

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

FORM 8-K

CURRENT REPORT

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

Date of Report (Date of earliest event reported): January 10, 2024

GUESS?, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of incorporation)

1-11893
(Commission File Number)

95-3679695
(IRS Employer Identification No.)

Strada Regina 44, Bioggio, Switzerland CH-6934
(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code: **+41 91 809 5000**

Not applicable

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

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

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

Title of each class	Trading symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.01 per share	GES	New York Stock Exchange

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

Emerging growth company

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

Item 1.01. Entry into a Material Definitive Agreement.

Convertible Note Offering

On January 10, 2024, Guess?, Inc. (the “Company”) completed its previously announced separate, privately negotiated exchange and subscription agreements (the “Exchange and Subscription Agreements”) with a limited number of holders of its 2.00% convertible senior notes due 2024 (the “2024 Notes”) pursuant to exemptions from registration under the Securities Act of 1933, as amended (the “Securities Act”). Pursuant to the Exchange and Subscription Agreements, the Company exchanged approximately \$67.1 million in aggregate principal amount of the 2024 Notes for approximately \$64.8 million in aggregate principal amount of additional 3.75% convertible senior notes due 2028 (the “Additional 2028 Notes”) (collectively, the “Exchange Transactions”). The Additional 2028 Notes will have the same terms, constitute a single series with, and have the same CUSIP number as the currently outstanding 2028 Notes.

Convertible Note Hedge Transaction and Warrant Transaction

On January 5, 2024, the Company entered into a convertible note hedge transaction (the “Hedge Transaction”) with a financial institution (the “Option Counterparty”). The Hedge Transaction is expected to reduce the potential dilution with respect to the Company’s common stock upon conversion of the Additional 2028 Notes or offset any cash payment the Company is required to make in excess of the principal amount of converted Additional 2028 Notes.

The Hedge Transaction includes call options covering, subject to anti-dilution adjustments substantially similar to those applicable to the Additional 2028 Notes, approximately 2.7 million shares of the Company’s common stock, which is equal to the number of shares of the Company’s common stock that will initially underlie the Additional 2028 Notes. Separately, the Company also entered into a privately negotiated warrant transaction (the “Warrant Transaction”) with the Option Counterparty relating to, subject to anti-dilution adjustments, approximately 2.7 million shares of the Company’s common stock, with a strike price of approximately \$41.37 per share. Such Warrant Transaction may have a dilutive effect with respect to the Company’s common stock to the extent that the market price per share of its common stock exceeds the strike price of the warrants. The Hedge Transaction and Warrant Transaction are separate transactions, entered into by the Company with the Option Counterparty, and are not part of the terms of the Additional 2028 Notes. Holders of the Additional 2028 Notes will not have any rights with respect to the Hedge Transaction or Warrant Transaction.

The Option Counterparty or its respective affiliates may enter into or unwind various over-the-counter derivatives and/or purchase or sell the Company’s common stock in open market and/or privately negotiated transactions prior to maturity of the Additional 2028 Notes, and are likely to do so during any observation period for the settlement of conversions of Additional 2028 Notes. This activity could also cause or avoid an increase or a decrease in the market price of the Company’s common stock or the Additional 2028 Notes, which could affect the ability to convert the Additional 2028 Notes, and, to the extent the activity occurs during any observation period related to a conversion of Additional 2028 Notes, it could affect the number of shares and value of the consideration that will be received upon conversion of the Additional 2028 Notes.

The foregoing description of the Hedge Transaction and the Warrant Transaction does not purport to be complete and is qualified in its entirety by reference to the forms of the Call Option Confirmation and the Warrant Confirmation executed by the Company and the Option Counterparty on January 5, 2024, which are attached hereto as Exhibit 10.1 and 10.2, respectively, and are incorporated herein by reference

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

The information set forth in Item 1.01 is incorporated by reference into this Item 2.03.

Item 3.02. Unregistered Sales of Equity Securities.

The Additional 2028 Notes were sold in reliance on the exemption from the registration requirements provided by Section 4(a)(2) of the Securities Act for resale to qualified institutional buyers pursuant to Rule 144A of the Securities Act. The Company does not intend to file a shelf registration statement for the resale of the Additional 2028 Notes or any common stock issuable upon conversion of the Additional 2028 Notes. Any shares of common stock that may be issued upon conversion of the Additional 2028 Notes will be issued in reliance upon Section 3(a)(9) of the Securities Act as involving an exchange by the Company exclusively with its security holders. The Additional 2028 Notes are initially convertible into a maximum of 3,447,445 shares of common stock, based on the initial maximum conversion rate of 52.6315 shares of common stock per \$1,000 principal amount of the Additional 2028 Notes (which includes Additional Shares, if any, issuable in connection with a

Make-Whole Fundamental Change), which is subject to customary anti-dilution adjustment provisions. The warrants were sold to the Option Counterparty in reliance on the exemption from the registration requirements provided by Section 4(a)(2) of the Securities Act. The warrants are exercisable with respect to a maximum of 5,303,766 shares of common stock. Additional information pertaining to the Additional 2028 Notes, the shares of common stock issuable upon conversion of the Additional 2028 Notes and the warrants is contained in Item 1.01 of this report and is incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
10.1	Form of Call Option Confirmation between the Company and the Option Counterparty.
10.2	Form of Warrant Confirmation between the Company and the Option Counterparty.
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

SIGNATURES

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

Dated: January 10, 2024

GUESS?, INC.

By: /s/ Markus Neubrand
Markus Neubrand
Chief Financial Officer

January [], 2024

To: Guess?, Inc.
1444 South Alameda Street
Los Angeles, California 90021
Attn:
Telephone:

From: [Dealer Contact]

Re: Convertible Bond Hedge Transaction

Ladies and Gentlemen:

The purpose of this communication (this “**Confirmation**”) is to set forth the terms and conditions of the above- referenced transaction entered into on the Trade Date specified below (the “**Transaction**”) between [] (“**Dealer**”) and Guess?, Inc. (“**Counterparty**”). This communication constitutes a “Confirmation” as referred to in the ISDA Master Agreement specified below.

1. This Confirmation is subject to, and incorporates, the definitions and provisions of the 2006 ISDA Definitions (including the Annex thereto) (the “**2006 Definitions**”) and the definitions and provisions of the 2002 ISDA Equity Derivatives Definitions (the “**Equity Definitions**”), and together with the 2006 Definitions, the “**Definitions**”), in each case as published by the International Swaps and Derivatives Association, Inc. (“**ISDA**”). In the event of any inconsistency between the 2006 Definitions and the Equity Definitions, the Equity Definitions will govern. Certain defined terms used herein have the meanings assigned to them in the Indenture dated as of April 17, 2023 between Counterparty and U.S. Bank Trust Company, National Association, as trustee, (the “**Indenture**”) relating to the 3.75% convertible securities due 2028 (the “**Convertible Securities**”). In the event of any inconsistency between the terms defined in the Indenture and this Confirmation, this Confirmation shall govern. The parties further acknowledge that references to the Indenture herein are references to the Indenture as in effect on the date of its execution and if the Indenture is, or the Convertible Securities are, amended, supplemented or modified following their execution, any such amendment, supplement or modification (other than a Merger Supplemental Indenture (as defined below)) will be disregarded for purposes of this Confirmation (other than as provided in Section 8(a) below) unless the parties agree otherwise in writing.

