extent there are any outstanding “in-scope QFCs,” as defined in 12 C.F.R. § 252.82(d), that are not excluded under 12 C.F.R. § 252.88, between Dealer and Counterparty that do not otherwise comply with the requirements of 12 C.F.R. § 252.2, 252.81–8 (each such agreement, a “Preexisting In-Scope Agreement”), then each such Preexisting In-Scope Agreement is hereby amended to include the foregoing provisions in this Section 9(h), with references to “this Confirmation” being understood to be references to the applicable Preexisting In-Scope Agreement.

For purposes of this Section 9(h):

“**Affiliate**” is defined in, and shall be interpreted in accordance with, 12 U.S.C. § 1841(k).

“**Credit Enhancement**” means any credit enhancement or credit support arrangement in support of the obligations of Dealer under or with respect to this Confirmation, including any guarantee, collateral arrangement (including any pledge, charge, mortgage or other security interest in collateral or title transfer arrangement), trust or similar arrangement, letter of credit, transfer of margin or any similar arrangement.

(i) *Additional Termination Events.*

(i) Notwithstanding anything to the contrary in this Confirmation, upon any conversion of a Convertible Note occurring prior to the 45th Scheduled Valid Day immediately prior to the Expiration Date (any such conversion, an “**Early Conversion**”) in respect of which a Conversion Notice that is effective as to Counterparty has been delivered by the relevant converting Holder:

(A) Counterparty may, within two Scheduled Trading Days of the date on which the Holder (as such term is defined in the Indenture) of such Convertible Note satisfies all of the requirements for conversion thereof as set forth in Section 14.02 of the Indenture (the “**Conversion Date**”) for such Early Conversion, provide written notice (an “**Early Conversion Notice**”) to Dealer specifying the number of Convertible Notes surrendered for conversion on such Conversion Date (such Convertible Notes, the “**Affected Convertible Notes**”), and the giving of such Early Conversion Notice shall constitute an Additional Termination Event as provided in this clause (i) (*provided* that Counterparty acknowledges its responsibilities under applicable securities laws, and in particular Section 9 and Section 10(b) of the Exchange Act and the rules and regulations thereunder, in respect of any Early Conversion Notice);



- (B) upon receipt of any such Early Conversion Notice, Dealer shall designate an Exchange Business Day as an Early Termination Date (which Exchange Business Day shall be no earlier than one Scheduled Trading Day following the Conversion Date for such Early Conversion) with respect to the portion of the Transaction corresponding to a number of Options (the “**Affected Number of Options**”) equal to the lesser of (x) the number of Affected Convertible Notes *minus* the “Affected Number of Options” (as defined in the Base Call Option Transaction Confirmation letter agreement dated January 30, 2019 between Dealer and Counterparty (the “**Base Call Option Confirmation**”)), if any, that relate to such Affected Convertible Notes *minus* the “Affected Number of Options” (as defined in the Additional Call Option Transaction Confirmation dated February 13, 2019 between Dealer and Counterparty (the “**First Additional Call Option Confirmation**”)), if any, that relate to such Affected Convertible Notes and (y) the Number of Options as of the Conversion Date for such Early Conversion;
  - (C) any payment hereunder with respect to such termination shall be calculated pursuant to Section 6 of the Agreement as if (x) an Early Termination Date had been designated in respect of a Transaction having terms identical to the Transaction and a Number of Options equal to the Affected Number of Options, (y) Counterparty were the sole Affected Party with respect to such Additional Termination Event and (z) the terminated portion of the Transaction were the sole Affected Transaction;
  - (D) for the avoidance of doubt, in determining the amount payable in respect of such Affected Transaction pursuant to Section 6 of the Agreement, the Calculation Agent shall assume that (x) the relevant Early Conversion and any conversions, adjustments, agreements, payments, deliveries or acquisitions by or on behalf of Counterparty leading thereto had not occurred, (y) no adjustments to the Conversion Rate have occurred pursuant to any Excluded Provision and (z) the corresponding Convertible Notes remain outstanding; and
  - (E) the Transaction shall remain in full force and effect, except that, as of the Conversion Date for such Early Conversion, the Number of Options shall be reduced by the Affected Number of Options.
- (ii) Notwithstanding anything to the contrary in this Confirmation if an event of default with respect to Counterparty occurs under the terms of the Convertible Notes as set forth in Section 6.01 of the Indenture and such event of default results in the Convertible Notes being accelerated and declared due and payable, then such event of default shall constitute an Additional Termination Event applicable to the Transaction and, with respect to such Additional Termination Event, (A) Counterparty shall be deemed to be the sole Affected Party, (B) the Transaction shall be the sole Affected Transaction and (C) Dealer shall be the party entitled to designate an Early Termination Date pursuant to Section 6(b) of the Agreement (which Early Termination Date shall be on or as promptly as reasonably practicable after Dealer becomes aware of the occurrence of such acceleration).

- (iii) Notwithstanding anything to the contrary in this Confirmation, the occurrence of an Amendment Event shall constitute an Additional Termination Event applicable to the Transaction and, with respect to such Additional Termination Event, (A) Counterparty shall be deemed to be the sole Affected Party, (B) the Transaction shall be the sole Affected Transaction and (C) Dealer shall be the party entitled to designate an Early Termination Date pursuant to Section 6(b) of the Agreement. “**Amendment Event**” means that Counterparty amends, modifies, supplements, waives or obtains a waiver in respect of any term of the Indenture or the Convertible Notes governing the principal amount, coupon, maturity, repurchase obligation of Counterparty, tax redemption right of Counterparty, any term relating to conversion of the Convertible Notes (including changes to the conversion rate, conversion rate adjustment provisions, conversion settlement dates or conversion conditions), or any term that would require consent of the holders of not less than 100% of the principal amount of the Convertible Notes to amend (other than, in each case, any amendment or supplement (x) pursuant to Section 10.01(i) of the Indenture that, as determined by the Calculation Agent, conforms the Indenture to the description of Convertible Notes in the Offering Memorandum or (y) pursuant to Section 14.07 of the Indenture), in each case, without the consent of Dealer.
- (iv) Promptly (but in any event within five Scheduled Trading Days) following any Repurchase Event (as defined below), Counterparty shall notify Dealer of such Repurchase Event and the aggregate principal amount of Convertible Notes subject to such Repurchase Event (any such notice, a “**Convertible Notes Repurchase Notice**”); *provided* that any such Convertible Notes Repurchase Notice shall contain a repetition by Counterparty of the representation set forth in Section 8(f) as of the date of such Convertible Notes Repurchase Notice and an acknowledgment by Counterparty of its responsibilities under applicable securities laws, and in particular Section 9 and Section 10(b) of the Exchange Act and the rules and regulations thereunder, in respect of such Repurchase Event and the delivery of such Convertible Notes Repurchase Notice. Any Convertible Notes Repurchase Notice delivered to Dealer pursuant to the Base Call Option Confirmation shall be deemed to be a Convertible Notes Repurchase Notice pursuant to this Confirmation and the terms of such Convertible Notes Repurchase Notice shall apply, *mutatis mutandis*, to this Confirmation. The receipt by Dealer from Counterparty of any Convertible Notes Repurchase Notice shall constitute an Additional Termination Event as provided in this Section 9(i)(iv). Upon receipt of any such Convertible Notes Repurchase Notice, Dealer shall designate an Exchange Business Day following receipt of such Convertible Notes Repurchase Notice (which Exchange Business Day shall be on or as promptly as reasonably practicable following the settlement date for such Repurchase Event) as an Early Termination Date with respect to the portion of the Transaction corresponding to a number of Options (the “**Repurchase Options**”) equal to the lesser of (A) (x) the aggregate principal amount of such Convertible Notes specified in such Convertible Notes Repurchase Notice, *divided by* USD 1,000 *minus* (y) the “Repurchase Options” (as defined in the Base Call Option Confirmation), if any, that relate to such Convertible Notes *minus* (z) the “Repurchase Options” (as defined in the First Additional Call Option Confirmation), if any, that relate to such Convertible Notes and (B) the Number of Options as of the date Dealer designates such Early Termination Date and, as of such date, the Number of Options shall be reduced by the number of Repurchase Options. Any payment hereunder with respect to such termination (the “**Repurchase Unwind Payment**”) shall be calculated pursuant to Section 6 of the Agreement as if (1) an Early Termination Date had been designated in respect of a Transaction having terms identical to the Transaction and a Number of Options equal to the number of Repurchase Options, (2) Counterparty were the sole Affected Party with respect to such Additional Termination Event and (3) the terminated portion of the Transaction were the sole Affected Transaction (and, for the avoidance of doubt, in determining the amount payable in respect of such Affected Transaction pursuant to Section 6 of the Agreement, Dealer shall assume that (x) the relevant Repurchase Event and any conversions, adjustments, agreements, payments, deliveries or acquisitions by or on behalf of Counterparty leading thereto had not occurred, (y) no adjustments to the Conversion Rate have occurred pursuant to any Excluded Provisions and (z) the corresponding Convertible Notes remain outstanding). “**Repurchase Event**” means that (i) any Convertible Notes are repurchased or redeemed (whether pursuant to Section 15.01 of the Indenture, Section 15.02 of the Indenture, Section 16.01 of the Indenture or otherwise) by Counterparty or any of its subsidiaries, (ii) any Convertible Notes are delivered to Counterparty in exchange for delivery of any property or assets of Counterparty or any of its subsidiaries (howsoever described), including for the avoidance of doubt shares or American depository shares of Issuer and/or cash, (iii) any principal of any of the Convertible Notes is repaid prior to the final maturity date of the Convertible Notes (other than upon acceleration of the Convertible Notes described in Section 9(i)(ii)), or (iv) any Convertible Notes are exchanged by or for the benefit of the holders thereof for any other securities of Counterparty or any of its affiliates (or any other property, or any combination thereof) pursuant to any exchange offer or similar transaction; *provided* that any conversion of Convertible Notes pursuant to the terms of the Indenture shall not constitute a Repurchase Event. Counterparty acknowledges and agrees that if an Additional Termination Event has occurred under this Section 9(i)(iv) that any related Convertible Notes subject to a Repurchase Event will be promptly cancelled under the applicable provisions of the Indenture and, in any event, will be deemed to be cancelled and disregarded and no longer outstanding for all purposes hereunder.

- (j) Amendments to Equity Definitions.
- (i) Solely in respect of adjustments to the Cap Price pursuant to Section 9(y), Section 11.2(e)(vii) of the Equity Definitions is hereby amended by deleting the words “that may have a diluting or concentrative effect on the theoretical value of the relevant Shares” and replacing them with the words “that is the result of a corporate event involving the Underlying Shares Issuer or its securities that has a material economic effect on the Shares and/or the Underlying Shares or options on the Shares and/or the Underlying Shares; *provided* that such event is not based on (a) an observable market, other than the market for the Underlying Shares Issuer’s own stock or (b) an observable index, other than an index calculated and measured solely by reference to the Underlying Shares Issuer’s own operations.”
  - (ii) Section 12.6(a)(ii) of the Equity Definitions is hereby amended by (1) inserting “(1)” immediately following the word “means” in the first line thereof and (2) inserting immediately prior to the semi-colon at the end of subsection (B) thereof the following words: “or (2) the occurrence of any of the events specified in Section 5(a)(vii)(1) through (9) of the ISDA Master Agreement with respect to that Issuer” *provided* that the period for dismissal, discharge, stay or restraint therein shall be increased from “within 15 days” to “within 30 days.”
  - (iii) Section 12.9(b)(i) of the Equity Definitions is hereby amended by (1) replacing “either party may elect” with “Dealer may elect” and (2) replacing “notice to the other party” with “notice to Counterparty” in the first sentence of such section.
- (k) Setoff. Neither party shall have the right to set off any obligation that it may have to the other party under the Transaction against any obligation such other party may have to it, whether arising under the Agreement, this Confirmation or any other agreement between the parties hereto, by operation of law or otherwise and each party hereby waives any such right to setoff.
- (l) Adjustments. For the avoidance of doubt, whenever the Calculation Agent is called upon to make an adjustment pursuant to the terms of this Confirmation or the Equity Definitions to take into account the effect of an event (other than on adjustments made by reference to the Indenture), the Calculation Agent shall make such adjustment in a commercially reasonable manner by reference to the effect of such event on Dealer, assuming that Dealer maintains a commercially reasonable hedge position

(m) Alternative Calculations and Payment on Early Termination and on Certain Extraordinary Events. If (a) an Early Termination Date (whether as a result of an Event of Default or a Termination Event) occurs or is designated with respect to the Transaction or (b) the Transaction is cancelled or terminated upon the occurrence of an Extraordinary Event, and if Dealer would owe any amount to Counterparty pursuant to Section 6(d)(ii) of the Agreement or any Cancellation Amount pursuant to Article 12 of the Equity Definitions (any such amount, a “**Payment Obligation**”), Counterparty may request Dealer to satisfy the Payment Obligation by the Share Termination Alternative (as defined below) (except as a result of (i) a Nationalization, Insolvency or Merger Event in which the consideration to be paid to holders of Shares and/or Underlying Shares, as applicable, consists solely of cash, (ii) an Announcement Event, Merger Event or Tender Offer that is within Counterparty’s control, or (iii) an Event of Default in which Counterparty is the Defaulting Party or a Termination Event in which Counterparty is the Affected Party other than an Event of Default of the type described in Section 5(a)(iii), (v), (vi), (vii) or (viii) of the Agreement or a Termination Event of the type described in Section 5(b) of the Agreement, in each case that resulted from an event or events outside Counterparty’s control), as long as Counterparty remakes the representation set forth in Section 8(f) as of the date of such election, and Counterparty shall give irrevocable telephonic notice to Dealer, confirmed in writing within one Scheduled Trading Day, no later than 12:00 p.m. (New York City time) on the date of the Announcement Event, Merger Date, Tender Offer Date, Announcement Date (in the case of a Nationalization, Insolvency or Delisting), Early Termination Date or date of cancellation, as applicable; *provided* that if Counterparty does not validly request Dealer to satisfy the Payment Obligation by the Share Termination Alternative, Dealer shall have the right, in its sole discretion, to satisfy its Payment Obligation by the Share Termination Alternative, notwithstanding Counterparty’s failure to elect or election to the contrary. If such election is not made, then the provisions of Section 12.7 or Section 12.9 of the Equity Definitions, or the provisions of Section 6(d)(ii) and Section 6(e) of the Agreement, as the case may be, shall apply.

Share Termination Alternative:	If applicable, Dealer shall deliver to Counterparty the Share Termination Delivery Property on, or as promptly as commercially reasonably practicable thereafter, the date when the relevant Payment Obligation would otherwise be due pursuant to Section 12.7 or 12.9 of the Equity Definitions or Section 6(d)(ii) and 6(e) of the Agreement, as applicable, in satisfaction of such Payment Obligation in the manner reasonably requested by Counterparty free of payment.
Share Termination Delivery Property:	A number of Share Termination Delivery Units, as calculated by the Calculation Agent, equal to the Payment Obligation divided by the Share Termination Unit Price. The Calculation Agent shall adjust the Share Termination Delivery Property by replacing any fractional portion of a security therein with an amount of cash equal to the value of such fractional security based on the values used to calculate the Share Termination Unit Price.
Share Termination Unit Price:	The value of property contained in one Share Termination Delivery Unit, as determined by the Calculation Agent in its discretion by commercially reasonable means and notified by the Calculation Agent to Dealer at the time of notification of the Payment Obligation.

Share Termination Delivery Unit: One Share or, if the Shares or Underlying Shares, as applicable, have changed into cash or any other property or the right to receive cash or any other property as the result of a Nationalization, Insolvency or Merger Event (any such cash or other property, the “**Exchange Property**”), a unit consisting of the type and amount of such Exchange Property received by a holder of one Share or Underlying Share, as applicable (without consideration of any requirement to pay cash or other consideration in lieu of fractional amounts of any securities) in such Nationalization, Insolvency or Merger Event, as determined by the Calculation Agent. If such Nationalization, Insolvency, or Merger Event involves a choice of Exchange Property to be received by holders, such holders shall be deemed to have elected to receive the maximum possible amount of cash.

Failure to Deliver: Applicable

Other applicable provisions: If Share Termination Alternative is applicable, the provisions of Sections 9.8, 9.9 and 9.11 (as modified above) of the Equity Definitions and the provisions set forth opposite the caption “Representation and Agreement” in Section 2 will be applicable, except that all references in such provisions to “Physically-settled” shall be read as references to “Share Termination Settled” and all references to “Shares” shall be read as references to “Share Termination Delivery Units”. “Share Termination Settled” in relation to the Transaction means that Share Termination Alternative is applicable to the Transaction.