This Confirmation evidences a complete and binding agreement between Dealer and Counterparty as to the terms of the Transaction to which this Confirmation relates. This Confirmation shall be subject to an agreement (the “**Agreement**”) in the form of the ISDA 2002 Master Agreement as if Dealer and Counterparty had executed an agreement in such form but without any Schedule except for (i) the election of US Dollars (“USD”) as the Termination Currency and (ii) the election that the “Cross Default” provisions of Section 5(a)(vi) of the Agreement shall apply to Counterparty and to Dealer (a) with a “Threshold Amount” of USD 35 million applicable to Counterparty and 3% of [Dealer’s][the Dealer’s ultimate parent’s] shareholders equity applicable to Dealer, (b) the phrase “or becoming capable at such time of being declared” shall be deleted from clause (1) of such Section 5(a) (vi), (c) the following language shall be added to the end of such section: “Notwithstanding the foregoing, a default under subsection (2) hereof shall not constitute an Event of Default if (x) the default was caused solely by error or omission of an administrative or operational nature; (y) funds were available to enable the party to make the payment when due; and (z) the payment is made within two Local Business Days of such party’s receipt of written notice of its failure to pay” and (d) “Specified Indebtedness” shall have the meaning specified in Section 14 of the Agreement, except that such term shall not include obligations in respect of deposits received in the ordinary course of Dealer’s banking business. For the avoidance of doubt, the Transaction shall be the only transaction under the Agreement. If there exists any ISDA Master Agreement between Dealer and Counterparty or any confirmation or other agreement between Dealer and Counterparty

pursuant to which an ISDA Master Agreement is deemed to exist between Dealer and Counterparty, then notwithstanding anything to the contrary in such ISDA Master Agreement, such confirmation or agreement or any other agreement to which Dealer and Counterparty are parties, the Transaction shall not be considered a Transaction under, or otherwise governed by, such existing or deemed ISDA Master Agreement.

All provisions contained in, or incorporated by reference to, the Agreement will govern this Confirmation except as expressly modified herein. In the event of any inconsistency between this Confirmation and either the Definitions or the Agreement, this Confirmation shall govern. For the avoidance of doubt, except to the extent of an express conflict, the application of any provision of this Confirmation, the Agreement or the Equity Definitions shall not be construed to exclude or limit the application of any other provision of this Confirmation, the Agreement or the Equity Definitions.

2. The Transaction constitutes a Share Option Transaction for purposes of the Equity Definitions. The terms of the particular Transaction to which this Confirmation relates are as follows:

General Terms:

Trade Date:	January [], 2024
Effective Date:	The closing date of the initial issuance of the Convertible Securities.
Option Type:	Call
Seller:	Dealer
Buyer:	Counterparty
Shares:	The common stock of Counterparty, par value USD 0.01 per share (Ticker Symbol: "GES").
Number of Options:	The number of Convertible Securities in denominations of USD 1,000 principal amount issued by Counterparty.
Applicable Percentage	[]%
Number of Shares:	As of any date, the product of (A) the Number of Options, (B) the Conversion Rate and (C) the Applicable Percentage.
Conversion Rate:	As of any date, the "Conversion Rate" (as defined in the Indenture) as of such date, but without regard to any adjustments to the "Conversion Rate" pursuant to Section 5.06 or 5.07 of the Indenture.
Premium:	As provided in Annex A to this Confirmation.
Premium Payment Date:	The Effective Date
Exchange:	The New York Stock Exchange
Related Exchange:	All Exchanges

Procedures for Exercise:

Exercise Dates:	Each Conversion Date.
Conversion Date:	Each “Conversion Date”, as defined in the Indenture, occurring during the period from and excluding the Effective Date to and including the Expiration Date, for Convertible Securities, each in denominations of USD 1,000 principal amount, that are submitted for conversion on such Conversion Date in accordance with the terms of the Indenture (such Convertible Securities, the “ Relevant Convertible Securities ” for such Conversion Date).
Required Exercise on Conversion Dates:	On each Conversion Date, a number of Options equal to the number of Relevant Convertible Securities for such Conversion Date in denominations of USD 1,000 principal amount shall be automatically exercised.
Expiration Date:	The “Maturity Date” (as defined in the Indenture).
Automatic Exercise:	As provided above under “Required Exercise on Conversion Dates”.
Exercise Notice Deadline:	In respect of any exercise of Options hereunder on any Conversion Date, the Exchange Business Day prior to the first “Scheduled Trading Day” of the “Observation Period” (each as defined in the Indenture) relating to the Convertible Securities converted on the Conversion Date occurring on the relevant Exercise Date; <i>provided</i> that in the case of any exercise of Options hereunder in connection with the conversion of any Relevant Convertible Securities on any Conversion Date occurring during the period starting on and including the 95th “Scheduled Trading Day” preceding the “Maturity Date” (each as defined in the Indenture) and ending on and including the second “Scheduled Trading Day” immediately preceding the “Maturity Date” (each as defined in the Indenture) (the “ Final Conversion Period ”), the Exercise Notice Deadline shall be the Scheduled Trading Day immediately preceding the Maturity Date.
Notice of Exercise:	Notwithstanding anything to the contrary in the Equity Definitions, Dealer shall have no obligation to make any payment or delivery in respect of any exercise of Options hereunder unless Counterparty notifies Dealer in writing prior to 5:00 PM, New York City time, on the Exercise Notice Deadline in respect of such exercise of (i) the number of Options being exercised on the relevant Exercise Date (including, if applicable, whether all or any portion of such exercise relates to the conversion of Relevant Convertible Securities in connection with which holders thereof are entitled to receive additional Shares and/or cash pursuant to the adjustment to the Conversion Rate set forth in Section 5.07 of the Indenture), (ii) the scheduled settlement date under the Indenture for the Convertible Securities converted on the Conversion Date corresponding to such Exercise Date, (iii) whether such Relevant Convertible Securities will be settled by Counterparty by delivery of cash, Shares or a combination of cash and Shares and, if such a combination, the “Specified Dollar Amount” (as defined in the Indenture) and (iv) the first “Scheduled Trading Day” of the “Observation Period” (as defined in the Indenture); <i>provided</i> that in the case of any exercise of Options hereunder in connection with the conversion of any Relevant Convertible Securities on any Conversion Date occurring during the Final Conversion Period, the contents of such notice shall be as set forth in clause (i) above. Counterparty acknowledges its

responsibilities under applicable securities laws, and in particular Section 9 and Section 10(b) of the Exchange Act (as defined below) and the rules and regulations thereunder, in respect of any election of a settlement method with respect to the Convertible Securities.

For the avoidance of doubt, if Counterparty fails to give such notice when due in respect of any exercise of Options hereunder, Dealer's obligation to make any payment or delivery in respect of such exercise shall be permanently extinguished, and late notice shall not cure such failure; *provided* that notwithstanding the foregoing, such notice (and the related exercise of Options) shall be effective if given after the Exercise Notice Deadline, but prior to 5:00 PM New York City time, on the fifth Exchange Business Day following the Exercise Notice Deadline, in which event the Calculation Agent shall have the right to adjust the Delivery Obligation as appropriate to reflect the additional costs (including, but not limited to, hedging mismatches and market losses) and commercially reasonable expenses incurred by Dealer in connection with its commercially reasonable hedging activities (including the unwinding of its commercially reasonable hedge position in a commercially reasonable manner) as a result of Dealer not having received such notice on or prior to the Exercise Notice Deadline.

Notice of Convertible Security
Settlement Method:

Counterparty shall notify Dealer in writing before 5:00 P.M. (New York City time) on the 95th "Scheduled Trading Day" immediately preceding the "Maturity Date" (each as defined in the Indenture) of the irrevocable election by the Counterparty, in accordance with Section 5.03(A) of the Indenture, of the settlement method and, if applicable, the "Specified Dollar Amount" (as defined in the Indenture) applicable to Relevant Convertible Securities with a Conversion Date occurring during the Final Conversion Period. If Counterparty fails timely to provide such notice, Counterparty shall be deemed to have notified Dealer of combination settlement with a "Specified Dollar Amount" (as defined in the Indenture) of USD 1,000 for all conversions occurring during the Final Conversion Period. Counterparty agrees that it shall settle any Relevant Convertible Securities with a Conversion Date occurring during the Final Conversion Period in the same manner as provided in the Notice of Convertible Security Settlement Method it provides or is deemed to have provided hereunder.

Dealer's Telephone Number and Telex
and/or Facsimile Number and Contact
Details for purpose of Giving Notice:

To be provided by Dealer.

Settlement Terms:

Settlement Date:

In respect of an Exercise Date occurring on a Conversion Date, the settlement date for the cash and/or Shares (if any) to be delivered in respect of the Relevant Convertible Securities converted on such Conversion Date pursuant to Section 5.03(C) of the Indenture; *provided* that the Settlement Date will not be prior to the Exchange Business Day immediately following the date Counterparty provides the Notice of Delivery Obligation prior to 5:00 PM, New York City time.

In lieu of the obligations set forth in Sections 8.1 and 9.1 of the Equity Definitions, and subject to “Notice of Exercise” above and “Dividends” (under “Share Adjustments”) below, in respect of an Exercise Date occurring on a Conversion Date, Dealer will deliver to Counterparty, on the related Settlement Date, a number of Shares and/or amount of cash in USD equal to the Applicable Percentage of the aggregate number of Shares, if any, that Counterparty would be obligated to deliver to the holder(s) of the Relevant Convertible Securities converted on such Conversion Date pursuant to Section 5.03 of the Indenture and/or the Applicable Percentage of the aggregate amount of cash, if any, in excess of USD 1,000 per Convertible Security (in denominations of USD 1,000) that Counterparty would be obligated to deliver to holder(s) pursuant to Section 5.03 of the Indenture, as determined by the Calculation Agent by reference to such Section of the Indenture (except that such aggregate number of Shares shall be determined without taking into consideration any rounding pursuant to Section 5.03(B)(ii) of the Indenture and shall be rounded down to the nearest whole number) and cash in lieu of fractional Shares, if any, resulting from such rounding, if Counterparty had elected to satisfy its conversion obligation in respect of such Relevant Convertible Securities by the Convertible Security Settlement Method, notwithstanding any different actual election by Counterparty with respect to the settlement of such Convertible Securities (the “**Convertible Obligation**”); *provided* that such obligation shall be determined (i) excluding any Shares and/or cash that Counterparty is obligated to deliver to holder(s) of the Relevant Convertible Securities as a result of any adjustments to the Conversion Rate pursuant to Section 5.06 or 5.07 of the Indenture and (ii) without regard to the election, if any, by Counterparty to adjust the Conversion Rate (and, for the avoidance of doubt, the Delivery Obligation shall not include any interest payment on the Relevant Convertible Securities that the Counterparty is (or would have been) obligated to deliver to holder(s) of the Relevant Convertible Securities for such Conversion Date); and *provided further* that if such exercise relates to the conversion of Relevant Convertible Securities in connection with which holders thereof are entitled to receive additional Shares and/or cash pursuant to the adjustment to the Conversion Rate set forth in Section 5.07 of the Indenture, then, notwithstanding the foregoing, the Delivery Obligation shall include such additional Shares and/or cash (as determined by the Calculation Agent by reference to such Section of the Indenture), except that the Delivery Obligation shall be capped so that the value of the Delivery Obligation per Option (with the value of any Shares included in the Delivery Obligation determined by the Calculation Agent using the VWAP Price on the last day of the relevant “Observation Period”) does not exceed the amount as determined by the Calculation Agent that would be payable by Dealer pursuant to Section 6 of the Agreement (such amount to be determined solely based on the then current values of the variables that Dealer has used to determine the Premium payable by Counterparty for the Options) if such Conversion Date were an Early Termination Date resulting from an Additional Termination Event with respect to which the Transaction (except that, for purposes of determining such amount (x) the Number of Options shall be deemed to be equal to the Applicable Percentage of the number of Options exercised on such Exercise Date and (y) such amount payable will be determined as if

Section 5.07 of the Indenture were deleted) was the sole Affected Transaction and Counterparty was the sole Affected Party (determined without regard to Section 8(b) of this Confirmation). Notwithstanding the foregoing, and in addition to the cap described in the further proviso to the preceding sentence, in all events the Delivery Obligation shall be capped so that the value of the Delivery Obligation does not exceed the value of the Convertible Obligation (with the Convertible Obligation determined based on the actual settlement method elected by Counterparty with respect to such Relevant Convertible Securities instead of the Convertible Security Settlement Method and with the value of any Shares included in either the Delivery Obligation or such Convertible Obligation determined by the Calculation Agent using the heading "Op" on Bloomberg page GES <equity> (or any successor thereto) on the relevant Settlement Date).

Convertible Security Settlement Method: For any Relevant Convertible Securities, if Counterparty has notified Dealer in the related Notice of Exercise (or in the Notice of Convertible Security Settlement Method, as the case may be) that it has elected to satisfy its conversion obligation in respect of such Relevant Convertible Securities in cash or in a combination of cash and Shares in accordance with Section 5.03(A) of the Indenture (a "**Cash Election**") with a "Specified Dollar Amount" (as defined in the Indenture) of at least USD 1,000, the Convertible Security Settlement Method shall be the settlement method actually so elected by Counterparty in respect of such Relevant Convertible Securities; otherwise, the Convertible Security Settlement Method shall (i) assume Counterparty made a Cash Election with respect to such Relevant Convertible Securities with a "Specified Dollar Amount" (as defined in the Indenture) of USD 1,000 per Relevant Convertible Security and (ii) be calculated as if the relevant "Observation Period" (as defined in the Indenture) pursuant to Section 5.03(B) of the Indenture consisted of 90 Trading Days commencing on (x) the third "Scheduled Trading Day" (as defined in the Indenture) after the Conversion Date for conversions occurring prior to the Final Conversion Period or (y) the 91st "Scheduled Trading Day" prior to the "Maturity Date" (each as defined in the Indenture) for conversions occurring during the Final Conversion Period and any reference herein to the "Observation Period" in respect of such Relevant Convertible Securities shall be deemed to refer to such extended "Observation Period".

Notice of Delivery Obligation: No later than the Scheduled Trading Day immediately following the last day of the relevant "Observation Period", as defined in the Indenture, Counterparty shall give Dealer notice of the final number of Shares and/or the amount of cash comprising the Convertible Obligation; *provided* that, with respect to any Exercise Date occurring during the Final Conversion Period, Counterparty may provide Dealer with a single notice of an aggregate number of Shares and/or the amount of cash comprising the Convertible Obligations for all Exercise Dates occurring in such period (it being understood, for the avoidance of doubt, that the requirement of Counterparty to deliver such notice shall not limit Counterparty's obligations with respect to Notice of Exercise or Notice of Convertible Security Settlement Method or Dealer's obligations with respect to Delivery Obligation, each as set forth above, in any way).