- (n) Waiver of Jury Trial. Each party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any suit, action or proceeding relating to the Transaction. Each party (i) certifies that no representative, agent or attorney of either party has represented, expressly or otherwise, that such other party would not, in the event of such a suit, action or proceeding, seek to enforce the foregoing waiver and (ii) acknowledges that it and the other party have been induced to enter into the Transaction, as applicable, by, among other things, the mutual waivers and certifications provided herein.
- (o) Registration. Counterparty hereby agrees that if, in the good faith reasonable judgment of Dealer, based on the advice of counsel, the Shares and/or Underlying Shares (“**Hedge Shares**”) acquired by Dealer for the purpose of commercially reasonably hedging its obligations pursuant to the Transaction cannot be sold in the public market by Dealer without registration under the Securities Act, Counterparty shall, at its election, either (i) in order to allow Dealer to sell the Hedge Shares in a registered offering, make available to Dealer an effective registration statement under the Securities Act and enter into an agreement, in form and substance reasonably satisfactory to Dealer, substantially in the form of an underwriting agreement customary for a registered secondary offering of a similar size in respect of a similar issuer; *provided, however*, that if Dealer, in its sole reasonable discretion, is not satisfied with access to due diligence materials, the results of its due diligence investigation, or the procedures and documentation for the registered offering referred to above, then clause (ii) or clause (iii) of this paragraph shall apply at the election of Counterparty, (ii) in order to allow Dealer to sell the Hedge Shares in a private placement, use commercially reasonable efforts to enter into a private placement agreement substantially similar to private placement purchase agreements customary for private placements of equity securities of a similar size in respect of a similar issuer, in form and substance satisfactory to Dealer (in which case, the Calculation Agent shall make any adjustments to the terms of the Transaction that are necessary, in its commercially reasonable judgment, to compensate Dealer for any commercially reasonable discount from the public market price of the Shares and/or Underlying Shares incurred on the sale of Hedge Shares in a private placement), or (iii) purchase the Hedge Shares from Dealer at the then-current market price on such Exchange Business Days, and in the amounts and at such time(s), reasonably requested by Dealer.

- (p) Tax Disclosure. Effective from the date of commencement of discussions concerning the Transaction, Counterparty and each of its employees, representatives, or other agents may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the Transaction and all materials of any kind (including opinions or other tax analyses) that are provided to Counterparty relating to such tax treatment and tax structure.
- (q) Right to Extend. Dealer may postpone or add, in whole or in part, any Valid Day or Valid Days during the Settlement Averaging Period or any other date of valuation, payment or delivery by Dealer, with respect to some or all of the Options hereunder, if Dealer reasonably determines, in the case of clause (i) below, in its commercially reasonable judgment or, in the case of clause (ii) below, based on advice of counsel, that such action is reasonably necessary or appropriate (i) to preserve Dealer's commercially reasonable hedging or hedge unwind activity hereunder in light of existing liquidity conditions in the relevant market or (ii) to enable Dealer to effect transactions with respect to Shares and/or Underlying Shares in connection with its commercially reasonable hedging, hedge unwind or settlement activity hereunder in a manner that would, if Dealer were Counterparty or an affiliated purchaser of Counterparty, be in compliance with applicable legal, regulatory or self-regulatory requirements, or with related policies and procedures adopted by Dealer in good faith so long as such policies and procedures are generally applicable in similar situations and applied in a non-discriminatory manner); *provided* that no such Valid Day or other date of valuation, payment or delivery may be postponed or added more than 40 Valid Days after the original Valid Day or other date of valuation, payment or delivery, as the case may be.
- (r) Status of Claims in Bankruptcy. Dealer acknowledges and agrees that this Confirmation is not intended to convey to Dealer rights against Counterparty with respect to the Transaction that are senior to the claims of common or ordinary shareholders of Counterparty in any United States or Cayman Islands 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 the Transaction; *provided, further* that nothing herein shall limit or shall be deemed to limit Dealer's rights in respect of any transactions other than the Transaction.
- (s) Securities Contract; Swap Agreement. The parties hereto intend for (i) the Transaction to be a "securities contract" and a "swap agreement" as defined in the Bankruptcy Code (Title 11 of the United States Code) (the "**Bankruptcy Code**"), and the parties hereto to be entitled to the protections afforded by, among other Sections, Sections 362(b)(6), 362(b)(17), 546(e), 546(g), 555 and 560 of the Bankruptcy Code, (ii) a party's right to liquidate the Transaction and to exercise any other remedies upon the occurrence of any Event of Default under the Agreement with respect to the other party to constitute a "contractual right" as described in the Bankruptcy Code, and (iii) each payment and delivery of cash, securities or other property hereunder to constitute a "margin payment" or "settlement payment" and a "transfer" as defined in the Bankruptcy Code.

- (t) Notice of Certain Other Events. Counterparty covenants and agrees that:
- (i) promptly following the public announcement of the results of any election by the holders of Shares and/or Underlying Shares, as applicable, with respect to the consideration due upon consummation of any Merger Event, Counterparty shall give Dealer written notice of (x) the weighted average of the types and amounts of consideration that holders of Shares and/or Underlying Shares, as applicable, have elected to receive upon consummation of such Merger Event or (y) if no holders of Shares and/or Underlying Shares, as applicable, affirmatively make such election, the types and amounts of consideration actually received by holders of Shares and/or Underlying Shares, as applicable, (the date of such notification, the “**Consideration Notification Date**”); *provided* that in no event shall the Consideration Notification Date be later than the date on which such Merger Event is consummated;
  - (ii) (A) Counterparty shall give Dealer commercially reasonable advance (but in no event less than one Exchange Business Day) written notice of the section or sections of the Indenture and, if applicable, the formula therein, pursuant to which any adjustment will be made to the Convertible Notes in connection with any Potential Adjustment Event, Merger Event or Tender Offer and (B) promptly following any such adjustment, Counterparty shall give Dealer written notice of the details of such adjustment; and
  - (iii) Counterparty will provide a written notice to Dealer immediately upon becoming aware that Counterparty is not or will no longer be a “foreign private issuer,” as such term is defined in Rule 3b-4 under the Exchange Act.
- (u) 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 Confirmation or the Agreement, as applicable, arising from a termination event, force majeure, illegality, increased costs, regulatory change or similar event under this Confirmation, the Equity Definitions incorporated herein, or the Agreement (including, but not limited to, rights arising from Change in Law, Hedging Disruption, an Excess Ownership Position, or Illegality (as defined in the Agreement)).
- (v) Agreements and Acknowledgements Regarding Hedging. Counterparty understands, acknowledges and agrees that: (A) at any time on and prior to the Expiration Date, Dealer and its affiliates may buy or sell Shares, Underlying Shares or other securities or buy or sell options or futures contracts or enter into swaps or other derivative securities in order to adjust its hedge position with respect to the Transaction; (B) Dealer and its affiliates also may be active in the market for Shares and/or Underlying Shares other than in connection with hedging activities in relation to the Transaction; (C) Dealer shall make its own determination as to whether, when or in what manner any hedging or market activities in securities of Issuer and/or Underlying Shares Issuer shall be conducted and shall do so in a manner that it deems appropriate to hedge its price and market risk with respect to the Relevant Prices; and (D) any market activities of Dealer and its affiliates with respect to Shares and/or Underlying Shares may affect the market price and volatility of Shares and/or Underlying Shares, as well as the Relevant Prices, each in a manner that may be adverse to Counterparty.
- (w) Early Unwind. In the event the sale of the “Option Securities” (as defined in the Purchase Agreement) is not consummated with the Initial Purchasers for any reason, or Counterparty fails to deliver to Dealer opinions of counsel as required pursuant to Section 9(a), in each case by 5:00 p.m. (New York City time) on the Premium Payment Date, or such later date as agreed upon by the parties (the Premium Payment Date or such later date the “**Early Unwind Date**”), the Transaction shall automatically terminate (the “**Early Unwind**”), on the Early Unwind Date and (i) the Transaction and all of the respective rights and obligations of Dealer and Counterparty under the Transaction shall be cancelled and terminated and (ii) each party shall be released and discharged by the other party from and agrees not to make any claim against the other party with respect to any obligations or liabilities of the other party arising out of and to be performed in connection with the Transaction either prior to or after the Early Unwind Date. Each of Dealer and Counterparty represents and acknowledges to the other that, upon an Early Unwind, all obligations with respect to the Transaction shall be deemed fully and finally discharged.

- (x) Payment by Counterparty. In the event that, following payment of the Premium, (i) an Early Termination Date occurs or is designated with respect to the Transaction as a result of a Termination Event or an Event of Default (other than an Event of Default arising under Section 5(a)(ii) or 5(a)(iv) of the Agreement) and, as a result, Counterparty owes to Dealer an amount calculated under Section 6(e) of the Agreement, or (ii) Counterparty owes to Dealer, pursuant to Section 12.7 or Section 12.9 of the Equity Definitions, an amount calculated under Section 12.8 of the Equity Definitions, such amount shall be deemed to be zero.
- (y) Other Adjustments Pursuant to the Equity Definitions. Notwithstanding anything to the contrary in this Confirmation, solely for the purpose of adjusting the Cap Price, the terms “Potential Adjustment Event,” “Merger Event,” and “Tender Offer” shall each have the meanings assigned to such term in the Equity Definitions (as amended by Section 9(j)(i) or, if applicable, by the definition of “Announcement Event”), and upon the occurrence of a Merger Date, the occurrence of a Tender Offer Date, or declaration by Counterparty of the terms of any Potential Adjustment Event, respectively, as such terms are defined in the Equity Definitions, the Calculation Agent may, in its sole discretion, adjust the Cap Price to preserve the fair value of the Options; *provided* that in no event shall the Cap Price be less than the Strike Price; *provided further* that any adjustment to the Cap Price made pursuant to this Section 9(y) shall be made without duplication of any other adjustment hereunder (including, for the avoidance of doubt, adjustment made pursuant to the provisions opposite the captions “Method of Adjustment,” “Consequences of Merger Events/Tender Offers” and “Consequence of Announcement Events” in Section 3 above). For the avoidance of doubt, for purposes of this Section 9(y), Section 12.1(d) of the Equity Definitions is hereby amended by replacing “10%” with “20%” in the third line thereof.
- (z) Service of Process. Counterparty irrevocably appoints Law Debenture Corporate Services Inc. as its authorized agent upon which process may be served in any suit, action or proceeding relating to the Transaction, and agrees that service of process in any manner permitted by applicable law upon such agent shall be deemed in every respect effective service of process in any manner permitted by applicable law upon Counterparty in any such suit, action or proceeding. Counterparty further agrees to take any and all action as may be necessary to maintain such designation and appointment of such agent in full force and effect for a period of five and a half years from the date of this Confirmation. If for any reason such agent shall cease to be such agent for service of process, Counterparty shall forthwith appoint a new agent of recognized standing for service of process in the State of New York and deliver to Dealer a copy of the new agent’s acceptance of that appointment within 10 days. Nothing herein shall affect the right of Dealer to serve process in any other manner permitted by law or to commence legal proceedings or otherwise proceed against Counterparty in any other court of competent jurisdiction.
- (aa) Taxes, Foreign Account Tax Compliance Act and HIRE Act. Counterparty is classified as a corporation for the U.S. federal income tax purposes. No income received or to be received under the Agreement will be effectively connected with the conduct of a trade or business by Counterparty in the United States. Counterparty is a “non-U.S. branch of a foreign person” as that term is used in Section 1.1441-4(a)(3)(ii) of the United States Treasury Regulations (the “**Regulations**”), and it is a “foreign person” as that term is used in Section 1.6041-4(a)(4) of the Regulations. The term “Indemnifiable Tax” as defined in Section 14 of the Agreement shall not include any U.S. federal withholding tax imposed or collected pursuant to Sections 1471 through 1474 of the U.S. Internal Revenue Code of 1986, as amended (the “**Code**”), any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b) of the Code, or any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code (a “**FATCA Withholding Tax**”). For the avoidance of doubt, a FATCA Withholding Tax is a Tax the deduction or withholding of which is required by applicable law for the purposes of Section 2(d) of the Agreement. The parties agree that the definitions and provisions contained in the ISDA 2015 Section 871(m) Protocol, as published by the International Swaps and Derivatives Association, Inc. and as may be amended, supplemented, replaced or superseded from time to time (the “**871(m) Protocol**”) shall apply to the Agreement as if the parties had adhered to the 871(m) Protocol as of the Effective Date. If there is any inconsistency between this provision and a provision in any other agreement executed between the parties, this provision shall prevail unless such other agreement expressly overrides the provisions of the 871(m) Protocol. Each of Dealer and Counterparty shall provide to the other party tax forms and documents required to be delivered pursuant to Sections 1471(b) or Section 1472(b)(1) of the Code promptly upon request by the other party and any other tax forms and documents they are legally able to provide that are reasonably requested by the other party.



(bb) U.S. Tax Forms. Without limiting the generality of the foregoing, Counterparty will provide a US Tax Form W-8BEN-E upon the execution of this Confirmation, promptly upon learning that any such tax form previously provided by it has become obsolete or incorrect and promptly upon reasonable demand by Dealer.

(cc) Additional Definitions and Amendments to Equity Definitions.

(i) For the purposes of this Confirmation the following definitions will apply:

“**Depository**” means, in relation to the Shares, Deutsche Bank Trust Company Americas, or any successor thereto from time to time.

“**Deposit Agreement**” means, (i) that certain Deposit Agreement, dated as of September 11, 2018, by and among Underlying Shares Issuer, Depository and the holders and beneficial owners of the Shares and (ii) the other agreements or other instruments constituting the Shares, as from time to time amended or supplemented in accordance with their terms.

“**DS Amendment**” means, where specified as applicable to a definition or provision, that the following changes shall be made to such definition or provision: (a) all references to “Shares” shall be deleted and replaced with the words “Shares and/or the Underlying Shares, as appropriate”; and (b) all references to “Issuer” shall be deleted and replaced with the words “Issuer or Underlying Shares Issuer, as appropriate”.

“**Replacement DSs**” means depositary shares or receipts, other than the Shares, over the same Underlying Shares.

(ii) The following amendments shall be made to the Equity Definitions:

(A) The definition of Potential Adjustment Event in Section 11.2(e) of the Equity Definitions shall be amended as follows:

(i) the DS Amendment shall be applicable, provided that an event under Section 11.2(e)(i) to (vii) of the Equity Definitions in respect of the Underlying Shares shall not constitute a Potential Adjustment Event unless, in the commercially reasonable opinion of the Calculation Agent, such event has a material effect on the theoretical value of the Shares; and

(ii) (A) ‘or’ shall be deleted where it appears at the end of subsection (vi);

(B) ‘.’ shall be deleted where it appears at the end of subsection (vii) and replaced with ‘;’;

(C) the following shall be inserted as subsection (viii): “(viii) the making of any amendment or supplement to the terms of the Deposit Agreement and/or the Shares; or”; and

- (D) the following shall be inserted as provision (ix): “(ix) any other event as a result of which the Shares represent fewer or more Underlying Shares than, and/or any property or assets in addition to, or as a whole or partial replacement of, in each case, the number of Underlying Shares represented by the Shares prior to such event.”
- (B) In making any adjustment following any Potential Adjustment Event, the Calculation Agent shall have reference to (to the extent necessary or appropriate among other factors) any adjustment made by the Depositary under the Deposit Agreement, any fees and/or expenses of the Depositary and any withholding or deduction of taxes. If the Calculation Agent determines that no adjustment that it could make will produce a commercially reasonable result, it shall notify the parties that the relevant consequence shall be the termination of the relevant Transaction, in which case “Cancellation and Payment (Calculation Agent Determination)” will be deemed to apply and any payment to be made by one party to the other shall be calculated in accordance with Section 12.7 of the Equity Definitions (as amended by this Confirmation).
- (C) If a Potential Adjustment Event occurs under Section 11.2(e)(viii) of the Equity Definitions (as amended by this Confirmation), then the following further amendments shall be deemed to be made to Section 11.2(c) of the Equity Definitions in respect of such Potential Adjustment Event:
- (i) the words “the Calculation Agent will determine whether such Potential Adjustment Event has a material effect on the theoretical value of the relevant Shares, options on the Shares or the Transaction” shall be deleted and replaced with the words “the Calculation Agent will determine whether such Potential Adjustment Event has a material economic effect on such Transaction”; and
- (ii) the words “as the Calculation Agent determines appropriate to account for that material effect” shall be deleted and replaced with the words “as the Calculation Agent determines appropriate to account for such economic effect on such Transaction”.
- (D) The definitions of “Merger Event”, “Tender Offer”, “Announcement Date”, “Share-for-Share”, “Share-for-Other” and “Share-for-Combined” in Section 12.1 of the Equity Definitions shall be amended in accordance with the DS Amendment.
- (E) In making any adjustment in respect of a Merger Event, Tender Offer or Announcement Event in relation to the Underlying Shares, the Calculation Agent shall in determining any adjustment pursuant to Modified Calculation Adjustment, have reference to (amongst other factors) any adjustment made by the Depositary under the Deposit Agreement, any fees and/or expenses of the Depositary and any withholding or deduction of taxes, as determined by the Calculation Agent in its commercially reasonable discretion.
- (F) The definitions of Nationalization and Insolvency in Section 12.6 of the Equity Definitions shall be amended in accordance with the DS Amendment.
- (G) The consequence of a Nationalization or Insolvency in respect of the Depositary shall be Cancellation and Payment.
- (H) If a Delisting of the Shares occurs or the Depositary announces that the Deposit Agreement is (or will be) terminated, then:
- (i) Cancellation and Payment will apply as provided in this Confirmation; and

- (ii) where Cancellation and Payment applies under (H)(i) above in respect of a termination of the Deposit Agreement, the Equity Definitions shall be interpreted as follows: (i) such termination shall be deemed to be an “Extraordinary Event”; (ii) Cancellation and Payment shall apply as defined in Section 12.6(c)(ii) of the Equity Definitions; and (iii) the definition of “Announcement Date” in Section 12.1(l) of the Equity Definitions shall include the following additional clause (vii) at the end of the first sentence thereof: “(vii) in the case of a termination of the Deposit Agreement, the date of the first public announcement by the Depository that the Deposit Agreement is (or will be) terminated”.
- (I) If Cancellation and Payment applies under Section 9(cc)(ii)(G) or Section 9(cc)(ii)(H) of this Confirmation in respect of a Transaction, then the Determining Party shall be Dealer.
- (J) The definition of “Insolvency Filing” in Section 12.9(a)(iv) of the Equity Definitions shall be amended in accordance with the DS Amendment.
- (K) For the avoidance of doubt, where a provision is amended by this Section 9(cc) in accordance with the DS Amendment, if the event described in such provision occurs in respect of the Underlying Shares or Underlying Shares Issuer, then the consequence of such event shall be interpreted consistently with the DS Amendment and such event.
- (dd) 2013 EMIR Portfolio Reconciliation, Dispute Resolution and Disclosure Protocol. The parties agree that the Attachment to the 2013 EMIR Portfolio Reconciliation, Dispute Resolution and Disclosure Protocol published by ISDA on July 19, 2013 (“**PDD Protocol**”) apply to the Confirmation as if set out in full herein. 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 Section 9(dd) (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 this Confirmation”, (iii) references to “Protocol Covered Agreement” shall be deemed to be references to this Confirmation (and each “Protocol Covered Agreement” shall be read accordingly), (iv) references to “Implementation Date” shall be deemed to be references to the date of this Confirmation, (v) the words “or the Investment Manager on its behalf,” shall be inserted after the words “Portfolio Data Receiving Entity” in Part I(1)(a)(ii), (vi) (a) the words “, or the Investment Manager on its behalf,” shall be inserted after the words “Portfolio Data Receiving Entity”, and (b) the words “such party” shall be deleted and replaced with the words “Portfolio Data Receiving Party” in Part I(1)(a)(iii), and (vii) the words “, or, in the case of Counterparty, its board of directors,” shall be inserted after the words “senior members of staff of such party or of its Affiliate, adviser or agent” in Part I(4)(c). For the purposes of this Section 9(dd):
1. Dealer is a Portfolio Data Sending Entity and Counterparty is a Portfolio Data Receiving Entity;
  2. 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.
  3. The Local Business Days for such purposes in relation to Dealer are London, United Kingdom and in relation to Counterparty are Shanghai, Hong Kong and New York;
  4. The provisions in this paragraph shall survive the termination of this Transaction.
  5. The following are the applicable email addresses.

Portfolio Data:

Dealer: portfolio.reconciliation@gs.com

Counterparty: chao.wang10@nio.com

Notice of discrepancy:

Dealer: portfolio.reconciliation@gs.com

Counterparty: chao.wang10@nio.com

Dispute Notice:

Dealer: portfolio.reconciliation@gs.com

Counterparty: chao.wang10@nio.com

- (ee) NFC Representation Protocol. (i) 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 Confirmation as if each party were an Adhering Party under the terms of the NFC Representation Protocol. In respect of the Attachment to the Protocol, (A) the definition of “Adherence Letter” shall be deemed to be deleted and references to “Adherence Letter” shall be deemed to be to this Section 9(ee) (and references to “the relevant Adherence Letter” and “its Adherence Letter” shall be read accordingly), (B) references to “adheres to the Protocol” shall be deemed to be “enters into this Confirmation”, (C) references to “Covered Master Agreement” shall be deemed to be references to this Confirmation (and each “Covered Master Agreement” shall be read accordingly), and (D) references to “Implementation Date” shall be deemed to be references to the date of this Confirmation. (ii) Counterparty confirms that it enters into this Confirmation as a party making the NFC Representation (as such term is defined in the NFC Representation Protocol). Counterparty shall promptly notify Dealer of any change to its status as a party making the NFC Representation.
- (ff) 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**”):
1. 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
  2. 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 such information becoming available to the public or recipients in a jurisdiction which may have a different level of protection for personal data from that of the relevant party’s home jurisdiction.

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 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.

Please confirm that the foregoing correctly sets forth the terms of our agreement by executing this Confirmation and returning it to Dealer.

Very truly yours,

**GOLDMAN SACHS INTERNATIONAL**

By:           /s/ Authorized Signatory          

Authorized Signatory

Name:



February 26, 2019

To: **NIO Inc.**  
Building 20, No. 56 AnTuo Road, Jiading District  
Shanghai, 201804  
People's Republic of China  
Attention: Louis T. Hsieh, Chief Financial Officer  
Telephone No.: +86 (21) 6908 3306  
Facsimile No.: +86 (21) 3913 0192

**From:** Morgan Stanley & Co. LLC  
1585 Broadway, 5th Floor  
New York, NY 10036

Re: Second Additional Call Option Transaction

The purpose of this letter agreement (this "**Confirmation**") is to confirm the terms and conditions of the call option transaction entered into between Morgan Stanley & Co. LLC ("**Dealer**") and NIO Inc. ("**Counterparty**") as of the Trade Date specified below (the "**Transaction**"). This letter agreement constitutes a "Confirmation" as referred to in the ISDA Master Agreement specified below. Each party further agrees that this Confirmation together with the Agreement evidence a complete binding agreement between Counterparty and Dealer as to the subject matter and terms of the Transaction to which this Confirmation relates, and shall supersede all prior or contemporaneous written or oral communications with respect thereto.

The definitions and provisions contained in the 2002 ISDA Equity Derivatives Definitions (the "**Equity Definitions**"), as published by the International Swaps and Derivatives Association, Inc. ("**ISDA**") are incorporated into this Confirmation. In the event of any inconsistency between the Equity Definitions and this Confirmation, this Confirmation shall govern. Certain defined terms used herein are based on terms that are defined in the Offering Memorandum dated January 30, 2019 (the "**Offering Memorandum**") relating to the 4.50% Convertible Senior Notes due 2024 (as originally issued by Counterparty, the "**Convertible Notes**" and each USD 1,000 principal amount of Convertible Notes, a "**Convertible Note**") issued by Counterparty in an aggregate initial principal amount of USD 650,000,000 (as increased by an aggregate principal amount of USD 100,000,000 pursuant to the exercise by the Initial Purchasers (as defined herein) of their option to purchase additional Convertible Notes pursuant to the Purchase Agreement (as defined herein)) pursuant to an Indenture dated February 4, 2019 between Counterparty and The Bank of New York Mellon, as trustee (the "**Indenture**"). In the event of any inconsistency between the terms defined in the Offering Memorandum, the Indenture and this Confirmation, this Confirmation shall govern. The parties acknowledge that this Confirmation is entered into on the date hereof with the understanding that (i) definitions set forth in the Indenture which are also defined herein by reference to the Indenture and (ii) sections of the Indenture that are referred to herein will conform to the descriptions thereof in the Offering Memorandum. If any such definitions in the Indenture or any such sections of the Indenture differ from the descriptions thereof in the Offering Memorandum, the descriptions thereof in the Offering Memorandum will govern for purposes of this Confirmation. The parties further acknowledge that the Indenture section numbers used herein are based on the Indenture as executed. Subject to the foregoing, references to the Indenture herein are references to the Indenture as in effect on the date of its execution, and if the Indenture is amended or supplemented following such date (other than any amendment or supplement (x) pursuant to Section 10.01(i) of the Indenture that, as determined by the Calculation Agent, conforms the Indenture to the description of Convertible Notes in the Offering Memorandum, and (y) pursuant to Section 14.07(a) of the Indenture, subject, in the case of this clause (y), to the second paragraph under "Method of Adjustment" in Section 3), any such amendment or supplement will be disregarded for purposes of this Confirmation (other than as provided in Section 9(i)(iii) below) unless the parties agree otherwise in writing. For the avoidance of doubt, adjustments pursuant to any Dilution Adjustment Provision shall not constitute amendment, modification, supplement, or waiver in respect of any term of the Indenture or the Convertible Notes for any purpose under this paragraph and under Section 9(i)(iii).

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

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1. This Confirmation evidences a complete and binding agreement between Dealer and Counterparty as to the terms of the Transaction to which this Confirmation relates. This Confirmation shall supplement, form a part of, and be subject to an agreement in the form of the 2002 ISDA Master Agreement (the “**Agreement**”) as if Dealer and Counterparty had executed an agreement in such form (but without any Schedule except for (i) the election of the laws of the State of New York as the governing law (without reference to choice of law doctrine) and (ii) the agreement of the parties hereto that, following the payment of the Premium and the delivery to Dealer of the opinions of counsel as required pursuant to Section 9(a), the condition precedent in Section 2(a)(iii) of the Agreement shall not apply to a payment or delivery owing by Dealer to Counterparty (it being understood that such condition precedent will continue to apply and this clause (ii) will have no effect with respect to a Potential Event of Default, Event of Default and/or Early Termination Date arising under, or with respect to, Section 5(a)(ii) or 5(a)(iv) of the Agreement)) on the Trade Date.

In the event of any inconsistency between provisions of the Agreement and this Confirmation, this Confirmation will prevail for the purpose of the Transaction to which this Confirmation relates. The parties hereby agree that no transaction other than the Transaction to which this Confirmation relates shall be governed by the Agreement. If there exists any ISDA Master Agreement between Dealer and Counterparty or any confirmation or other agreement between Dealer and Counterparty pursuant to which an ISDA Master Agreement is deemed to exist between Dealer and Counterparty, then notwithstanding anything to the contrary in such ISDA Master Agreement, such confirmation or agreement or any other agreement to which Dealer and Counterparty are parties, the Transaction shall not be considered a Transaction under, or otherwise governed by, such existing or deemed ISDA Master Agreement.

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

General Terms.

Trade Date:	February 26, 2019
Effective Date:	The Trade Date.
Option Style:	“Modified American”, as described under “Procedures for Exercise” below
Option Type:	Call
Buyer:	Counterparty
Seller:	Dealer
Shares:	The American Depositary Shares of Counterparty issued or deemed issued under the Deposit Agreement (as defined below) (Symbol: “NIO”), each representing as of the date hereof one Underlying Share.
Underlying Shares:	The Class A ordinary shares of Counterparty, nominal value USD \$0.00025 per Underlying Share.
Number of Options:	48,227. For the avoidance of doubt, the Number of Options shall be reduced by any Options exercised by Counterparty. In no event will the Number of Options be less than zero.
Underlying Shares Issuer:	Counterparty
Applicable Percentage:	20%
Option Entitlement:	A number equal to the product of the Applicable Percentage and 105.1359.



Strike Price:	USD 9.5115
Cap Price:	USD 14.9200
Premium:	USD 1,126,582.72
Premium Payment Date:	February 28, 2019
Exchange:	The New York Stock Exchange
Related Exchange(s):	All Exchanges
Excluded Provisions:	Section 14.04(h) and Section 14.03 of the Indenture.

Procedures for Exercise.

Expiration Time:	The Valuation Time
Expiration Date:	February 1, 2024, subject to earlier exercise.
Multiple Exercise:	Applicable, as described under “Automatic Exercise” below.
Automatic Exercise:	<p>Notwithstanding Section 3.4 of the Equity Definitions, all Options then outstanding as of 5:00 p.m. New York City time on the Expiration Date will be deemed to be automatically exercised; <i>provided</i> that, for the avoidance of doubt, no such automatic exercise pursuant to this paragraph will occur if the Relevant Price for each Valid Day during the applicable Settlement Averaging Period is less than or equal to the Strike Price.</p> <p>Notwithstanding the foregoing, in no event shall the number of Options that are exercised or deemed exercised hereunder exceed the Number of Options.</p>
Valuation Time:	At the close of trading of the regular trading session on the Exchange; <i>provided</i> that if the principal trading session is extended, the Calculation Agent shall determine the Valuation Time in its reasonable discretion.
Market Disruption Event:	<p>Section 6.3(a) of the Equity Definitions is hereby replaced in its entirety by the following:</p> <p>“‘Market Disruption Event’ means, in respect of a Share, (i) a failure by the primary United States national or regional securities exchange or market on which the Shares are 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 Valid Day for the Shares 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 Shares or in any options contracts or futures contracts relating to the Shares.”</p>

Settlement Terms.

Settlement Method Election:

Applicable; *provided* that (i) Section 7.1 of the Equity Definitions is hereby amended by deleting the word “Physical” in the sixth line thereof and replacing it with the words “Net Share”; and (ii) as of such notice delivery date, Counterparty shall be deemed to have made the following representations:

(A) Counterparty is not aware of any material non-public information with respect to Counterparty, the Underlying Shares Issuer (if other than Counterparty), the Underlying Shares or the Shares;

(B) Counterparty is electing Cash Settlement in good faith and not as part of a plan or scheme to evade compliance with the U.S. federal securities laws; Counterparty is not electing Cash Settlement to create actual or apparent trading activity in the Shares and/or Underlying Shares (or any security convertible into or exchangeable for the Shares and/or Underlying Shares) or to raise or depress or otherwise manipulate the price of the Shares and/or Underlying Shares (or any security convertible into or exchangeable for the Shares and/or Underlying Shares) or otherwise in violation of the Exchange Act; and Counterparty has not entered into or altered any hedging transaction relating to the Shares or the Underlying Shares corresponding to or offsetting the Transaction;

(C) such election and performance of its obligations under this Confirmation do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets; and

(D) any transaction that Dealer makes with respect to the Shares and/or the Underlying Shares during the period beginning at the time that Counterparty delivers such notice and ending at the close of business on the final day of the Settlement Averaging Period shall be made by Dealer at Dealer's sole discretion for Dealer's own account and Counterparty shall not have, and shall not attempt to exercise, any influence over how, when, whether or at what price Dealer effects such transactions, including, without limitation, the prices paid or received by Dealer per Share or Underlying Share pursuant to such transactions, or whether such transactions are made on any securities exchange or privately.

Default Settlement Method:

Net Share Settlement

Settlement Method Election Date:	The third Scheduled Trading Day immediately preceding the first Scheduled Valid Day of the Settlement Averaging Period.
Net Share Settlement:	Dealer will deliver to Counterparty, on the relevant Settlement Date, a number of Shares equal to the Net Shares in respect of any Option exercised or deemed exercised hereunder. In no event will the Net Shares be less than zero.
Net Shares:	In respect of any Option exercised or deemed exercised, a number of Shares equal to the sum of the quotients, for each Valid Day during the Settlement Averaging Period for such Option, of (i) (A) the Daily Option Value for such Valid Day, <i>divided by</i> (B) the Relevant Price on such Valid Day, <i>divided by</i> (ii) the number of Valid Days in the Settlement Averaging Period.  Dealer will pay cash in lieu of delivering any fractional Shares to be delivered with respect to any Net Shares valued at the Relevant Price for the last Valid Day of the Settlement Averaging Period.
Cash Settlement:	If Cash Settlement is applicable to any Option exercised or deemed exercised hereunder, in lieu of Section 8.1 of the Equity Definitions, Dealer will pay to Counterparty, on the relevant Settlement Date for each such Option, an amount of cash (the “ <b>Cash Settlement Amount</b> ”) equal to the sum, for each Valid Day during the Settlement Averaging Period for such Option, of (i) the Daily Option Value for such Valid Day, <i>divided by</i> (ii) the number of Valid Days in the Settlement Averaging Period.
Daily Option Value:	For any Valid Day, an amount equal to (i) the Option Entitlement on such Valid Day, <i>multiplied by</i> (ii) (A) the lesser of the Relevant Price on such Valid Day and the Cap Price, <i>less</i> (B) the Strike Price on such Valid Day; <i>provided</i> that if the calculation contained in clause (ii) above results in a negative number, the Daily Option Value for such Valid Day shall be deemed to be zero. In no event will the Daily Option Value be less than zero.
Valid Day:	A day on which (i) there is no Market Disruption Event and (ii) trading in the Shares generally occurs on the Exchange or, if the Shares are not then listed on the Exchange, on the principal other United States national or regional securities exchange on which the Shares are then listed or, if the Shares are not then listed on a United States national or regional securities exchange, on the principal other market on which the Shares are then listed or admitted for trading. If the Shares are not so listed or admitted for trading, “Valid Day” means a Business Day.
Scheduled Valid Day:	A day that is scheduled to be a Valid Day on the principal United States national or regional securities exchange or market on which the Shares are listed or admitted for trading. If the Shares are not so listed or admitted for trading, “Scheduled Valid Day” means a Business Day.