Other Applicable Provisions:	To the extent Dealer is obligated to deliver Shares hereunder, the provisions of Sections 9.1(c), 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) and 9.12 of the Equity Definitions will be applicable as if “Physical Settlement” applied to the Transaction.
Restricted Certificated Shares:	Notwithstanding anything to the contrary in the Equity Definitions, Dealer may, in whole or in part, deliver Shares required to be delivered to Counterparty hereunder in certificated form in lieu of delivery through the Clearance System. With respect to such certificated Shares, the Representation and Agreement contained in Section 9.11 of the Equity Definitions shall be modified by deleting the remainder of the provision after the word “encumbrance” in the fourth line thereof.
Share Adjustments:	
Method of Adjustment:	<p>Notwithstanding Section 11.2 of the Equity Definitions, upon the occurrence of any event or condition set forth in Sections 5.05(A)(i), (ii), (iii), (iv) and (v) and Section 5.05(H) of the Indenture that results in an adjustment under the Indenture by reference to such Sections thereof (any such event or condition, an “Adjustment Event”), the Calculation Agent shall make a corresponding adjustment in a commercially reasonable manner to the terms relevant to the exercise, settlement or payment of the Transaction, subject to “Discretionary Adjustments” below. Prior to the occurrence of any Adjustment Event, Counterparty shall give the Calculation Agent 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 such Adjustment Event; and once the adjustments to be made to the terms of the Indenture and the Convertible Securities in respect of such Adjustment Event have been determined, Counterparty shall promptly notify the Calculation Agent in writing of the details of such adjustments (including, without limitation, of the section or sections of the Indenture and, if applicable, the formula therein pursuant to which such Adjustment Event has occurred).</p> <p>In connection with any Adjustment Event as a result of an event or condition set forth in Section 5.05(A)(ii) of the Indenture or Section 5.05(A)(iii) of the Indenture where, in either case, the period for determining “Y” (as such term is used in Section 5.05(A)(ii) of the Indenture) or “SP” (as such term is used in Section 5.05(A)(iii) of the Indenture), as the case may be, begins before Counterparty has publicly announced the event or condition giving rise to such Adjustment Event, then the Calculation Agent shall have the right to adjust, in good faith and in a commercially reasonable manner, taking into account the terms of the Indenture, any variable relevant to the exercise, settlement or payment for the Transaction as appropriate to reflect the reasonable costs (including, but not limited to, hedging mismatches and market losses) and commercially reasonable expenses incurred by Dealer in connection with its commercially</p>

reasonable hedging activities as a result of such event or condition not having been publicly announced prior to the beginning of such period.

If any Adjustment Event is declared and (a) the event or condition giving rise to such Adjustment Event is subsequently amended, modified, cancelled or abandoned (whether or not there has been a "Conversion Rate" adjustment under the Indenture for such Adjustment Event), (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 Adjustment Event and subsequently such adjustment, in respect of such Adjustment Event, is modified, amended, altered or corrected (each of clauses (a), (b) and (c), a "**Adjustment Event Change**") then, in each case, but without duplication, the Calculation Agent shall have the right to adjust, in good faith and in a commercially reasonable manner, taking into account the terms of the Indenture, any variable relevant to the exercise, settlement or payment for the Transaction as appropriate to reflect the reasonable costs (including, but not limited to, hedging mismatches and market losses) and commercially reasonable expenses incurred by Dealer in connection with its commercially reasonable hedging activities as a result of such Adjustment Event Change.

For the avoidance of doubt, Dealer shall not have any payment or delivery obligation hereunder in respect of, 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 the holders of Convertible Securities (upon conversion or otherwise) or (y) any other transaction in which holders of Convertible Securities are entitled to participate, in each case, in lieu of an adjustment under the Indenture in respect of an Adjustment Event (including, without limitation, under the proviso to the first paragraph of Section 5.05(A)(iii)(1) of the Indenture or the proviso to the first paragraph of Section 5.05(A)(iv) of the Indenture.

Discretionary Adjustments:

Notwithstanding anything to the contrary herein or in the Equity Definitions, if the Calculation Agent in good faith and in a commercially reasonable manner disagrees with any adjustment under the Indenture that is the basis of any adjustment hereunder and that involves an exercise of discretion by Counterparty or its board of directors (including, without limitation, pursuant to Section 5.05(H) of the Indenture or pursuant to Section 5.08(A) of the Indenture any supplemental indenture entered into thereunder (a "**Merger Supplemental Indenture**") 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 in good faith and in a commercially reasonable manner will determine the adjustment to be made to any one or more of the Number of Options, Option Entitlement and any other variable relevant to the exercise, settlement or payment of or under the Transaction in good faith and in a commercially reasonable manner.

Dividends:

If an ex-dividend date for a cash dividend on the Shares occurs on or after the Trade Date and on or prior to the Expiration Date and the amount of such dividend is less than Ordinary Dividend Amount, or if no ex-dividend date for a cash dividend on the Shares occurs in any

regular quarterly dividend period of Counterparty that falls, in whole or in part, after the Trade Date and on or prior to the Expiration Date, then the Calculation Agent will make adjustments to the Delivery Obligation in respect of each Exercise Date as it determines appropriate to account for the economic effect on the Transaction of such shortfall.

Ordinary Dividend Amount:

For the first cash dividend on the Shares for which the ex-dividend date occurs during any regular quarterly dividend period of Counterparty, USD 0.225 (for the avoidance of doubt, subject to adjustment as contemplated by “Method of Adjustment” above and “Consequences of Merger Events” below); for any other cash dividend on the Shares for which the ex-dividend date occurs during the same regular quarterly dividend period, USD 0.00.

Extraordinary Events:

Merger Events:

Notwithstanding Section 12.1(b) of the Equity Definitions, a “Merger Event” means the occurrence of any event or condition set forth in Section 5.08(A) of the Indenture.

Consequences of Merger Events:

Notwithstanding Sections 12.2 and 12.3 of the Equity Definitions, upon the occurrence of a Merger Event that results in an adjustment under the Indenture, the Calculation Agent shall make a corresponding adjustment in a commercially reasonable manner to the terms relevant to the exercise, settlement or payment of the Transaction, subject to “Discretionary Adjustments” above; *provided* that such adjustment shall be made without regard to any adjustment to the Conversion Rate pursuant to Section 5.06 or 5.07 of the Indenture and the election, if any, by Counterparty to adjust the Conversion Rate; and *provided further* that if, with respect to a Merger Event, (i) the consideration for the Shares includes (or, at the option of a holder of Shares, may include) shares of an entity or person that is not a corporation organized under the laws of the United States, any State thereof or the District of Columbia or (ii) the Counterparty following such Merger Event will not be a corporation organized under the laws of the United States, any State thereof or the District of Columbia or will not be the Issuer following such Merger Event, Cancellation and Payment (Calculation Agent Determination) shall apply.

Notice of Merger Consideration:

Upon the occurrence of a Merger Event that causes the Shares to be converted into the right to receive more than a single type of consideration (determined based in part upon any form of stockholder election), Counterparty shall reasonably promptly (but, in any event prior to the effective time of such Merger Event) notify the Calculation Agent of (i) the weighted average of the types and amounts of consideration received by the holders of Shares entitled to receive cash, securities or other property or assets with respect to or in exchange for such Shares in any Merger Event who affirmatively make such an election or, if no holders of Shares affirmatively make such an election, the types and amounts of consideration actually received by holders of Shares and (ii) the details of the adjustment made under the Indenture in respect of such Merger 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 shall also constitute a Delisting if the Shares are not immediately re-listed, re-traded or re-quoted on any of the

New York Stock Exchange, 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.