Business Day:	Any day other than a Saturday, a Sunday or a day on which the Federal Reserve Bank of New York is authorized or required by law or executive order to close or be closed.
Relevant Price:	On any Valid Day, the per Share volume-weighted average price as displayed under the heading “Bloomberg VWAP” on Bloomberg page “NIO <equity> AQR” (or its equivalent successor if such page is not available) in respect of the period from the scheduled opening time of the Exchange to the Scheduled Closing Time of the Exchange on such Valid Day (or if such volume-weighted average price is unavailable at such time, the market value of one Share on such Valid Day, as determined by the Calculation Agent using, if practicable, a volume-weighted average method). The Relevant Price will be determined without regard to after-hours trading or any other trading outside of the regular trading session trading hours.
Settlement Averaging Period:	For any Option being exercised hereunder, the 40 consecutive Valid Days commencing on, and including, the 41st Scheduled Valid Day immediately prior to the Expiration Date.
Settlement Date:	For any Option, the second Business Day immediately following the final Valid Day of the Settlement Averaging Period for such Option.
Settlement Currency:	USD
Other Applicable Provisions:	The provisions of Sections 9.1(c), 9.8, 9.9 and 9.11 of the Equity Definitions will be applicable, except that all references in such provisions to “Physically-settled” shall be read as references to “Net Share Settled”. “Net Share Settled” in relation to any Option means that Net Share Settlement is applicable to that Option.
Representation and Agreement:	Notwithstanding anything to the contrary in the Equity Definitions (including, but not limited to, Section 9.11 thereof), the parties acknowledge that (i) any Shares delivered to Counterparty shall be, upon delivery, subject to restrictions and limitations arising from Counterparty’s status as issuer of the Underlying Shares under applicable securities laws, (ii) Dealer may deliver any Shares required to be delivered hereunder in certificated form or restricted book-entry form, in each case, in lieu of delivery through the Clearance System and (iii) any Shares delivered to Counterparty may be “restricted securities” (as defined in Rule 144 under the Securities Act of 1933, as amended (the “ <b>Securities Act</b> ”)).

3. **Additional Terms applicable to the Transaction.**

Adjustments applicable to the Transaction:

Potential Adjustment Events:

Notwithstanding Section 11.2(e) of the Equity Definitions (which Section shall not apply for the purposes of the Transaction, except as provided in Section 9(y) below), a “Potential Adjustment Event” means an occurrence of any event or condition, as set forth in any Dilution Adjustment Provision, that requires an adjustment to be made under the Indenture to the “Conversion Rate” or the composition of a “unit of Reference Property” or to any “Last Reported Sale Price” (each as defined in the Indenture). For the avoidance of doubt, Dealer shall not have any delivery or payment obligation hereunder, and no adjustment shall be made to the terms of the Transaction, on account of (x) any distribution of cash, property or securities by Counterparty to holders of the Convertible Notes (upon conversion or otherwise) or (y) any other transaction in which holders of the Convertible Notes participate, in each case, in lieu of an adjustment under the Indenture of the type referred to in the immediately preceding sentence (including, without limitation, pursuant to the fourth sentence of the first paragraph of Section 14.04(c) of the Indenture or the fourth sentence of Section 14.04(d) of the Indenture).

Method of Adjustment:

Calculation Agent Adjustment, which means that, notwithstanding Section 11.2(c) of the Equity Definitions, (which Section shall not apply for the purposes of the Transaction, except as provided in Section 9(y) below) upon any Potential Adjustment Event, the Calculation Agent shall make an adjustment to any one or more of the Strike Price, Number of Options, Option Entitlement and any other variable relevant to the exercise, settlement or payment for the Transaction corresponding to the adjustment required to be made pursuant to the Indenture.

Notwithstanding the foregoing and “Consequences of Merger Events / Tender Offers” below:

- (i) if the Calculation Agent in good faith disagrees with any adjustment to the Convertible Notes that involves an exercise of discretion by Counterparty or its board of directors (including, without limitation, pursuant to Section 14.05 of the Indenture, Section 14.07 of the Indenture or any supplemental indenture entered into thereunder or in connection with any proportional adjustment or the determination of the fair value of any securities, property, rights or other assets), then in each such case, the Calculation Agent will determine in good faith and in a commercially reasonable manner, the adjustment to be made to any one or more of the Strike Price, Number of Options, Option Entitlement and any other variable relevant to the exercise, settlement or payment for the Transaction in a commercially reasonable manner; *provided* that, notwithstanding the foregoing, if any Potential Adjustment Event occurs during the Settlement Averaging Period but no adjustment was made to any Convertible Note under the Indenture because the relevant Holder (as such term is defined in the Indenture) was deemed to be a record owner of the underlying Shares on the related Conversion Date (as such term is defined in the Indenture), then the Calculation Agent shall make a commercially reasonable adjustment, as determined by it, to the terms hereof in order to account for such Potential Adjustment Event;

- (ii) in connection with any Potential Adjustment Event as a result of an event or condition set forth in Section 14.04(b) of the Indenture or Section 14.04(c) of the Indenture where, in either case, the period for determining “Y” (as such term is used in Section 14.04(b) of the Indenture) or “SP<sub>0</sub>” (as such term is used in Section 14.04(c) of the Indenture), as the case may be, begins before Counterparty has publicly announced the event or condition giving rise to such Potential Adjustment Event, then the Calculation Agent shall have the right to adjust any variable relevant to the exercise, settlement or payment for the Transaction as appropriate to reflect the costs (to account solely for hedging mismatches and market losses) and expenses incurred by Dealer in connection with its hedging activities, with such adjustments made assuming that Dealer maintains commercially reasonable hedge positions, as a result of such event or condition not having been publicly announced prior to the beginning of such period; and
- (iii) if any Potential Adjustment Event is declared and (a) the event or condition giving rise to such Potential Adjustment Event is subsequently amended, modified, cancelled or abandoned, (b) the “Conversion Rate” (as defined in the Indenture) is otherwise not adjusted at the time or in the manner contemplated by the relevant Dilution Adjustment Provision based on such declaration or (c) the “Conversion Rate” (as defined in the Indenture) is adjusted as a result of such Potential Adjustment Event and subsequently re-adjusted (each of clauses (a), (b) and (c), a “**Potential Adjustment Event Change**”) then, in each case, the Calculation Agent shall have the right to adjust any variable relevant to the exercise, settlement or payment for the Transaction as appropriate to reflect the costs (to account solely for hedging mismatches and market losses) and expenses incurred by Dealer in connection with its hedging activities, with such adjustments made assuming that Dealer maintains commercially reasonable hedge positions, as a result of such Potential Adjustment Event Change.

Dilution Adjustment Provisions:

Sections 14.04(a), (b), (c), (d) and (e) and Section 14.05 of the Indenture.

Extraordinary Events applicable to the Transaction:

Merger Events:

Applicable; *provided* that notwithstanding Section 12.1(b) of the Equity Definitions, a “Merger Event” means the occurrence of any event or condition set forth in the definition of “Merger Event” in Section 14.07 of the Indenture.

Tender Offers:

Applicable; *provided* that notwithstanding Section 12.1(d) of the Equity Definitions, a “Tender Offer” means the occurrence of any event or condition set forth in Section 14.04(e) of the Indenture.

Consequences of Merger Events/  
Tender Offers:

Notwithstanding Section 12.2 and Section 12.3 of the Equity Definitions, upon the occurrence of a Merger Event or a Tender Offer, the Calculation Agent shall make a corresponding adjustment in respect of any adjustment under the Indenture to any one or more of the nature of the Shares (in the case of a Merger Event), Strike Price, Number of Options, Option Entitlement and any other variable relevant to the exercise, settlement or payment for the Transaction to the extent that an analogous adjustment is required to be made pursuant to the Indenture in respect of such Merger Event or Tender Offer, subject to the second paragraph under “Method of Adjustment”; *provided, however*, that such adjustment shall be made without regard to any adjustment to the Conversion Rate pursuant to any Excluded Provision; *provided further* that if, with respect to a Merger Event or a Tender Offer, (i) the consideration for the Shares or Underlying Shares, as applicable, includes (or, at the option of a holder of Shares, or Underlying Shares, as applicable, may include) shares of an entity or person that is not (1) a corporation or an entity that is treated as a corporation for U.S. federal income tax purposes or (2) organized under the laws of the Cayman Islands or (ii) the Counterparty to the Transaction following such Merger Event or Tender Offer will not be a corporation or an entity that is treated as a corporation for U.S. federal income tax purposes organized under the laws of the Cayman Islands, and/or will not be the Underlying Shares Issuer then, in any case, Cancellation and Payment (Calculation Agent Determination) may apply at Dealer’s commercially reasonable election; *provided further* that, for the avoidance of doubt, adjustments shall be made pursuant to the provisions set forth above regardless of whether any Merger Event or Tender Offer gives rise to an Early Conversion (as defined below).

Consequences of Announcement Events:

If an Announcement Event occurs, the Calculation Agent shall determine the cumulative economic effect of such Announcement Event (it being understood that the Calculation Agent may take into account any changes to volatility in connection with such Announcement Event within a commercially reasonable (as determined by the Calculation Agent) period of time prior to or after such Announcement Event) on the Transaction on the earliest to occur of (i) the date on which the transaction described in such Announcement Event (as amended) is consummated or otherwise results in a Merger Date or Tender Offer Date, as applicable, (ii) the Valuation Date, or (iii) any earlier date of termination or cancellation with respect to any Option, and if the Calculation Agent determines that such economic effect is material and that making the relevant adjustment would be commercially reasonable, the Calculation Agent shall adjust the Cap Price to reflect such economic effect (but, for the avoidance of doubt, taking into account, and without duplication of, any other adjustment made pursuant to this “Consequences of Announcement Events” provision or pursuant to the provisions opposite the captions “Method of Adjustment”, “Consequences of Merger Events” or “Consequences of Tender Offers” above in respect of the transaction or intention giving rise to such Announcement Event).

Announcement Event:

(i) The public announcement by (x) any entity of any transaction or event that the Calculation Agent determines is reasonably likely to be completed and that, if completed, would constitute a Merger Event or Tender Offer (it being understood that Calculation Agent may make such determination by reference to the impact of such announcement on the market for the Shares and/or Underlying Shares or options relating to the Shares and/or Underlying Shares), (y) Underlying Shares Issuer or any subsidiary thereof of any potential acquisition or disposal by the Underlying Shares Issuer and/or its subsidiaries where the aggregate consideration payable or receivable exceeds 25% of the market capitalization of the Underlying Shares Issuer as of the date of such announcement (a “**Transformative Transaction**”) or (z) Underlying Shares Issuer, any subsidiary of the Underlying Shares Issuer or any Valid Third Party Entity of the intention to enter into a Merger Event or Tender Offer or a Transformative Transaction (in the case of a Valid Third-Party Entity, that the Calculation Agent determines is a bona fide intention, it being understood that the Calculation Agent may make such determination by reference to the impact of such announcement on the market for the Shares and/or Underlying Shares or options relating to the Shares and/or Underlying Shares), (ii) the public announcement by the Underlying Shares Issuer of an intention to solicit or enter into, or to explore strategic alternatives or other similar undertaking that may include, a Merger Event or Tender Offer or a Transformative Transaction or (iii) any subsequent public announcement by any entity of a change to a transaction or intention that is the subject of an announcement of the type described in clause (i) or (ii) of this sentence (including, without limitation, a new announcement, whether or not by the same party, relating to such a transaction or intention or the announcement of a withdrawal from, or the abandonment or discontinuation of, such a transaction or intention), as determined by the Calculation Agent. For the avoidance of doubt, the occurrence of an Announcement Event with respect to any transaction or intention shall not preclude the occurrence of a later Announcement Event with respect to such transaction or intention. For purposes of this definition of “Announcement Event,” (A) “Merger Event” shall mean such term as defined under Section 12.1(b) of the Equity Definitions (but, for the avoidance of doubt, the remainder of the definition of “Merger Event” in Section 12.1(b) of the Equity Definitions following the definition of “Reverse Merger” therein shall be disregarded) and (B) “Tender Offer” shall mean such term as defined under Section 12.1(d) of the Equity Definitions; *provided* that Section 12.1(d) of the Equity Definitions is hereby amended by replacing “10%” with “20%” in the third line thereof.



Valid Third Party Entity:

In respect of any transaction or intention, any third party (i) whose announcement is reasonably determined by the Calculation Agent to have had a material economic effect on the Shares and/or Underlying Shares and/or options on the Shares and/or Underlying Shares and (ii) that is the entity, or an affiliate of the entity, that is, or would be, a party to the relevant transaction or event.

Nationalization, Insolvency or Delisting:

Cancellation and Payment (Calculation Agent Determination); *provided* that, in addition to the provisions of Section 12.6(a)(iii) of the Equity Definitions, it will also constitute a Delisting if the 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 of the New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or their respective successors), such exchange or quotation system shall thereafter be deemed to be the Exchange.

Section 12.1 of the Equity Definitions is hereby amended by deleting subsection (v) thereof in its entirety and replacing it with “(v) in the case of an Insolvency, the date of (A) the institution of a proceeding or presentation of a petition or the passing of a resolution (or the convening of a meeting to pass a resolution or the proposing of a written resolution) (in each case the occurrence of which shall be deemed its announcement) that leads to an Insolvency within the meaning of subsection (A) of the definition thereof, (B) the first public announcement of the institution of a proceeding or presentation of a petition or passing of a resolution (or other analogous procedure in any jurisdiction) that leads to the Insolvency or (C) the occurrence of any of the events specified in Section 5(a)(vii)(1) through (9) of the ISDA Master Agreement with respect to that Issuer”.

Section 12.6(a)(ii) of the Equity Definitions is hereby amended by (1) inserting “(A)” after “means” in the first line thereof and replacing “(A)” and “(B)” in the third and fourth lines thereof with “(1)” and “(2)” respectively, (2) deleting from the fourth line thereof the word “or” after the word “official” and inserting a comma therefor, (3) inserting at the end of renumbered subsection (2) thereof the following wording, “or, under the laws of the Cayman Islands, any other jurisdiction or otherwise, any other impediment to or restriction on the transfer of any Share arises or becomes applicable including, without limitation, where (x) any transfer of a Share or alteration of the status of the members of the Issuer would be void unless a court of the Cayman Islands or any other jurisdiction orders otherwise or (y) any transfer of a Share not being a transfer with the sanction of a liquidator, and any alteration in the status of the Issuer’s members, would be void” and (4) deleting the semi-colon at the end of renumbered subsection (2) thereof and inserting the following words therefor “or (B) at Dealer’s option, the occurrence of any of the events specified in Section 5(a)(vii) (1) through (9) of the ISDA Master Agreement with respect to that Issuer.”

Additional Disruption Events:

Change in Law:

Applicable; *provided* that Section 12.9(a)(ii) of the Equity Definitions is hereby amended by (i) replacing the phrase “the interpretation” in the third line thereof with the phrase “, or public announcement of, the formal or informal interpretation”, (ii) replacing the word “Shares” where it appears in clause (X) thereof with the words “Hedge Position,” (iii) replacing the parenthetical beginning after the word “regulation” in the second line thereof with the words “(including, for the avoidance of doubt and without limitation, (x) any tax law or (y) adoption, effectiveness or promulgation of new regulations authorized or mandated by existing statute)” and (iv) adding the words “*provided* that, in the case of clause (Y) hereof where such determination is based on Dealer’s policies and procedures, such policies and procedures have been adopted by Dealer in good faith and are generally applicable in similar situations and applied in a non-discriminatory manner;” after the semi-colon in the last line thereof.