Additional Disruption Events:

- (a) Change in Law: Applicable; *provided* that Section 12.9(a)(ii) of the Equity Definitions is hereby amended by (i) replacing the parenthetical after the word “regulation” in the second line thereof with “(including, for the avoidance of doubt and without limitation, any tax law or the adoption or promulgation of new regulations authorized or mandated by existing statute)”; (ii) replacing the phrase “the interpretation” in the third line thereof with the phrase “, or public announcement of, the formal or informal interpretation”; (iii) adding the words “or any Hedge Positions” after the word “Shares” in the clause (X) thereof; (iv) by immediately following the word “Transaction” in clause (X) thereof, adding the phrase “in the manner contemplated by the Hedging Party on the Trade Date” and (v) adding the words “, or holding, acquiring or disposing of Shares or any Hedge Positions relating to,” after the words “obligations under” in clause (Y) thereof.
 - (b) Failure to Deliver: Applicable
 - (c) Insolvency Filing: Applicable
 - (d) Hedging Disruption: Applicable; *provided* that:
 - (i) Section 12.9(a)(v) of the Equity Definitions is hereby amended by (a) inserting the following words at the end of clause (A) thereof: “in the manner contemplated by the Hedging Party on the Trade Date” and (b) inserting the following two phrases at the end of such Section:

“For the avoidance of doubt, the term “equity price risk” shall be deemed to include, but shall not be limited to, stock price and volatility risk. And, for the further avoidance of doubt, any such transactions or assets referred to in phrases (A) or (B) above must be available on commercially reasonable pricing terms. For purposes of the immediately preceding sentence, solely a de minimis increase in the cost of acquiring, establishing, re-establishing, substituting, maintaining, unwinding or disposing of any transaction(s) or asset(s) that the Hedging Party deems necessary to hedge the equity price risk of entering into and performing its obligations with respect to the relevant Transaction shall not give rise to a Hedging Disruption.”; and

“(ii) 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”.”
 - (e) Increased Cost of Hedging: Not Applicable
- Hedging Party: For all applicable Potential Adjustment Events and Extraordinary Events, Dealer; *provided* that, when making any election, determination or calculation, the Hedging Party shall be bound by the same obligations applicable to the Calculation Agent as set forth in Section 1.40 of the Equity Definitions as if the Hedging Party were the Calculation Agent.

Determining Party:	For all applicable Extraordinary Events, Dealer; <i>provided</i> that, when making any election, determination or calculation, the Determining Party shall be bound by the same obligations applicable to the Calculation Agent as set forth in Section 1.40 of the Equity Definitions as if the Determining Party were the Calculation Agent. Following any determination or calculation by the Determining Party hereunder, upon a written request by Counterparty, the Determining Party will promptly provide to Counterparty a written explanation (including, if applicable, a report in a commonly used file format for the storage and manipulation of financial data) describing in reasonable detail the basis for the relevant calculation, adjustment or determination (including any quotations, market data or information from internal or external sources used in making such calculation, adjustment or determination, as the case may be, but without disclosing Determining Party's proprietary models or other information that may be proprietary or subject to contractual, legal or regulatory obligations to not disclose such information) and shall use commercially reasonable efforts to provide such written explanation within five (5) Exchange Business Days after the receipt of any such request.
Non-Reliance:	Applicable
Agreements and Acknowledgments Regarding Hedging Activities:	Applicable
Additional Acknowledgments:	Applicable
3. <u>Calculation Agent</u> :	Dealer; <i>provided</i> that (i) if an Event of Default as a result of Section 5(a)(vii) of the Agreement has occurred and is continuing with respect to Dealer, then the Counterparty shall have the right to designate a Calculation Agent that is a leading recognized dealer in equity derivatives (as determined in good faith by the Counterparty) for so long as such Event of Default is continuing and <i>provided, further</i> , that all determinations made by the Calculation Agent shall be made in good faith and in a commercially reasonable manner. Following any calculation, adjustment or determination by the Calculation Agent hereunder, upon a written request by Counterparty, the Calculation Agent will promptly provide to Counterparty a written explanation (including, if applicable, a report in a commonly used file format for the storage and manipulation of financial data) describing in reasonable detail the basis for the relevant calculation, adjustment or determination (including any quotations, market data or information from internal or external sources used in making such calculation, adjustment or determination, as the case may be, but without disclosing Dealer's proprietary models or other information that may be proprietary or subject to contractual, legal or regulatory obligations to not disclose such information) and shall use commercially reasonable efforts to provide such written explanation within five (5) Exchange Business Days after the receipt of any such request.
4. <u>Account Details</u> :	
Dealer Payment Instructions:	[]
Counterparty Payment Instructions	

Bank Routing:
Account No.:

5. Offices:

The Office of Dealer for the Transaction is: []

The Office of Counterparty for the Transaction is: Not applicable

6. Notices: For purposes of this Confirmation:

Address for notices or communications to Counterparty:

To: Guess?, Inc.
1444 South Alameda Street
Los Angeles, California 90021
Attn:
Telephone:
Email:

With a copy to:

To: Guess?, Inc.
1444 South Alameda Street
Los Angeles, California 90021
Attn:
Telephone:
Email:

Address for notices or communications to Dealer:

To: []

7. Representations, Warranties and Agreements:

- (a) In addition to the representations and warranties in the Agreement and those contained elsewhere herein, Counterparty represents and warrants to and for the benefit of, and agrees with, Dealer as follows:
- (i) On the Trade Date, (A) none of Counterparty and its officers and directors is aware of any material nonpublic information regarding Counterparty or the Shares and (B) all reports and other documents filed by Counterparty with the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”) when considered as a whole (with the more recent such reports and documents deemed to amend inconsistent statements contained in any earlier such reports and documents), do not contain any untrue statement of a material fact or any omission of a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances in which they were made, not misleading.
- (ii) (A) On the Trade Date, the Shares or securities that are convertible into, or exchangeable or exercisable for Shares, are not, and shall not be, subject to a “restricted period,” as such term is defined in Regulation M under the Exchange Act (“**Regulation M**”) unless (x) such Shares or securities are excepted from section 101(a) of Regulation M by sections 101(c)(1) or 101(c)(3) of Regulation M and section 102(a) of Regulation M by sections 102(d)(1) or 102(d)(3) of Regulation M or (y) such Shares or securities are of the kind that may be excepted from the prohibitions of sections 101(a) and 102(a) of Regulation M by sections 101(b)(10) and 102(b)(7) of Regulation M and (B) Counterparty shall not engage in any “distribution,” as such term is defined in Regulation M, other than a distribution meeting the requirements of the exceptions set forth in sections 101(b)(10) and 102(b)(7) of Regulation M, until the second Exchange Business Day immediately following the Trade Date.
- (iii) On the Trade Date, neither Counterparty nor any “affiliate” or “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 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, except through Dealer.
- (iv) Without limiting the generality of Section 13.1 of the Equity Definitions, Counterparty acknowledges that Dealer is not making any representations or warranties or taking any position or expressing any view with respect to the treatment of the Transaction under any accounting standards including ASC Topic 260, *Earnings Per Share*, ASC Topic 815, *Derivatives and Hedging*, or ASC Topic 480, *Distinguishing Liabilities from Equity* and ASC 815-40, *Derivatives and Hedging – Contracts in Entity’s Own Equity* (or any successor issue statements) or under FASB’s Liabilities & Equity Project.
- (v) Without limiting the generality of Section 3(a)(iii) of the Agreement, the Transaction will not violate Rule 13e-1 or Rule 13e-4 under the Exchange Act.
- (vi) 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.
- (vii) Counterparty is not entering into this Confirmation to create actual or apparent trading activity in the Shares (or any security convertible into or exchangeable for Shares) or to raise or depress or otherwise manipulate the price of the Shares (or any security convertible into or exchangeable for Shares) or otherwise in violation of the Exchange Act.
- (viii) Counterparty is not, and after giving effect to the transactions contemplated hereby will not be, required to register as an “investment company” as such term is defined in the Investment Company Act of 1940, as amended.
- (ix) On each of the Trade Date and the Premium Payment Date, Counterparty is not, or 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**”)) and Counterparty would be able to purchase the Shares hereunder in compliance with the laws of the jurisdiction of its incorporation.
- (x) The representations and warranties of Counterparty set forth in Section 3 of the Agreement and Section 4 of the Exchange and Subscription Agreements dated as of January [], 2024, between the Counterparty and the New Notes Investors (as defined therein) party thereto (the “**Exchange and Subscription Agreements**”) are true and correct and are hereby deemed to be repeated to Dealer as if set forth herein.