Failure to Deliver:	Applicable
Hedging Disruption:	Applicable; <i>provided</i> that:  Section 12.9(b)(iii) of the Equity Definitions is hereby amended by inserting in the third line thereof, after the words “to terminate the Transaction”, the words “or a portion of the Transaction affected by such Hedging Disruption”.
Increased Cost of Hedging:	Not Applicable
Hedging Party:	For all applicable Additional Disruption Events, Dealer.
Determining Party:	For all applicable Extraordinary Events, Dealer; <i>provided</i> that when making any determination or calculation as “Determining Party,” Dealer shall make such determinations or calculations in good faith and in a commercially reasonable manner.  Following any determination or calculation by Determining Party hereunder, the Determining Party will, upon written request from Counterparty, promptly (but in any event within five Scheduled Trading Days) provide to Counterparty a report (in a commonly used file format for the storage and manipulation of financial data) displaying in reasonable detail the basis for such determination or calculation (including any assumptions used in making such determination or calculation), it being understood that in no event will the Determining Party be obligated to share with Counterparty any proprietary or confidential data or information or any proprietary or confidential models used by it in making such determination or calculation or any information that is subject to an obligation not to disclose such information.
Non-Reliance:	Applicable
Agreements and Acknowledgments Regarding Hedging Activities:	Applicable
Additional Acknowledgments:	Applicable

4. **Calculation Agent.**

Dealer; *provided* that, following the occurrence and during the continuance of an Event of Default under Section 5(a)(vii) of the Agreement with respect to which Dealer is the Defaulting Party, Counterparty shall have the right to designate a nationally recognized independent equity derivatives 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 adjustment, determination or calculation by the Calculation Agent hereunder, the Calculation Agent will, upon written request from Counterparty, promptly (but in any event within five Scheduled Trading Days) provide to Counterparty by email a report (in a commonly used file format for the storage and manipulation of financial data) displaying in reasonable detail the basis for such adjustment, determination or calculation (including any assumptions used in making such adjustment, determination or calculation), it being understood that in no event will the Calculation Agent be obligated to share with Counterparty any proprietary or confidential data or information or any proprietary or confidential models used by it in making such adjustment, determination or calculation or any information that is subject to an obligation not to disclose such information.

All calculations and determinations by the Calculation Agent shall be made in good faith and in a commercially reasonable manner.

5. **Account Details.**

- (a) Account for payments to Counterparty:

To be provided.

Account for delivery of Shares to Counterparty:

To be provided.

- (b) Account for payments to Dealer:

To be provided.

Account for delivery of Shares from Dealer:

To be provided.

6. **Offices.**

- (a) The Office of Counterparty for the Transaction is: Inapplicable, Counterparty is not a Multibranch Party.
- (b) The Office of Dealer for the Transaction is: Morgan Stanley & Co. LLC, 1221 Avenue of the Americas, New York, NY 10020

7. **Notices.**

(a) Address for notices or communications to Counterparty:

NIO Inc.  
Building 20, No. 56 AnTuo Road, Jiading District  
Shanghai, 201804  
People's Republic of China  
Attention: Louis T. Hsieh, Chief Financial Officer  
Telephone No.: +86 (21) 6908 3306  
Facsimile No.: +86 (21) 3913 0192

with a copy to:

Nick Wang  
VP of Finance  
Telephone No.: +86 (21) 6908-2002  
Email: Nick.Wang@nio.com

with a copy to:

Fang Liu  
General Counsel  
Telephone No.: +86 (21) 6908-2277  
Email: Fang.Liu@nio.com

with a copy to:

Sabrina Shi  
Senior Corporate Counsel  
Telephone No.: +86 (21) 6908-3391  
Email: Danting.Shi@nio.com

(b) Address for notices or communications to Dealer:

Morgan Stanley & Co. LLC  
1585 Broadway, 5<sup>th</sup> Floor  
New York, NY 10036  
Attn: Global Capital Markets  
Telephone: +1 212 761-9363  
Facsimile: +1 212 404-9481  
Email: nycd-notices@morganstanley.com

With a copy to: Morgan Stanley & Co. LLC  
1221 Avenue of the Americas, 34<sup>th</sup> Floor  
New York, NY 10020  
Attn: Global Capital Markets  
Telephone: +1 212 761-9363  
Facsimile: +1 212 404-9481  
Email: nycd-notices@morganstanley.com

With a copy to: Steven.Seltzer1@morganstanley.com; David.Oakes@morganstanley.com; and Saurabh.Dinakar@morganstanley.com

**8. Representations and Warranties of Counterparty.**

Each of the representations and warranties of Counterparty set forth in Section 2 of the Purchase Agreement (the “**Purchase Agreement**”) dated as of January 30, 2019, between Counterparty and Credit Suisse Securities (USA) LLC, J.P. Morgan Securities LLC, Morgan Stanley & Co. LLC, and Goldman Sachs (Asia) LLC, as representatives of the Initial Purchasers party thereto (the “**Initial Purchasers**”), are true and correct and are hereby deemed to be repeated to Dealer as if set forth herein. Counterparty hereby further represents and warrants to Dealer on the date hereof and on and as of the Premium Payment Date, that:

- (a) Counterparty (i) is duly incorporated and validly existing as an exempted company with limited liability under the laws of the Cayman Islands and is in good standing under such laws, and (ii) has all necessary corporate power and authority to execute, deliver and perform its obligations and exercise its rights in respect of the Transaction; such execution, delivery, performance and exercise have been duly authorized by all necessary corporate action on Counterparty’s part; and this Confirmation has been duly and validly executed and delivered by Counterparty and constitutes its valid and binding obligation, enforceable against Counterparty in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar laws affecting creditors’ rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity) and except that rights to indemnification and contribution hereunder may be limited by federal or state securities laws or public policy relating thereto.
- (b) Neither the execution and delivery of this Confirmation nor the incurrence or performance of obligations nor the exercise of rights of Counterparty hereunder will conflict with or result in a breach of the memorandum and articles of association or by-laws (or any equivalent documents) of Counterparty, or any applicable law or regulation, or any order, writ, injunction or decree of any court or governmental authority or agency, or any agreement or instrument to which Counterparty or any of its subsidiaries is a party or by which Counterparty or any of its subsidiaries is bound or to which Counterparty or any of its subsidiaries is subject, or constitute a default under, or result in the creation of any lien under, any such agreement or instrument.
- (c) No consent, approval, authorization, or order of, or filing with, any governmental agency or body or any court is required in connection with the execution, delivery or performance by Counterparty of this Confirmation, except such as have been obtained or made and such as may be required under the Securities Act or state securities laws.
- (d) Counterparty is not and, after consummation of the transactions contemplated hereby, will not be required to register as an “investment company” as such term is defined in the Investment Company Act of 1940, as amended.
- (e) Counterparty is an “eligible contract participant” (as such term is defined in Section 1a(18) of the Commodity Exchange Act, as amended, other than a person that is an eligible contract participant under Section 1a(18)(C) of the Commodity Exchange Act).
- (f) Counterparty is not, on the date hereof, aware of any material non-public information with respect to Counterparty, the Underlying Shares Issuer (if other than Counterparty), the Underlying Shares or the Shares.
- (g) To the knowledge of Counterparty, no state or local (including any non-U.S. jurisdiction’s) law, rule, regulation or regulatory order applicable to the Shares and/or Underlying 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 and/or Underlying Shares (except for filings of Form 13F, Schedule 13D or Schedule 13G under the Exchange Act); *provided* that Counterparty makes no representation or warranty regarding any such requirement that is applicable generally to the ownership of equity securities by Dealer or any of its affiliates solely as a result of it or any of such affiliates being a financial institution or broker-dealer.

- (h) Counterparty (A) is capable of evaluating investment risks independently, both in general and with regard to all transactions and investment strategies involving a security or securities; (B) will exercise independent judgment in evaluating the recommendations of any broker-dealer or its associated persons, unless it has otherwise notified the broker-dealer in writing; (C) has total assets of at least USD 50 million; and (D) is acting for its own account, and it has made its own independent decisions to enter into the Transaction and as to whether the Transaction is appropriate or proper for it (including as to any legal, regulatory, tax, accounting or economic consequences arising from the Transaction) based upon its own judgment and upon advice from such advisers as it has deemed necessary (including legal, financial and accounting advisors).
- (i) Counterparty as of and immediately after the Trade Date and the Premium Payment Date (x) is not, and shall not be after giving effect to the transactions contemplated hereby, “insolvent” (as such term is defined in Section 101(32) of the Bankruptcy Code, (y) would be able to purchase 100,536,150 Shares and the Underlying Shares represented by such number of Shares in compliance with the laws of the jurisdiction of Counterparty’s incorporation or organization, and (z), for the purposes of Cayman Islands law, is able to pay its debts.
- (j) Counterparty’s board of directors (the “**Board**”) has concluded that (A) the Transaction is suitable for Counterparty, for its commercial benefit and in its best interests, in light of its own investment objectives, financial condition and expertise and (B) the Transaction has been duly approved and authorized by the Board after due consideration by the Board of the foregoing matters and those referred to in subparagraph (h)(D) above.

**9. Other Provisions.**

- (a) *Deliverables.* Counterparty shall deliver to Dealer (A) an opinion of U.S. counsel and (B) an opinion of Cayman counsel, each dated as of the Premium Payment Date, with respect to, among other things, the matters set forth in Sections 8(a) through (c) of this Confirmation, it being understood that such opinions of counsel shall be limited to the federal laws of the United States and the laws of the State of New York (in the case of clause (A) above) and the laws Cayman Islands (in the case of clause (B) above) and may contain customary limitations, exceptions and qualifications for transactions of the same type as the Transaction. Delivery of such opinions to Dealer shall be a condition precedent for the purpose of Section 2(a)(iii) of the Agreement with respect to each obligation of Dealer under Section 2(a)(i) of the Agreement; (C) a resolution of the Board authorizing the Transaction; and (D) on or before the Premium Payment Date, a solvency certificate with respect to Counterparty signed by a member of the Board, the chief executive officer or the chief financial officer of the Counterparty certifying the solvency of Counterparty as of and immediately after the Premium Payment Date (after giving effect to Counterparty’s payment of amounts required to be paid by Counterparty on such date under the Transaction and the other transactions described under “Use of Proceeds” in the Offering Memorandum related to the offering of the Convertible Notes), which solvency certificate is reasonably satisfactory to Dealer.

- (b) Repurchase Notices. Counterparty shall, on or prior to the date that is one Scheduled Trading Day following any date on which Counterparty effects any repurchase of Shares and/or Underlying Shares, promptly give Dealer a written notice of such repurchase (a “**Repurchase Notice**”) on such day if following such repurchase, the number of outstanding Underlying Shares as determined on such day is (i) less than 727.2 million (in the case of the first such notice) or (ii) thereafter more than 37.8 million less than the number of Underlying Shares included in the immediately preceding Repurchase Notice; *provided* that Counterparty may provide Dealer advance notice on or prior to any such day including the maximum number of Shares and/or Underlying Shares that may be repurchased under a repurchase program entered into in reliance on Rule 10b5-1(c) and the approximate periods during which such repurchases may occur, to the extent it expects that repurchases effected on such day may result in an obligation to deliver a Repurchase Notice (and in such case, any such advance notice shall be deemed a Repurchase Notice to the maximum extent of repurchases set forth in such advance notice as if Counterparty had executed such repurchases). Counterparty agrees that, if Counterparty ceases to qualify as a “foreign private issuer” as defined in Rule 3b-4 under the Exchange Act or the Shares or Underlying Shares, as applicable, otherwise become subject to the requirements of Section 16 of the Exchange Act, Counterparty will indemnify and hold harmless Dealer and its affiliates and their respective officers, directors, employees, affiliates, advisors, agents and controlling persons (each, an “**Indemnified Person**”) from and against any and all losses (including losses relating to Dealer’s hedging activities as a consequence of becoming, or of the risk of becoming, a Section 16 “insider”, including without limitation, any forbearance from hedging activities or cessation of hedging activities and any losses in connection therewith with respect to the Transaction), claims, damages, judgments, liabilities and reasonable and documented out-of-pocket expenses (including reasonable attorney’s fees of one outside counsel in each relevant jurisdiction), joint or several, which an Indemnified Person may become subject to, in each case, as a result of Counterparty’s failure to provide Dealer with a Repurchase Notice on the day and in the manner specified in this paragraph, and to reimburse, within 30 days, upon written request, each of such Indemnified Persons for any reasonable legal or other out-of-pocket expenses (to the extent supported by invoices or other documentation setting forth in reasonable detail such expenses) incurred in connection with investigating, preparing for, providing testimony or other evidence in connection with or defending any of the foregoing. If any suit, action, proceeding (including any governmental or regulatory investigation), claim or demand shall be brought or asserted against the Indemnified Person as a result of Counterparty’s failure to provide Dealer with a Repurchase Notice in accordance with this paragraph, such Indemnified Person shall promptly notify Counterparty in writing, and Counterparty, upon request of the Indemnified Person, shall retain counsel reasonably satisfactory to the Indemnified Person to represent the Indemnified Person and any others Counterparty may designate in such proceeding and shall pay the reasonable fees and expenses of such counsel related to such proceeding. Counterparty shall not be liable to the extent that the Indemnified Person fails to notify Counterparty within a commercially reasonable period of time after any action is commenced against it in respect of which indemnity may be sought hereunder. In addition, Counterparty shall not have liability for any settlement of any such proceeding contemplated by this paragraph that is effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, Counterparty agrees to indemnify any Indemnified Person from and against any loss or liability by reason of such settlement or judgment. Counterparty shall not, without the prior written consent of the Indemnified Person, effect any settlement of any pending or threatened proceeding contemplated by this paragraph in respect of which any Indemnified Person is or could have been a party and indemnity could have been sought hereunder by such Indemnified Person, unless such settlement includes an unconditional release of such Indemnified Person from all liability on claims that are the subject matter of such proceeding on terms reasonably satisfactory to such Indemnified Person. If the indemnification provided for in this paragraph is unavailable to an Indemnified Person or insufficient in respect of any losses, claims, damages or liabilities referred to therein, then Counterparty hereunder, in lieu of indemnifying such Indemnified Person thereunder, shall contribute to the amount paid or payable by such Indemnified Person as a result of such losses, claims, damages or liabilities. The remedies provided for in this paragraph (b) are not exclusive and shall not limit any rights or remedies which may otherwise be available to any Indemnified Person at law or in equity. The indemnity and contribution agreements contained in this paragraph shall remain operative and in full force and effect regardless of the termination of the Transaction.
- (c) Regulation M. Counterparty is not on the Trade Date engaged in a distribution, as such term is used in Regulation M under the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), of any securities of Counterparty, other than a distribution meeting the requirements of the exception set forth in Rules 101(b)(10) and 102(b)(7) of Regulation M. Counterparty shall not, until the second Scheduled Trading Day immediately following the Effective Date, engage in any such distribution.