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

(xii) Counterparty acknowledges that the board of directors of Counterparty has granted the approval necessary to cause the restrictions set forth in Section 203 of the Delaware General Corporation Law (the “**Business Combinations Statute**”) to be inapplicable to the Transaction, including, without limitation, transactions in, or linked to, Counterparty’s securities to be effected by Dealer or its affiliate in connection with hedging the Transaction, and as a result neither Dealer nor any of its affiliates or associates shall be subject to the restrictions in the Business Combinations Statute as an “interested stockholder” of Counterparty by virtue of (i) its entry into the Transaction or (ii) any act that Dealer may take in furtherance of the Transaction (including without limitation the hedging transactions to be effected by Dealer or its affiliates in connection with the Transaction, whether in Shares or transactions that references the Shares) or (iii) its purchase of, as the case may be, and/or marketmaking in, the Convertible Securities.

(b) Each of Dealer and Counterparty agrees and represents that it is an “eligible contract participant” as defined in Section 1a(18) of the U.S. Commodity Exchange Act, as amended.

(c) Each of Dealer and Counterparty acknowledges that the offer and sale of the Transaction to it is intended to be exempt from registration under the Securities Act of 1933, as amended (the “**Securities Act**”), by virtue of Section 4(a)(2) thereof. Accordingly, Counterparty represents and warrants to Dealer that (i) it has the financial ability to bear the economic risk of its investment in the Transaction and is able to bear a total loss of its investment, (ii) it is an “accredited investor” as that term is defined in Regulation D as promulgated under the Securities Act, (iii) it is entering into the Transaction for its own account and without a view to the distribution or resale thereof 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.

(d) Counterparty agrees and acknowledges that Dealer is a “financial participant” within the meaning of Section 101(22A) of the Bankruptcy Code. The parties hereto further agree and acknowledge that it is the intent of the parties that (A) this Confirmation is a “securities contract,” as such term is defined in Section 741(7) of the Bankruptcy Code, with respect to which each payment and delivery hereunder or in connection herewith is a “termination value,” “payment amount” or “other transfer obligation” within the meaning of Section 362 of the Bankruptcy Code and a “settlement payment” within the meaning of Section 546 of the Bankruptcy Code, 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 other transfer of property” within the meaning of Sections 362 and 546 of the Bankruptcy Code, and (B) Dealer is entitled to the protections afforded by, among other sections, Sections 362(b)(6), 362(b)(27), 362(o), 546(e), 546(j), 548(d)(2), 555 and 561 of the Bankruptcy Code.

(e) Counterparty shall deliver to Dealer an opinion of counsel, dated as of the Effective Date and reasonably acceptable to Dealer in form and substance, with respect to the matters set forth in Section 3(a) of the Agreement, Section 7(a)(viii) hereof and such other matters as Dealer may reasonably request.

8. Other Provisions:

(a) *Additional Termination Events.*

(i) an “Event of Default” with respect to Counterparty under the terms of the Convertible Securities as set forth in Section 7.01 of the Indenture shall be an Additional Termination Event with respect to which the Transaction is the sole Affected Transaction and Counterparty is the sole Affected Party and Dealer shall be the party entitled to designate an Early Termination Date pursuant to Section 6(b) of the Agreement.

(ii) Promptly following, but in no event later than the fifth Scheduled Trading Day after, any Repayment Event, Counterparty shall notify Dealer in writing of such Repayment Event and the aggregate principal amount of Convertible Securities subject to such Repayment Event (any such notice, a “**Repayment Notice**”). Notwithstanding anything to the contrary in this Confirmation but subject to Section 8(a)(iii) below, the receipt by Dealer from Counterparty of any Repayment Notice, within the applicable time period set forth in the preceding sentence, shall constitute an Additional Termination Event as provided in this Section 8(a)(ii). Upon receipt of any such Repayment Notice, Dealer shall designate an Exchange Business Day following receipt of such Repayment Notice (which Exchange Business Day shall be on or as promptly as commercially reasonably practicable after the date of receipt of the Repayment Notice) as an Early Termination Date with respect to the portion of this Transaction corresponding to

a number of Options (the “**Repayment Options**”) equal to the lesser of (A) the aggregate principal amount of Convertible Securities specified in such Repayment 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 Repayment Options (such a termination, a “**Pro Rata Termination**”). Any payment hereunder with respect to such termination 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 this Transaction and a Number of Options equal to the number of Repayment 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. Counterparty acknowledges its responsibilities under applicable securities laws, and in particular Section 9 and Section 10(b) of the Exchange Act and the rules and regulations thereunder, in respect of any action taken by Counterparty in respect of a repurchase or cancellation of Convertible Securities, including, without limitation, the delivery of a Repayment Notice. Counterparty acknowledges and agrees that any Convertible Securities subject to a Repayment Event will be cancelled in accordance with the applicable provisions of the Indenture and, except for any obligation arising under this Section 8(a)(ii) in respect thereof, will be disregarded and no longer outstanding for all purposes hereunder (including for the calculation of any amount in respect of any termination or cancellation of the Transaction under the Agreement, the Equity Definitions or otherwise). “**Repayment Event**” means the occurrence of (i) any repurchase by Counterparty or any of its subsidiaries of Convertible Securities (whether in connection with or as a result of a “fundamental change”, howsoever defined, or for any other reason), (ii) any Convertible Securities are delivered to Counterparty or any of its subsidiaries in exchange for delivery of any property or assets of such party (howsoever described), (iii) the repayment of any principal of any of the Convertible Securities prior to the final maturity date of the Convertible Securities (for any reason other than as a result of an acceleration of the Convertible Securities that results in an Additional Termination Event pursuant to the preceding Section 8(a)(i)), or (iv) any Convertible Securities are exchanged by or for the benefit of the holders thereof for any other securities of Counterparty or any of its subsidiaries (or any other property, or any combination thereof) pursuant to any exchange offer or similar transaction. For the avoidance of doubt, any conversion of Convertible Securities pursuant to the terms of the Indenture shall not constitute a Repayment Event. 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 (1) the relevant Repayment Event and any conversions, adjustments, agreements, payments, deliveries or acquisitions by or on behalf of Counterparty leading thereto had not occurred, (2) no adjustments to the Conversion Rate have occurred pursuant to Section 5.06 or 5.07 of the Indenture and (3) the corresponding Convertible Securities remain outstanding as if the circumstances related to the Repayment Event had not occurred.