- (d) No Manipulation. Counterparty is not entering into the Transaction to create actual or apparent trading activity in the Shares and/or Underlying Shares (or any security convertible into or exchangeable for the Shares and/or Underlying Shares) or to raise or depress or otherwise manipulate the price of the Shares and/or Underlying Shares (or any security convertible into or exchangeable for the Shares and/or Underlying Shares) or otherwise in violation of the Exchange Act.
- (e) Transfer or Assignment.
- (i) Counterparty shall have the right to transfer or assign all or any of its rights and obligations hereunder with respect to all, or any, of the Options hereunder (such Options, the “**Transfer Options**”) with the prior written consent of Dealer, such consent not to be unreasonably withheld; *provided* that withholding of such consent by Dealer shall not be considered unreasonable if such transfer or assignment does not meet any of the following conditions:
- (A) With respect to any Transfer Options, Counterparty shall not be released from its notice and indemnification obligations pursuant to Section 9(b) of this Confirmation;
- (B) Such transfer or assignment shall be effected on terms, including any reasonable undertakings by such third party (including, but not limited to, an undertaking with respect to compliance with applicable securities laws in a manner that, in the reasonable judgment of Dealer, will not expose Dealer to material risks under applicable securities laws) and execution of any documentation and delivery of legal opinions with respect to securities laws and other matters by such third party and Counterparty, as are reasonably requested and reasonably satisfactory to Dealer;
- (C) Under the applicable law effective on the date of such transfer or assignment, (1) Dealer will not, as a result of such transfer or assignment, be required to pay the transferee or assignee on any payment date or delivery date an amount or a number of Shares, as applicable, under Section 2(d)(i)(4) of the Agreement greater than the amount or the number of Shares, as applicable, that Dealer would have been required to pay to Counterparty in the absence of such transfer or assignment and (2) Dealer will not, as a result of such transfer or assignment, receive from the transferee or assignee on any payment date an amount under Section 2(d)(i)(4) of the Agreement that is less than the amount that Dealer would have received from Counterparty in the absence of such transfer or assignment;
- (D) No Event of Default, Potential Event of Default or Termination Event will occur as a result of such transfer and assignment;
- (E) Counterparty shall cause the transferee to make such tax representations and to provide such tax documentation as may be reasonably requested by Dealer to permit Dealer to determine that results described in clauses (C) and (D) will not occur upon or after such transfer and assignment, including but not limited to providing tax documentation specified in Section 9(bb) of this Confirmation and making the tax representations specified in Section 9(aa) of this Confirmation on or prior to such transfer and at the other times specified in such Sections; and

- (F) Counterparty shall be responsible for all reasonable and documented costs and expenses, including reasonable counsel fees, incurred by Dealer in connection with such transfer or assignment.
- (ii) Dealer may, without Counterparty's consent, transfer or assign all or any part of its rights or obligations under the Transaction to any affiliate of Dealer (1) that has a long-term issuer rating that is equal to or better than Dealer's credit rating at the time of such transfer or assignment, or (2) whose obligations hereunder will be guaranteed, pursuant to the terms of a customary guarantee in a form used by Dealer generally for similar transactions, by Dealer or Morgan Stanley; *provided* that, in the case of any such transfer or assignment, under the applicable law effective on the date of such transfer or assignment, (I) Counterparty will not, as a result of such transfer or assignment, be required to pay the transferee or assignee on any payment date an amount under Section 2(d)(i)(4) of the Agreement greater than the amount that Counterparty would have been required to pay to Dealer in the absence of such transfer or assignment; (II) Counterparty will not, as a result of such transfer or assignment, receive from the transferee or assignee on any payment or delivery date an amount or a number of Shares, as applicable, under Section 2(d)(i)(4) of the Agreement that is less than the amount or the number of Shares that Counterparty would have received from Dealer in the absence of such transfer or assignment; (III) Dealer shall cause the transferee or assignee to make such tax representations and to provide such tax documentation as may be reasonably requested by Counterparty to permit Counterparty to determine that events described in clauses (I) and (II) of this proviso will not occur upon or after such transfer or assignment; and (IV) no Event of Default, Potential Event of Default or Termination Event will occur as a result of such transfer and assignment. If at any time at which (A) the Section 13 Percentage exceeds 8.5%, (B) the Option Equity Percentage exceeds 14.5%, or (C) the Share Amount exceeds the Applicable Share Limit (if any applies) (any such condition described in clauses (A), (B) or (C), an "**Excess Ownership Position**"), Dealer is unable after using its commercially reasonable efforts to effect a transfer or assignment of Options to a third party on pricing terms reasonably acceptable to Dealer and within a time period reasonably acceptable to Dealer such that no Excess Ownership Position exists, then Dealer may designate any Exchange Business Day as an Early Termination Date with respect to a portion of the Transaction (the "**Terminated Portion**"), to the extent necessary so that following such partial termination no Excess Ownership Position exists. In the event that Dealer so designates an Early Termination Date with respect to a portion of the Transaction, a payment shall be made pursuant to Section 6 of the Agreement as if (1) an Early Termination Date had been designated in respect of a Transaction having terms identical to the Transaction and a Number of Options equal to the number of Options underlying the Terminated Portion, (2) Counterparty were the sole Affected Party with respect to such partial termination and (3) the Terminated Portion were the sole Affected Transaction (and, for the avoidance of doubt, the provisions of Section 9(m) shall apply to any amount that is payable by Dealer to Counterparty pursuant to this sentence as if Counterparty was not the Affected Party). The "**Section 13 Percentage**" as of any day is the fraction, expressed as a percentage, (A) the numerator of which is the number of Underlying Shares that Dealer and any of its affiliates or any other person subject to aggregation with Dealer for purposes of the "beneficial ownership" test under Section 13 of the Exchange Act, or any "group" (within the meaning of Section 13 of the Exchange Act) of which Dealer is or may be deemed to be a part beneficially owns (within the meaning of Section 13 of the Exchange Act), without duplication, on such day (or, to the extent that for any reason the equivalent calculation under Section 16 of the Exchange Act applies with respect to the Shares or Underlying Shares, as applicable, and the rules and regulations thereunder results in a higher number, such higher number) and (B) the denominator of which is the number of Underlying Shares outstanding on such day. The "**Option Equity Percentage**" as of any day is the fraction, expressed as a percentage, (A) the numerator of which is the sum of (1) the product of (x) the Number of Options (y) the Option Entitlement and (z) the number of Underlying Shares represented by one Share and (2) the aggregate number of Underlying Shares underlying any other call option transaction sold by Dealer to Counterparty, and (B) the denominator of which is the number of Underlying Shares outstanding. The "**Share Amount**" as of any day is the number of Underlying Shares that Dealer and any person whose ownership position would be aggregated with that of Dealer (Dealer or any such person, a "**Dealer Person**") under any law, rule, regulation, regulatory order or organizational documents or contracts of Counterparty that are, in each case, applicable to ownership of Underlying Shares ("**Applicable Restrictions**"), owns, beneficially owns, constructively owns, controls, holds the power to vote or otherwise meets a relevant definition of ownership under any Applicable Restriction, as determined by Dealer in its reasonable discretion. The "**Applicable Share Limit**" means a number of Underlying Shares equal to (A) the minimum number of Underlying Shares that could give rise to reporting or registration obligations (except for any filing requirements on Form 13F, Schedule 13D or Schedule 13G under the Exchange Act, in each case, as in effect on the Trade Date) or other requirements (including obtaining prior approval from any person or entity) of a Dealer Person, or could result in an adverse effect on a Dealer Person, under any Applicable Restriction, as determined by Dealer in good faith and in its commercially reasonable discretion, *minus* (B) 1% of the number of Underlying Shares outstanding.

- (iii) Notwithstanding any other provision in this Confirmation to the contrary requiring or allowing Dealer to purchase, sell, receive or deliver any Shares, Underlying Shares or other securities, or make or receive any payment in cash, to or from Counterparty, Dealer may designate any of its affiliates to purchase, sell, receive or deliver such Shares, Underlying Shares or other securities, or to make or receive such payment in cash, and otherwise to perform Dealer's obligations in respect of the Transaction and any such designee may assume such obligations. Dealer shall be discharged of its obligations to Counterparty to the extent of any such performance.
- (f) Staggered Settlement. If upon advice of counsel with respect to applicable legal and regulatory requirements, including any requirements relating to Dealer's hedging activities hereunder, Dealer reasonably determines that it would not be practicable or advisable to deliver, or to acquire Shares to deliver, any or all of the Shares to be delivered by Dealer on any Settlement Date for the Transaction, Dealer may, by notice to Counterparty on or prior to any Settlement Date (a "**Nominal Settlement Date**"), elect to deliver the Shares on two or more dates (each, a "**Staggered Settlement Date**") as follows:
  - (i) in such notice, Dealer will specify to Counterparty the related Staggered Settlement Dates (the first of which will be such Nominal Settlement Date and the last of which will be no later than the twentieth (20<sup>th</sup>) Exchange Business Day following such Nominal Settlement Date) and the number of Shares that it will deliver on each Staggered Settlement Date;
  - (ii) the aggregate number of Shares that Dealer will deliver to Counterparty hereunder on all such Staggered Settlement Dates will equal the number of Shares that Dealer would otherwise be required to deliver on such Nominal Settlement Date; and
  - (iii) if the Net Share Settlement terms set forth above were to apply on the Nominal Settlement Date, then the Net Share Settlement terms will apply on each Staggered Settlement Date, except that the Shares otherwise deliverable on such Nominal Settlement Date will be allocated among such Staggered Settlement Dates as specified by Dealer in the notice referred to in clause (i) above.
- (g) Reserved.

- (h) QFC Stay Provisions. The parties agree that (i) to the extent that prior to the date hereof both parties have adhered to the 2018 ISDA U.S. Resolution Stay Protocol (the “**Protocol**”), the terms of the Protocol are incorporated into and form a part of this Confirmation, and for such purposes this 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; (ii) to the extent that prior to the date hereof the parties have executed a separate agreement the effect of which is to amend the qualified financial contracts between them to conform with the requirements of the QFC Stay Rules (the “**Bilateral Agreement**”), the terms of the Bilateral Agreement are incorporated into and form a part of this Confirmation and each party shall be deemed to have the status of “Covered Entity” or “Counterparty Entity” (or other similar term) as applicable to it under the Bilateral Agreement; or (iii) if clause (i) and clause (ii) do not apply, the terms of Section 1 and Section 2 and the related defined terms (together, the “**Bilateral Terms**”) of the form of bilateral template entitled “Full-Length Omnibus (for use between U.S. G-SIBs and Corporate Groups)” published by ISDA on November 2, 2018 (currently available on the 2018 ISDA U.S. Resolution Stay Protocol page at [www.isda.org](http://www.isda.org) and, a copy of which is available upon request), the effect of which is to amend the qualified financial contracts between the parties thereto to conform with the requirements of the QFC Stay Rules, are hereby incorporated into and form a part of this Confirmation, and for such purposes this Confirmation shall be deemed a “Covered Agreement,” Dealer shall be deemed a “Covered Entity” and Counterparty shall be deemed a “Counterparty Entity.” In the event that, after the date of this Confirmation, both parties hereto become adhering parties to the Protocol, the terms of the Protocol will replace the terms of this section. In the event of any inconsistencies between this Confirmation and the terms of the Protocol, the Bilateral Agreement or the Bilateral Terms (each, the “**QFC Stay Terms**”), as applicable, the QFC Stay Terms will govern. Terms used in this paragraph without definition shall have the meanings assigned to them under the QFC Stay Rules. For purposes of this paragraph, references to “this 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**” means 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 FDIC 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.

(i) Additional Termination Events.

- (i) Notwithstanding anything to the contrary in this Confirmation, upon any conversion of a Convertible Note occurring prior to the 45th Scheduled Valid Day immediately prior to the Expiration Date (any such conversion, an “**Early Conversion**”) in respect of which a Conversion Notice that is effective as to Counterparty has been delivered by the relevant converting Holder:
- (A) Counterparty may, within two Scheduled Trading Days of the date on which the Holder (as such term is defined in the Indenture) of such Convertible Note satisfies all of the requirements for conversion thereof as set forth in Section 14.02 of the Indenture (the “**Conversion Date**”) for such Early Conversion, provide written notice (an “**Early Conversion Notice**”) to Dealer specifying the number of Convertible Notes surrendered for conversion on such Conversion Date (such Convertible Notes, the “**Affected Convertible Notes**”), and the giving of such Early Conversion Notice shall constitute an Additional Termination Event as provided in this clause (i) (*provided* that Counterparty acknowledges its responsibilities under applicable securities laws, and in particular Section 9 and Section 10(b) of the Exchange Act and the rules and regulations thereunder, in respect of any Early Conversion Notice);

- (B) upon receipt of any such Early Conversion Notice, Dealer shall designate an Exchange Business Day as an Early Termination Date (which Exchange Business Day shall be no earlier than one Scheduled Trading Day following the Conversion Date for such Early Conversion) with respect to the portion of the Transaction corresponding to a number of Options (the “**Affected Number of Options**”) equal to the lesser of (x) the number of Affected Convertible Notes *minus* the “Affected Number of Options” (as defined in the Base Call Option Transaction Confirmation letter agreement dated January 30, 2019 between Dealer and Counterparty (the “**Base Call Option Confirmation**”)), if any, that relate to such Affected Convertible Notes *minus* the “Affected Number of Options” (as defined in the Additional Call Option Transaction Confirmation dated February 13, 2019 between Dealer and Counterparty (the “**First Additional Call Option Confirmation**”)), if any, that relate to such Affected Convertible Notes and (y) the Number of Options as of the Conversion Date for such Early Conversion;
  - (C) any payment hereunder with respect to such termination shall be calculated pursuant to Section 6 of the Agreement as if (x) an Early Termination Date had been designated in respect of a Transaction having terms identical to the Transaction and a Number of Options equal to the Affected Number of Options, (y) Counterparty were the sole Affected Party with respect to such Additional Termination Event and (z) the terminated portion of the Transaction were the sole Affected Transaction;
  - (D) for the avoidance of doubt, in determining the amount payable in respect of such Affected Transaction pursuant to Section 6 of the Agreement, the Calculation Agent shall assume that (x) the relevant Early Conversion and any conversions, adjustments, agreements, payments, deliveries or acquisitions by or on behalf of Counterparty leading thereto had not occurred, (y) no adjustments to the Conversion Rate have occurred pursuant to any Excluded Provision and (z) the corresponding Convertible Notes remain outstanding; and
  - (E) the Transaction shall remain in full force and effect, except that, as of the Conversion Date for such Early Conversion, the Number of Options shall be reduced by the Affected Number of Options.
- (ii) Notwithstanding anything to the contrary in this Confirmation if an event of default with respect to Counterparty occurs under the terms of the Convertible Notes as set forth in Section 6.01 of the Indenture and such event of default results in the Convertible Notes being accelerated and declared due and payable, then such event of default shall constitute an Additional Termination Event applicable to the Transaction and, with respect to such Additional Termination Event, (A) Counterparty shall be deemed to be the sole Affected Party, (B) the Transaction shall be the sole Affected Transaction and (C) Dealer shall be the party entitled to designate an Early Termination Date pursuant to Section 6(b) of the Agreement (which Early Termination Date shall be on or as promptly as reasonably practicable after Dealer becomes aware of the occurrence of such acceleration).

- (iii) Notwithstanding anything to the contrary in this Confirmation, the occurrence of an Amendment Event shall constitute an Additional Termination Event applicable to the Transaction and, with respect to such Additional Termination Event, (A) Counterparty shall be deemed to be the sole Affected Party, (B) the Transaction shall be the sole Affected Transaction and (C) Dealer shall be the party entitled to designate an Early Termination Date pursuant to Section 6(b) of the Agreement. “**Amendment Event**” means that Counterparty amends, modifies, supplements, waives or obtains a waiver in respect of any term of the Indenture or the Convertible Notes governing the principal amount, coupon, maturity, repurchase obligation of Counterparty, tax redemption right of Counterparty, any term relating to conversion of the Convertible Notes (including changes to the conversion rate, conversion rate adjustment provisions, conversion settlement dates or conversion conditions), or any term that would require consent of the holders of not less than 100% of the principal amount of the Convertible Notes to amend (other than, in each case, any amendment or supplement (x) pursuant to Section 10.01(i) of the Indenture that, as determined by the Calculation Agent, conforms the Indenture to the description of Convertible Notes in the Offering Memorandum or (y) pursuant to Section 14.07 of the Indenture), in each case, without the consent of Dealer.
- (iv) Promptly (but in any event within five Scheduled Trading Days) following any Repurchase Event (as defined below), Counterparty shall notify Dealer of such Repurchase Event and the aggregate principal amount of Convertible Notes subject to such Repurchase Event (any such notice, a “**Convertible Notes Repurchase Notice**”); *provided* that any such Convertible Notes Repurchase Notice shall contain a repetition by Counterparty of the representation set forth in Section 8(f) as of the date of such Convertible Notes Repurchase Notice and an acknowledgment by Counterparty of its responsibilities under applicable securities laws, and in particular Section 9 and Section 10(b) of the Exchange Act and the rules and regulations thereunder, in respect of such Repurchase Event and the delivery of such Convertible Notes Repurchase Notice. Any Convertible Notes Repurchase Notice delivered to Dealer pursuant to the Base Call Option Confirmation shall be deemed to be a Convertible Notes Repurchase Notice pursuant to this Confirmation and the terms of such Convertible Notes Repurchase Notice shall apply, *mutatis mutandis*, to this Confirmation. The receipt by Dealer from Counterparty of any Convertible Notes Repurchase Notice shall constitute an Additional Termination Event as provided in this Section 9(i)(iv). Upon receipt of any such Convertible Notes Repurchase Notice, Dealer shall designate an Exchange Business Day following receipt of such Convertible Notes Repurchase Notice (which Exchange Business Day shall be on or as promptly as reasonably practicable following the settlement date for such Repurchase Event) as an Early Termination Date with respect to the portion of the Transaction corresponding to a number of Options (the “**Repurchase Options**”) equal to the lesser of (A) (x) the aggregate principal amount of such Convertible Notes specified in such Convertible Notes Repurchase Notice, *divided by* USD 1,000 *minus* (y) the “Repurchase Options” (as defined in the Base Call Option Confirmation), if any, that relate to such Convertible Notes *minus* (z) the “Repurchase Options” (as defined in the First Additional Call Option Confirmation), if any, that relate to such Convertible Notes and (B) the Number of Options as of the date Dealer designates such Early Termination Date and, as of such date, the Number of Options shall be reduced by the number of Repurchase Options. Any payment hereunder with respect to such termination (the “**Repurchase Unwind Payment**”) shall be calculated pursuant to Section 6 of the Agreement as if (1) an Early Termination Date had been designated in respect of a Transaction having terms identical to the Transaction and a Number of Options equal to the number of Repurchase Options, (2) Counterparty were the sole Affected Party with respect to such Additional Termination Event and (3) the terminated portion of the Transaction were the sole Affected Transaction (and, for the avoidance of doubt, in determining the amount payable in respect of such Affected Transaction pursuant to Section 6 of the Agreement, Dealer shall assume that (x) the relevant Repurchase Event and any conversions, adjustments, agreements, payments, deliveries or acquisitions by or on behalf of Counterparty leading thereto had not occurred, (y) no adjustments to the Conversion Rate have occurred pursuant to any Excluded Provisions and (z) the corresponding Convertible Notes remain outstanding). “**Repurchase Event**” means that (i) any Convertible Notes are repurchased or redeemed (whether pursuant to Section 15.01 of the Indenture, Section 15.02 of the Indenture, Section 16.01 of the Indenture or otherwise) by Counterparty or any of its subsidiaries, (ii) any Convertible Notes are delivered to Counterparty in exchange for delivery of any property or assets of Counterparty or any of its subsidiaries (howsoever described), including for the avoidance of doubt shares or American depository shares of Issuer and/or cash, (iii) any principal of any of the Convertible Notes is repaid prior to the final maturity date of the Convertible Notes (other than upon acceleration of the Convertible Notes described in Section 9(i)(ii)), or (iv) any Convertible Notes are exchanged by or for the benefit of the holders thereof for any other securities of Counterparty or any of its affiliates (or any other property, or any combination thereof) pursuant to any exchange offer or similar transaction; *provided* that any conversion of Convertible Notes pursuant to the terms of the Indenture shall not constitute a Repurchase Event. Counterparty acknowledges and agrees that if an Additional Termination Event has occurred under this Section 9(i)(iv) that any related Convertible Notes subject to a Repurchase Event will be promptly cancelled under the applicable provisions of the Indenture and, in any event, will be deemed to be cancelled and disregarded and no longer outstanding for all purposes hereunder.