(iii) Notwithstanding any provision in this Confirmation to the contrary, including, for the avoidance of doubt, Section 8(a)(ii) above (*provided* that, for the avoidance of doubt, the acknowledgements and requirements for notice under Section 8(a)(ii) shall continue to apply), in the event of a Repayment Event, Counterparty may elect, in its sole discretion and in lieu of a Pro Rata Termination, to terminate the Transaction and/or other bond hedge transactions with Dealer and other dealers relating to the Convertible Securities (such transactions, the “**Related Transactions**”) in a manner that is not pro rata (such a termination, a “**Non-Pro Rata Termination**”) by providing notice of such Non-Pro Rata Termination in the applicable Repayment Notice, with such Repayment Notice setting forth (X) the number of Repayment Options and (Y) if any, the number of Repayment Options for which Dealer shall designate an Early Termination Date with respect to this Transaction as described below (the “**Dealer Non-Pro Rata Repayment Options**”); *provided* that in no event shall the Dealer Non-Pro Rata Repayment Options be greater than the product of the Number of Options and the Applicable Percentage immediately prior to the related Non-Pro Rata Termination. Upon such notice, Dealer shall (I) designate an Early Termination Date with respect to a number of Options equal to the Dealer Non-Pro Rata Repayment Options, and (II) calculate a Close-out Amount as if (1) an Early Termination Date had been designated in respect of a Transaction having terms identical to this Transaction, but with an Applicable Percentage of 100%, and a number of Options equal to the Dealer Non-Pro Rata Repayment Options, (2) Counterparty were the sole Affected Party and (3) the terminated portion of the Transaction were the sole Affected Transaction. Immediately after giving effect to the Non-Pro Rata Termination with respect to this Transaction and/or Related Transactions, (x) the Number of Options hereunder shall be reduced to be equal to the Number of Options immediately prior to such Non-Pro Rata Termination less the number of Repayment Options; and (y) the Applicable Percentage hereunder shall be adjusted such that the Number of Shares after the Non-Pro Rata Termination shall be equal to the difference between (1) the Number of Shares under this Transaction before the related Repayment Event, *minus* (2) if any, the number of Shares under this Transaction in respect of which the related Non-Pro Rata Termination occurs as described in clause (II) (1) above. If, following any Non-Pro Rata Termination, the Applicable Percentage under this Transaction would be adjusted to zero, then this Transaction shall be terminated in whole after

giving effect to such Non-Pro Rata Termination. For the avoidance of doubt, in the absence of Counterparty's election of a Non-Pro Rata Termination, this Transaction and the Related Transactions shall terminate pursuant to Section 8(a)(ii) in accordance with the stated Applicable Percentage of each such Related Transaction.

(b) *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 such Payment Obligation by the Share Termination Alternative (as defined below); *provided* that Counterparty shall have the right, in its sole discretion, to require Dealer to satisfy any such Payment Obligation in cash ("**Cash Termination**") 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**"); *provided, further*, that if Counterparty elects to require Dealer to satisfy its Payment Obligation through Cash Termination, 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 the contrary; and *provided further* that, in the event of an Insolvency, a Nationalization or a Merger Event, in each case, in which the consideration or proceeds to be paid to holders of Shares consists solely of cash, Counterparty shall be automatically deemed to elect Cash Termination (but, notwithstanding the foregoing, Dealer shall have the right under such circumstances, in its sole discretion, to elect that the Share Termination Alternative shall apply in lieu of Cash Termination as described above); and *provided further* that Counterparty shall not have the right to elect Cash Termination in the event (i) 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 (ii) that Counterparty fails to remake the representation set forth in Section 7(a)(i) of this Confirmation as of the date of such election. If the Share Termination Alternative is applicable, the following provisions shall apply on the Scheduled Trading Day immediately following the relevant merger date, Announcement Date, Early Termination Date or date of cancellation or termination in respect of an Extraordinary Event, as applicable:

Share Termination Alternative: If applicable, means that Dealer shall deliver to Counterparty the Share Termination Delivery Property on the date on which the Payment Obligation would otherwise be due pursuant to "Consequences of Merger Events" above, Section 12.7 or 12.9 of the Equity Definitions or Section 6(d)(ii) of the Agreement, as applicable, or such later date or dates as the Calculation Agent may reasonably determine (such delivery to occur as soon as reasonably practicable under the circumstances) (the "**Share Termination Payment Date**"), in satisfaction of the Payment Obligation. For the avoidance of doubt, a delay in delivery of the Share Termination Delivery Property shall not result in a change in the composition of such Share Termination Delivery Property.

Share Termination Delivery Property: A number of Share Termination Delivery Units, as calculated by the Calculation Agent, equal to the Payment Obligation divided by the Share Termination Unit Price. The Calculation Agent shall adjust the Share Termination Delivery Property by replacing any fractional portion of the aggregate amount of a security therein with an amount of cash equal to the value of such fractional security based on the values used to calculate the Share Termination Unit Price.

Share Termination Unit Price: The value of property contained in one Share Termination Delivery Unit on the date such Share Termination Delivery Units are to be delivered as Share Termination Delivery Property, as determined by the Calculation Agent in its discretion by commercially reasonable means and notified by the Calculation Agent to Dealer at the time of notification of the Payment Obligation.

Share Termination Delivery Unit: In the case of a Termination Event, Event of Default, Delisting or Additional Disruption Event, one Share or, in the case of an Insolvency, Nationalization or Merger Event, one Share or a unit consisting of the number or amount of each type of property received by a holder of one Share (without consideration of any requirement to pay cash or other consideration in lieu of fractional amounts of any securities) in such Insolvency, Nationalization or Merger Event, as applicable. If such Insolvency, Nationalization or Merger Event involves a choice of consideration to be received by

holders, such holder shall be deemed to have elected to receive the maximum possible amount of cash.

Failure to Deliver:

Applicable

Other applicable provisions:

If Share Termination Alternative is applicable, the provisions of Sections 9.8, 9.9 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) and 9.12 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.”

(c) *Disposition of Hedge Shares.* Counterparty hereby agrees that if, in the good faith reasonable judgment of Dealer, based on the advice of counsel, any Shares (the “**Hedge Shares**”) acquired by Dealer or one of its affiliates for the purpose of 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: (i) in order to allow Dealer to sell the Hedge Shares in a registered offering, make available to Dealer an effective registration statement under the Securities Act to cover the resale of such Hedge Shares and (A) enter into an agreement, in form and substance satisfactory to Dealer, substantially in the form of an underwriting agreement for underwritten follow-on offerings of equity securities of companies of comparable size, maturity and lines of business, (B) provide accountant’s “comfort” letters in customary form for underwritten follow-on offerings of equity securities, (C) provide disclosure opinions of nationally recognized outside counsel to Counterparty as are customarily requested in connection with underwritten follow-on offerings of equity securities of companies of comparable size, maturity and lines of business, (D) provide other customary opinions, certificates and closing documents customary in form for underwritten follow-on offerings of equity securities of companies of comparable size, maturity and lines of business and (E) afford Dealer a reasonable opportunity to conduct a “due diligence” investigation with respect to Counterparty customary in scope for underwritten follow-on offerings of equity securities of companies of comparable size, maturity and lines of business; *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 Section 8(c) shall apply at the election of Counterparty; *provided* that Dealer has given Counterparty reasonable notice of its determination and provided Counterparty with reasonable opportunity to satisfy Dealer’s concerns; (ii) in order to allow Dealer to sell the Hedge Shares in a private placement, enter into a private placement agreement substantially similar to private placement purchase agreements customary for private placements of equity securities of companies of comparable size, maturity and lines of business, in form and substance reasonably satisfactory to Dealer, including customary representations, covenants, blue sky and other governmental filings and/or registrations, indemnities to Dealer, due diligence rights (for Dealer or any designated buyer of the Hedge Shares from Dealer), opinions and certificates and such other documentation as is customary for private placements agreements, all reasonably acceptable to Dealer (in which case, the Calculation Agent shall make any adjustments to the terms of the Transaction that are necessary, in its reasonable judgment, to compensate Dealer for any discount from the public market price of the Shares incurred on the sale of Hedge Shares in a private placement); or (iii) purchase the Hedge Shares from Dealer at the VWAP Price on such Exchange Business Days, and in the amounts, requested by Dealer. “**VWAP Price**” means, on any Exchange Business Day, the per Share volume- weighted average price as displayed under the heading “Bloomberg VWAP” on Bloomberg Screen GES <Equity> AQR (or, if such page is not available, its equivalent successor page) in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such Exchange Business Day (or if such volume-weighted average price is unavailable or is manifestly incorrect, the market value of one Share on such Exchange Business Day, as determined by the Calculation Agent using a volume-weighted method). The VWAP Price will be determined without regard to after-hours trading or any other trading outside of the regular trading session.