- (j) Amendments to Equity Definitions.
- (i) Solely in respect of adjustments to the Cap Price pursuant to Section 9(y), Section 11.2(e)(vii) of the Equity Definitions is hereby amended by deleting the words “that may have a diluting or concentrative effect on the theoretical value of the relevant Shares” and replacing them with the words “that is the result of a corporate event involving the Underlying Shares Issuer or its securities that has a material economic effect on the Shares and/or the Underlying Shares or options on the Shares and/or the Underlying Shares; *provided* that such event is not based on (a) an observable market, other than the market for the Underlying Shares Issuer’s own stock or (b) an observable index, other than an index calculated and measured solely by reference to the Underlying Shares Issuer’s own operations.”
  - (ii) Section 12.6(a)(ii) of the Equity Definitions is hereby amended by (1) inserting “(1)” immediately following the word “means” in the first line thereof and (2) inserting immediately prior to the semi-colon at the end of subsection (B) thereof the following words: “or (2) the occurrence of any of the events specified in Section 5(a)(vii)(1) through (9) of the ISDA Master Agreement with respect to that Issuer” *provided* that the period for dismissal, discharge, stay or restraint therein shall be increased from “within 15 days” to “within 30 days.”
  - (iii) Section 12.9(b)(i) of the Equity Definitions is hereby amended by (1) replacing “either party may elect” with “Dealer may elect” and (2) replacing “notice to the other party” with “notice to Counterparty” in the first sentence of such section.
- (k) Setoff. Neither party shall have the right to set off any obligation that it may have to the other party under the Transaction against any obligation such other party may have to it, whether arising under the Agreement, this Confirmation or any other agreement between the parties hereto, by operation of law or otherwise and each party hereby waives any such right to setoff.
- (l) Adjustments. For the avoidance of doubt, whenever the Calculation Agent is called upon to make an adjustment pursuant to the terms of this Confirmation or the Equity Definitions to take into account the effect of an event (other than on adjustments made by reference to the Indenture), the Calculation Agent shall make such adjustment in a commercially reasonable manner by reference to the effect of such event on Dealer, assuming that Dealer maintains a commercially reasonable hedge position

(m) Alternative Calculations and Payment on Early Termination and on Certain Extraordinary Events. If (a) an Early Termination Date (whether as a result of an Event of Default or a Termination Event) occurs or is designated with respect to the Transaction or (b) the Transaction is cancelled or terminated upon the occurrence of an Extraordinary Event, and if Dealer would owe any amount to Counterparty pursuant to Section 6(d)(ii) of the Agreement or any Cancellation Amount pursuant to Article 12 of the Equity Definitions (any such amount, a “**Payment Obligation**”), Counterparty may request Dealer to satisfy the Payment Obligation by the Share Termination Alternative (as defined below) (except as a result of (i) a Nationalization, Insolvency or Merger Event in which the consideration to be paid to holders of Shares and/or Underlying Shares, as applicable, consists solely of cash, (ii) an Announcement Event, Merger Event or Tender Offer that is within Counterparty’s control, or (iii) an Event of Default in which Counterparty is the Defaulting Party or a Termination Event in which Counterparty is the Affected Party other than an Event of Default of the type described in Section 5(a)(iii), (v), (vi), (vii) or (viii) of the Agreement or a Termination Event of the type described in Section 5(b) of the Agreement, in each case that resulted from an event or events outside Counterparty’s control), as long as Counterparty remakes the representation set forth in Section 8(f) as of the date of such election, and Counterparty shall give irrevocable telephonic notice to Dealer, confirmed in writing within one Scheduled Trading Day, no later than 12:00 p.m. (New York City time) on the date of the Announcement Event, Merger Date, Tender Offer Date, Announcement Date (in the case of a Nationalization, Insolvency or Delisting), Early Termination Date or date of cancellation, as applicable; *provided* that if Counterparty does not validly request Dealer to satisfy the Payment Obligation by the Share Termination Alternative, Dealer shall have the right, in its sole discretion, to satisfy its Payment Obligation by the Share Termination Alternative, notwithstanding Counterparty’s failure to elect or election to the contrary. If such election is not made, then the provisions of Section 12.7 or Section 12.9 of the Equity Definitions, or the provisions of Section 6(d)(ii) and Section 6(e) of the Agreement, as the case may be, shall apply.

Share Termination Alternative:	If applicable, Dealer shall deliver to Counterparty the Share Termination Delivery Property on, or as promptly as commercially reasonably practicable thereafter, the date when the relevant Payment Obligation would otherwise be due pursuant to Section 12.7 or 12.9 of the Equity Definitions or Section 6(d)(ii) and 6(e) of the Agreement, as applicable, in satisfaction of such Payment Obligation in the manner reasonably requested by Counterparty free of payment.
Share Termination Delivery Property:	A number of Share Termination Delivery Units, as calculated by the Calculation Agent, equal to the Payment Obligation divided by the Share Termination Unit Price. The Calculation Agent shall adjust the Share Termination Delivery Property by replacing any fractional portion of a security therein with an amount of cash equal to the value of such fractional security based on the values used to calculate the Share Termination Unit Price.
Share Termination Unit Price:	The value of property contained in one Share Termination Delivery Unit, as determined by the Calculation Agent in its discretion by commercially reasonable means and notified by the Calculation Agent to Dealer at the time of notification of the Payment Obligation.



Share Termination Delivery Unit: One Share or, if the Shares or Underlying Shares, as applicable, have changed into cash or any other property or the right to receive cash or any other property as the result of a Nationalization, Insolvency or Merger Event (any such cash or other property, the “**Exchange Property**”), a unit consisting of the type and amount of such Exchange Property received by a holder of one Share or Underlying Share, as applicable (without consideration of any requirement to pay cash or other consideration in lieu of fractional amounts of any securities) in such Nationalization, Insolvency or Merger Event, as determined by the Calculation Agent. If such Nationalization, Insolvency, or Merger Event involves a choice of Exchange Property to be received by holders, such holders shall be deemed to have elected to receive the maximum possible amount of cash.

Failure to Deliver: Applicable

Other applicable provisions: If Share Termination Alternative is applicable, the provisions of Sections 9.8, 9.9 and 9.11 (as modified above) of the Equity Definitions and the provisions set forth opposite the caption “Representation and Agreement” in Section 2 will be applicable, except that all references in such provisions to “Physically-settled” shall be read as references to “Share Termination Settled” and all references to “Shares” shall be read as references to “Share Termination Delivery Units”. “Share Termination Settled” in relation to the Transaction means that Share Termination Alternative is applicable to the Transaction.

- (n) Waiver of Jury Trial. Each party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any suit, action or proceeding relating to the Transaction. Each party (i) certifies that no representative, agent or attorney of either party has represented, expressly or otherwise, that such other party would not, in the event of such a suit, action or proceeding, seek to enforce the foregoing waiver and (ii) acknowledges that it and the other party have been induced to enter into the Transaction, as applicable, by, among other things, the mutual waivers and certifications provided herein.
- (o) Registration. Counterparty hereby agrees that if, in the good faith reasonable judgment of Dealer, based on the advice of counsel, the Shares and/or Underlying Shares (“**Hedge Shares**”) acquired by Dealer for the purpose of commercially reasonably hedging its obligations pursuant to the Transaction cannot be sold in the public market by Dealer without registration under the Securities Act, Counterparty shall, at its election, either (i) in order to allow Dealer to sell the Hedge Shares in a registered offering, make available to Dealer an effective registration statement under the Securities Act and enter into an agreement, in form and substance reasonably satisfactory to Dealer, substantially in the form of an underwriting agreement customary for a registered secondary offering of a similar size in respect of a similar issuer; *provided, however*, that if Dealer, in its sole reasonable discretion, is not satisfied with access to due diligence materials, the results of its due diligence investigation, or the procedures and documentation for the registered offering referred to above, then clause (ii) or clause (iii) of this paragraph shall apply at the election of Counterparty, (ii) in order to allow Dealer to sell the Hedge Shares in a private placement, use commercially reasonable efforts to enter into a private placement agreement substantially similar to private placement purchase agreements customary for private placements of equity securities of a similar size in respect of a similar issuer, in form and substance satisfactory to Dealer (in which case, the Calculation Agent shall make any adjustments to the terms of the Transaction that are necessary, in its commercially reasonable judgment, to compensate Dealer for any commercially reasonable discount from the public market price of the Shares and/or Underlying Shares incurred on the sale of Hedge Shares in a private placement), or (iii) purchase the Hedge Shares from Dealer at the then-current market price on such Exchange Business Days, and in the amounts and at such time(s), reasonably requested by Dealer.

- (p) Tax Disclosure. Effective from the date of commencement of discussions concerning the Transaction, Counterparty and each of its employees, representatives, or other agents may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the Transaction and all materials of any kind (including opinions or other tax analyses) that are provided to Counterparty relating to such tax treatment and tax structure.
- (q) Right to Extend. Dealer may postpone or add, in whole or in part, any Valid Day or Valid Days during the Settlement Averaging Period or any other date of valuation, payment or delivery by Dealer, with respect to some or all of the Options hereunder, if Dealer reasonably determines, in the case of clause (i) below, in its commercially reasonable judgment or, in the case of clause (ii) below, based on advice of counsel, that such action is reasonably necessary or appropriate (i) to preserve Dealer's commercially reasonable hedging or hedge unwind activity hereunder in light of existing liquidity conditions in the relevant market or (ii) to enable Dealer to effect transactions with respect to Shares and/or Underlying Shares in connection with its commercially reasonable hedging, hedge unwind or settlement activity hereunder in a manner that would, if Dealer were Counterparty or an affiliated purchaser of Counterparty, be in compliance with applicable legal, regulatory or self-regulatory requirements, or with related policies and procedures adopted by Dealer in good faith so long as such policies and procedures are generally applicable in similar situations and applied in a non-discriminatory manner); *provided* that no such Valid Day or other date of valuation, payment or delivery may be postponed or added more than 40 Valid Days after the original Valid Day or other date of valuation, payment or delivery, as the case may be.
- (r) Status of Claims in Bankruptcy. Dealer acknowledges and agrees that this Confirmation is not intended to convey to Dealer rights against Counterparty with respect to the Transaction that are senior to the claims of common or ordinary shareholders of Counterparty in any United States or Cayman Islands 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 the Transaction; *provided, further* that nothing herein shall limit or shall be deemed to limit Dealer's rights in respect of any transactions other than the Transaction.
- (s) Securities Contract; Swap Agreement. The parties hereto intend for (i) the Transaction to be a "securities contract" and a "swap agreement" as defined in the Bankruptcy Code (Title 11 of the United States Code) (the "**Bankruptcy Code**"), and the parties hereto to be entitled to the protections afforded by, among other Sections, Sections 362(b)(6), 362(b)(17), 546(e), 546(g), 555 and 560 of the Bankruptcy Code, (ii) a party's right to liquidate the Transaction and to exercise any other remedies upon the occurrence of any Event of Default under the Agreement with respect to the other party to constitute a "contractual right" as described in the Bankruptcy Code, and (iii) each payment and delivery of cash, securities or other property hereunder to constitute a "margin payment" or "settlement payment" and a "transfer" as defined in the Bankruptcy Code.

- (t) Notice of Certain Other Events. Counterparty covenants and agrees that:
- (i) promptly following the public announcement of the results of any election by the holders of Shares and/or Underlying Shares, as applicable, with respect to the consideration due upon consummation of any Merger Event, Counterparty shall give Dealer written notice of (x) the weighted average of the types and amounts of consideration that holders of Shares and/or Underlying Shares, as applicable, have elected to receive upon consummation of such Merger Event or (y) if no holders of Shares and/or Underlying Shares, as applicable, affirmatively make such election, the types and amounts of consideration actually received by holders of Shares and/or Underlying Shares, as applicable, (the date of such notification, the “**Consideration Notification Date**”); *provided* that in no event shall the Consideration Notification Date be later than the date on which such Merger Event is consummated;
  - (ii) (A) Counterparty shall give Dealer commercially reasonable advance (but in no event less than one Exchange Business Day) written notice of the section or sections of the Indenture and, if applicable, the formula therein, pursuant to which any adjustment will be made to the Convertible Notes in connection with any Potential Adjustment Event, Merger Event or Tender Offer and (B) promptly following any such adjustment, Counterparty shall give Dealer written notice of the details of such adjustment; and
  - (iii) Counterparty will provide a written notice to Dealer immediately upon becoming aware that Counterparty is not or will no longer be a “foreign private issuer,” as such term is defined in Rule 3b-4 under the Exchange Act.
- (u) 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 Confirmation or the Agreement, as applicable, arising from a termination event, force majeure, illegality, increased costs, regulatory change or similar event under this Confirmation, the Equity Definitions incorporated herein, or the Agreement (including, but not limited to, rights arising from Change in Law, Hedging Disruption, an Excess Ownership Position, or Illegality (as defined in the Agreement)).
- (v) Agreements and Acknowledgements Regarding Hedging. Counterparty understands, acknowledges and agrees that: (A) at any time on and prior to the Expiration Date, Dealer and its affiliates may buy or sell Shares, Underlying Shares or other securities or buy or sell options or futures contracts or enter into swaps or other derivative securities in order to adjust its hedge position with respect to the Transaction; (B) Dealer and its affiliates also may be active in the market for Shares and/or Underlying Shares other than in connection with hedging activities in relation to the Transaction; (C) Dealer shall make its own determination as to whether, when or in what manner any hedging or market activities in securities of Issuer and/or Underlying Shares Issuer shall be conducted and shall do so in a manner that it deems appropriate to hedge its price and market risk with respect to the Relevant Prices; and (D) any market activities of Dealer and its affiliates with respect to Shares and/or Underlying Shares may affect the market price and volatility of Shares and/or Underlying Shares, as well as the Relevant Prices, each in a manner that may be adverse to Counterparty.
- (w) Early Unwind. In the event the sale of the “Option Securities” (as defined in the Purchase Agreement) is not consummated with the Initial Purchasers for any reason, or Counterparty fails to deliver to Dealer opinions of counsel as required pursuant to Section 9(a), in each case by 5:00 p.m. (New York City time) on the Premium Payment Date, or such later date as agreed upon by the parties (the Premium Payment Date or such later date the “**Early Unwind Date**”), the Transaction shall automatically terminate (the “**Early Unwind**”), on the Early Unwind Date and (i) the Transaction and all of the respective rights and obligations of Dealer and Counterparty under the Transaction shall be cancelled and terminated and (ii) each party shall be released and discharged by the other party from and agrees not to make any claim against the other party with respect to any obligations or liabilities of the other party arising out of and to be performed in connection with the Transaction either prior to or after the Early Unwind Date. Each of Dealer and Counterparty represents and acknowledges to the other that, upon an Early Unwind, all obligations with respect to the Transaction shall be deemed fully and finally discharged.

- (x) Payment by Counterparty. In the event that, following payment of the Premium, (i) an Early Termination Date occurs or is designated with respect to the Transaction as a result of a Termination Event or an Event of Default (other than an Event of Default arising under Section 5(a)(ii) or 5(a)(iv) of the Agreement) and, as a result, Counterparty owes to Dealer an amount calculated under Section 6(e) of the Agreement, or (ii) Counterparty owes to Dealer, pursuant to Section 12.7 or Section 12.9 of the Equity Definitions, an amount calculated under Section 12.8 of the Equity Definitions, such amount shall be deemed to be zero.
- (y) Other Adjustments Pursuant to the Equity Definitions. Notwithstanding anything to the contrary in this Confirmation, solely for the purpose of adjusting the Cap Price, the terms “Potential Adjustment Event,” “Merger Event,” and “Tender Offer” shall each have the meanings assigned to such term in the Equity Definitions (as amended by Section 9(j)(i) or, if applicable, by the definition of “Announcement Event”), and upon the occurrence of a Merger Date, the occurrence of a Tender Offer Date, or declaration by Counterparty of the terms of any Potential Adjustment Event, respectively, as such terms are defined in the Equity Definitions, the Calculation Agent may, in its sole discretion, adjust the Cap Price to preserve the fair value of the Options; *provided* that in no event shall the Cap Price be less than the Strike Price; *provided further* that any adjustment to the Cap Price made pursuant to this Section 9(y) shall be made without duplication of any other adjustment hereunder (including, for the avoidance of doubt, adjustment made pursuant to the provisions opposite the captions “Method of Adjustment,” “Consequences of Merger Events/Tender Offers” and “Consequence of Announcement Events” in Section 3 above). For the avoidance of doubt, for purposes of this Section 9(y), Section 12.1(d) of the Equity Definitions is hereby amended by replacing “10%” with “20%” in the third line thereof.
- (z) Service of Process. Counterparty irrevocably appoints Law Debenture Corporate Services Inc. as its authorized agent upon which process may be served in any suit, action or proceeding relating to the Transaction, and agrees that service of process in any manner permitted by applicable law upon such agent shall be deemed in every respect effective service of process in any manner permitted by applicable law upon Counterparty in any such suit, action or proceeding. Counterparty further agrees to take any and all action as may be necessary to maintain such designation and appointment of such agent in full force and effect for a period of five and a half years from the date of this Confirmation. If for any reason such agent shall cease to be such agent for service of process, Counterparty shall forthwith appoint a new agent of recognized standing for service of process in the State of New York and deliver to Dealer a copy of the new agent’s acceptance of that appointment within 10 days. Nothing herein shall affect the right of Dealer to serve process in any other manner permitted by law or to commence legal proceedings or otherwise proceed against Counterparty in any other court of competent jurisdiction.
- (aa) Taxes, Foreign Account Tax Compliance Act and HIRE Act. Counterparty is classified as a corporation for the U.S. federal income tax purposes. No income received or to be received under the Agreement will be effectively connected with the conduct of a trade or business by Counterparty in the United States. Counterparty is a “non-U.S. branch of a foreign person” as that term is used in Section 1.1441-4(a)(3)(ii) of the United States Treasury Regulations (the “**Regulations**”), and it is a “foreign person” as that term is used in Section 1.6041-4(a)(4) of the Regulations. The term “Indemnifiable Tax” as defined in Section 14 of the Agreement shall not include any U.S. federal withholding tax imposed or collected pursuant to Sections 1471 through 1474 of the U.S. Internal Revenue Code of 1986, as amended (the “**Code**”), any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b) of the Code, or any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code (a “**FATCA Withholding Tax**”). For the avoidance of doubt, a FATCA Withholding Tax is a Tax the deduction or withholding of which is required by applicable law for the purposes of Section 2(d) of the Agreement. The parties agree that the definitions and provisions contained in the ISDA 2015 Section 871(m) Protocol, as published by the International Swaps and Derivatives Association, Inc. and as may be amended, supplemented, replaced or superseded from time to time (the “**871(m) Protocol**”) shall apply to the Agreement as if the parties had adhered to the 871(m) Protocol as of the Effective Date. If there is any inconsistency between this provision and a provision in any other agreement executed between the parties, this provision shall prevail unless such other agreement expressly overrides the provisions of the 871(m) Protocol. Each of Dealer and Counterparty shall provide to the other party tax forms and documents required to be delivered pursuant to Sections 1471(b) or Section 1472(b)(1) of the Code promptly upon request by the other party and any other tax forms and documents they are legally able to provide that are reasonably requested by the other party.

(bb) U.S. Tax Forms. Without limiting the generality of the foregoing, Counterparty will provide a US Tax Form W-8BEN-E upon the execution of this Confirmation, promptly upon learning that any such tax form previously provided by it has become obsolete or incorrect and promptly upon reasonable demand by Dealer.

(cc) Additional Definitions and Amendments to Equity Definitions.

(i) For the purposes of this Confirmation the following definitions will apply:

“**Depository**” means, in relation to the Shares, Deutsche Bank Trust Company Americas, or any successor thereto from time to time.

“**Deposit Agreement**” means, (i) that certain Deposit Agreement, dated as of September 11, 2018, by and among Underlying Shares Issuer, Depository and the holders and beneficial owners of the Shares and (ii) the other agreements or other instruments constituting the Shares, as from time to time amended or supplemented in accordance with their terms.

“**DS Amendment**” means, where specified as applicable to a definition or provision, that the following changes shall be made to such definition or provision: (a) all references to “Shares” shall be deleted and replaced with the words “Shares and/or the Underlying Shares, as appropriate”; and (b) all references to “Issuer” shall be deleted and replaced with the words “Issuer or Underlying Shares Issuer, as appropriate”.

“**Replacement DSs**” means depositary shares or receipts, other than the Shares, over the same Underlying Shares.

(ii) The following amendments shall be made to the Equity Definitions:

(A) The definition of Potential Adjustment Event in Section 11.2(e) of the Equity Definitions shall be amended as follows:

(i) the DS Amendment shall be applicable, provided that an event under Section 11.2(e)(i) to (vii) of the Equity Definitions in respect of the Underlying Shares shall not constitute a Potential Adjustment Event unless, in the commercially reasonable opinion of the Calculation Agent, such event has a material effect on the theoretical value of the Shares; and

(ii) (A) ‘or’ shall be deleted where it appears at the end of subsection (vi);

(B) ‘.’ shall be deleted where it appears at the end of subsection (vii) and replaced with ‘;’;

- (C) the following shall be inserted as subsection (viii): “(viii) the making of any amendment or supplement to the terms of the Deposit Agreement and/or the Shares; or”; and
  - (D) the following shall be inserted as provision (ix): “(ix) any other event as a result of which the Shares represent fewer or more Underlying Shares than, and/or any property or assets in addition to, or as a whole or partial replacement of, in each case, the number of Underlying Shares represented by the Shares prior to such event.”
- (B) In making any adjustment following any Potential Adjustment Event, the Calculation Agent shall have reference to (to the extent necessary or appropriate among other factors) any adjustment made by the Depositary under the Deposit Agreement, any fees and/or expenses of the Depositary and any withholding or deduction of taxes. If the Calculation Agent determines that no adjustment that it could make will produce a commercially reasonable result, it shall notify the parties that the relevant consequence shall be the termination of the relevant Transaction, in which case “Cancellation and Payment (Calculation Agent Determination)” will be deemed to apply and any payment to be made by one party to the other shall be calculated in accordance with Section 12.7 of the Equity Definitions (as amended by this Confirmation).
- (C) If a Potential Adjustment Event occurs under Section 11.2(e)(viii) of the Equity Definitions (as amended by this Confirmation), then the following further amendments shall be deemed to be made to Section 11.2(c) of the Equity Definitions in respect of such Potential Adjustment Event:
- (i) the words “the Calculation Agent will determine whether such Potential Adjustment Event has a material effect on the theoretical value of the relevant Shares, options on the Shares or the Transaction” shall be deleted and replaced with the words “the Calculation Agent will determine whether such Potential Adjustment Event has a material economic effect on such Transaction”; and
  - (ii) the words “as the Calculation Agent determines appropriate to account for that material effect” shall be deleted and replaced with the words “as the Calculation Agent determines appropriate to account for such economic effect on such Transaction”.
- (D) The definitions of “Merger Event”, “Tender Offer”, “Announcement Date”, “Share-for-Share”, “Share-for-Other” and “Share-for-Combined” in Section 12.1 of the Equity Definitions shall be amended in accordance with the DS Amendment.
- (E) In making any adjustment in respect of a Merger Event, Tender Offer or Announcement Event in relation to the Underlying Shares, the Calculation Agent shall in determining any adjustment pursuant to Modified Calculation Adjustment, have reference to (amongst other factors) any adjustment made by the Depositary under the Deposit Agreement, any fees and/or expenses of the Depositary and any withholding or deduction of taxes, as determined by the Calculation Agent in its commercially reasonable discretion.
- (F) The definitions of Nationalization and Insolvency in Section 12.6 of the Equity Definitions shall be amended in accordance with the DS Amendment.
- (G) The consequence of a Nationalization or Insolvency in respect of the Depositary shall be Cancellation and Payment.
- (H) If a Delisting of the Shares occurs or the Depositary announces that the Deposit Agreement is (or will be) terminated, then:

- (i) Cancellation and Payment will apply as provided in this Confirmation; and
  - (ii) where Cancellation and Payment applies under (H)(i) above in respect of a termination of the Deposit Agreement, the Equity Definitions shall be interpreted as follows: (i) such termination shall be deemed to be an “Extraordinary Event”; (ii) Cancellation and Payment shall apply as defined in Section 12.6(c)(ii) of the Equity Definitions; and (iii) the definition of “Announcement Date” in Section 12.1(l) of the Equity Definitions shall include the following additional clause (vii) at the end of the first sentence thereof: “(vii) in the case of a termination of the Deposit Agreement, the date of the first public announcement by the Depositary that the Deposit Agreement is (or will be) terminated”.
- (I) If Cancellation and Payment applies under Section 9(cc)(ii)(G) or Section 9(cc)(ii)(H) of this Confirmation in respect of a Transaction, then the Determining Party shall be Dealer.
  - (J) The definition of “Insolvency Filing” in Section 12.9(a)(iv) of the Equity Definitions shall be amended in accordance with the DS Amendment.
  - (K) For the avoidance of doubt, where a provision is amended by this Section 9(cc) in accordance with the DS Amendment, if the event described in such provision occurs in respect of the Underlying Shares or Underlying Shares Issuer, then the consequence of such event shall be interpreted consistently with the DS Amendment and such event.

Please confirm that the foregoing correctly sets forth the terms of our agreement by executing this Confirmation and returning it to Dealer.

Very truly yours,

**MORGAN STANLEY & CO. LLC**

By:           /s/ Authorized Signatory          

Authorized Signatory

Name:



Accepted and confirmed  
as of the Trade Date:

**NIO Inc.**

By:  /s/ Authorized Signatory  
Authorized Signatory  
Name:

## List of Principal Subsidiaries and Consolidated Variable Interest Entities

<b>Subsidiaries:</b>	<b>Place of Incorporation</b>
NIO Nextev Limited	Hong Kong
NIO User Enterprise Limited	Hong Kong
XPT Limited	Hong Kong
NIO Power Express Limited	Hong Kong
XPT Inc.	Delaware
NIO Nextev (UK) Ltd.	United Kingdom
NIO GmbH	Germany
NIO USA, Inc.	California
NIO Sport Limited	Hong Kong
XPT Technology Limited	Hong Kong
NIO Co., Ltd.	PRC
Shanghai NIO Sales and Services Co., Ltd.	PRC
XPT (Jiangsu) Investment Co., Ltd.	PRC
NIO Energy Investment (Hubei) Co., Ltd.	PRC
XPT (Jiangsu) Automotive Technology Co., Ltd.	PRC
Shanghai NIO Energy Technology Co., Ltd.	PRC
Wuhan NIO Energy Co., Ltd.	PRC
XPT (Nanjing) E-Powertrain Technology Co., Ltd.	PRC
XPT (Nanjing) Energy Storage System Co., Ltd.	PRC
XTRONICS (Nanjing) Automotive Intelligence Technologies Co., Ltd.	PRC
Shanghai XPT Technology Co., Ltd.	PRC
<b>Consolidated variable interest entities and their subsidiaries:</b>	
Beijing NIO Network Technology Co., Ltd.	PRC
Shanghai Anbin Technology Co., Ltd.	PRC
NIO Technology Co., Ltd.	PRC
Shanghai NIO New Energy Automobile Co., Ltd.	PRC

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**Certification by the Principal Executive Officer  
Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002**

I, Bin Li, certify that:

1. I have reviewed this annual report on Form 20-F of NIO Inc. (the "Company");
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the Company as of, and for, the periods presented in this report;
4. The Company's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the Company and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the Company, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) [intentionally omitted];
  - (c) Evaluated the effectiveness of the Company's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the Company's internal control over financial reporting that occurred during the period covered by the annual report that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting; and
5. The Company's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the Company's auditors and the audit committee of the Company's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the Company's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the Company's internal control over financial reporting.

Date: April 2, 2019

By: /s/ Bin Li

Name: Bin Li

Title: Chief Executive Officer

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**Certification by the Chief Financial Officer  
Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002**

I, Louis T. Hsieh, certify that:

1. I have reviewed this annual report on Form 20-F of NIO Inc. (the "Company");
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the Company as of, and for, the periods presented in this report;
4. The Company's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the Company and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the Company, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) [intentionally omitted];
  - (c) Evaluated the effectiveness of the Company's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the Company's internal control over financial reporting that occurred during the period covered by the annual report that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting; and
5. The Company's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the Company's auditors and the audit committee of the Company's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the Company's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the Company's internal control over financial reporting.

Date: April 2, 2019

By: /s/ Louis T. Hsieh

Name: Louis T. Hsieh

Title: Chief Financial Officer

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**Certification by the Principal Executive Officer  
Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002**

In connection with the Annual Report of NIO Inc. (the "Company") on Form 20-F for the fiscal year ended December 31, 2018 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Bin Li, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to my knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: April 2, 2019

By: /s/ Bin Li

Name: Bin Li

Title: Chief Executive Officer

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**Certification by the Chief Financial Officer  
Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002**

In connection with the Annual Report of NIO Inc. (the "Company") on Form 20-F for the fiscal year ended December 31, 2018 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Louis T. Hsieh, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to my knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: April 2, 2019

By: /s/ Louis T. Hsieh

Name: Louis T. Hsieh

Title: Chief Financial Officer

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**Consent of Independent Registered Public Accounting Firm**

We hereby consent to the incorporation by reference in the Registration Statement on Form S-8 (File No. 333-229952) of NIO Inc. of our report dated April 2, 2019 relating to the financial statements, which appears in this Form 20-F.

/s/ PricewaterhouseCoopers Zhong Tian LLP

Shanghai, the People's Republic of China  
April 2, 2019

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漢坤律師事務所

HAN KUN LAW OFFICES

33/F, HKRI Centre Two, HKRI Taikoo Hui, 288 Shimen Road (No. 1), Shanghai 200041, P. R. China  
TEL: (86 21) 6080 0909; FAX: (86 21) 6080 0999  
Beijing • Shanghai • Shenzhen • Hong Kong  
[www.hankunlaw.com](http://www.hankunlaw.com)

April 2, 2019  
Building 20, No. 56 AnTuo Road, Anting Town, Jiading District  
Shanghai 201804, People's Republic of China

Dear Sir/Madam:

We hereby consent to the reference of our name under the headings “Item 3. Key Information—D. Risk Factors—Risks Related to Our Corporate Structure” and “Item 4. Information on the Company—C. Organizational Structure” in NIO Inc.’s Annual Report on Form 20-F for the year ended December 31, 2018 (the “Annual Report”), which will be filed with the Securities and Exchange Commission (the “SEC”) on the date hereof, and further consent to the incorporation by reference, in NIO Inc.’s registration statement on Form S-8 (File No. 333-229952), of the summary of our opinion under the headings “Item 3. Key Information—D. Risk Factors—Risks Related to Our Corporate Structure” and “Item 4. Information on the Company—C. Organizational Structure” in the Annual Report.

We also consent to the filing of this consent letter with the SEC as an exhibit to the Annual Report.

In giving such consent, we do not thereby admit that we come within the category of persons whose consent is required under Section 7 of the Securities Act of 1933, or under the Securities Exchange Act of 1934, in each case, as amended, or the regulations promulgated thereunder.

Very truly yours,

/s/ Han Kun Law Offices

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