(d) *Repurchase and Conversion Rate Adjustment Notices.* Counterparty shall, on any day on which Counterparty effects any repurchase of Shares or consummates or otherwise executes or engages in any transaction or event (a “**Conversion Rate Adjustment Event**”) that would lead to an increase in the Conversion Rate (as such term is defined in the Indenture), give Dealer a written notice of such repurchase or Conversion Rate Adjustment Event (a “**Repurchase Notice**”) if, following such repurchase or Conversion Rate Adjustment Event, the Notice Percentage as determined on the date of such Repurchase Notice is (i) greater than []% and (ii) greater by 0.5% than the Notice Percentage included in the immediately preceding Repurchase Notice (or, in the case of the first such Repurchase Notice, greater than the Notice Percentage as of the date hereof),

and, if such repurchase or Conversion Rate Adjustment Event, or the intention to effect the same, would constitute material non-public information with respect to Counterparty or the Shares, Counterparty shall make public disclosure thereof at or prior to delivery of such Repurchase Notice. The “**Notice Percentage**” as of any day is the fraction, expressed as a percentage, the numerator of which is the Number of Shares plus the number of Shares underlying any other call options sold by Dealer to Counterparty and the denominator of which is the number of Shares outstanding on such day. In the event that Counterparty fails to provide Dealer with a Repurchase Notice on the day and in the manner specified in this Section 8(d) then Counterparty agrees to indemnify and hold harmless Dealer, its affiliates and their respective directors, officers, employees, agents and controlling persons (Dealer and each such person being an “**Indemnified Party**”) from and against any and all losses, claims, damages and liabilities (or actions in respect thereof), joint or several, to which such Indemnified Party may become subject under applicable securities laws, including without limitation, Section 16 of the Exchange Act, relating to or arising out of such failure. If for any reason the foregoing indemnification is unavailable to any Indemnified Party or insufficient to hold harmless any Indemnified Party, then Counterparty shall contribute, to the maximum extent permitted by law, to the amount paid or payable by the Indemnified Party as a result of such loss, claim, damage or liability. In addition, Counterparty will reimburse any Indemnified Party for any reasonable expenses (including reasonable counsel fees and expenses) as they are incurred (after notice to Counterparty) in connection with the investigation of, preparation for or defense or settlement of any pending or threatened claim or any action, suit or proceeding arising therefrom, whether or not such Indemnified Party is a party thereto and whether or not such claim, action, suit or proceeding is initiated or brought by or on behalf of Counterparty. Counterparty shall be relieved from liability under this Section 8(d) to the extent that the Indemnified Party fails promptly to notify Counterparty of any action commenced against it in respect of which indemnity may be sought hereunder; *provided* that failure to notify Counterparty (x) shall not relieve Counterparty from any liability hereunder to the extent it is not materially prejudiced as a result thereof and (y) shall not, in any event, relieve Counterparty from any liability that it may have otherwise than on account of the Transaction (including damages resulting from a breach of the Counterparty’s obligations under this Section 8(d)). For purposes of the foregoing sentence, the obligation to notify promptly shall in no event obligate the Dealer to provide such notice earlier than 10 Exchange Business Days from the relevant event. This indemnity shall survive the completion of the Transaction contemplated by this Confirmation and any assignment and delegation of the Transaction made pursuant to this Confirmation or the Agreement shall inure to the benefit of any permitted assignee of Dealer.

(e) *Transfer and Assignment.* Either party may transfer any of its rights or obligations under the Transaction with the prior written consent of the non-transferring party, such consent not to be unreasonably withheld or delayed. For the avoidance of doubt, Dealer may condition its consent on any of the following, without limitation: (i) the receipt by Dealer of opinions and documents reasonably satisfactory to Dealer in connection with such assignment, (ii) such assignment being effected on terms reasonably satisfactory to Dealer with respect to any legal and regulatory requirements relevant to Dealer, (iii) Counterparty continuing to be obligated to provide notices hereunder relating to the Convertible Securities and continuing to be obligated with respect to “Disposition of Hedge Shares” and “Repurchase Notices and Conversion Rate Adjustment Notices” above, (iv) payment by Counterparty of all reasonable costs and expenses, including reasonable counsel fees, incurred by Dealer in connection with such assignment, (v) Dealer not being obliged, as a result of such assignment, to pay the assignee on any payment date, an amount greater than Dealer would have been required to pay in the absence of such assignment and (vi) no Event of Default, Potential Event of Default or Termination Event occurring as a result of such assignment. In addition, Dealer may transfer or assign without any consent of the Counterparty its rights and obligations hereunder and under the Agreement, in whole or in part, to (i) any of its affiliates 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 Dealer’s ultimate parent or (ii) any person of credit quality equivalent to Dealer; provided that, under the applicable law effective on or of the date of such transfer or assignment, (1) 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 an amount that Counterparty would have been required to pay to Dealer in the absence of such transfer or assignment; (2) Counterparty 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 Counterparty would have received from Dealer in the absence of such transfer or assignment; and (3) such transfer or assignment does not cause a deemed exchange for Counterparty of the Transaction under Section 1001 of the Internal Revenue Code of 1986, as amended (the “**Code**”). At any time at which any Excess Ownership Position or a Hedging Disruption exists, if Dealer, in its discretion, is unable to effect a transfer or assignment to a third party in accordance with the requirements set forth above after using its commercially reasonable efforts on pricing terms and within a time period reasonably acceptable to Dealer such that an Excess Ownership Position or a Hedging Disruption, as the case may be, no longer exists, Dealer may designate any Scheduled Trading Day as an Early Termination Date with respect to a portion (the “**Terminated Portion**”) of the Transaction, such that such Excess Ownership Position or Hedging Disruption, as the case may be, no longer exists. In the event that Dealer so designates an Early Termination Date with respect to a portion of the Transaction, a payment or delivery shall be made pursuant to Section 6 of the Agreement and Section 8(b) of this

Confirmation as if (i) an Early Termination Date had been designated in respect of a Transaction having terms identical to the Terminated Portion of the Transaction, (ii) Counterparty shall be the sole Affected Party with respect to such partial termination and (iii) such portion of the Transaction shall be the only Terminated Transaction. “**Excess Ownership Position**” means any of the following: (i) the Equity Percentage exceeds 8.5%, (ii) Dealer or any “affiliate” or “associate” of Dealer would own in excess of 13% of the outstanding Shares for purposes of Section 203 of the Delaware General Corporation Law or (iii) Dealer, Dealer Group (as defined below) or any person whose ownership position would be aggregated with that of Dealer or Dealer Group (Dealer, Dealer Group or any such person, a “**Dealer Person**”) under any federal, state or local laws, regulations, regulatory orders or organizational documents or contracts of Counterparty that are, in each case, applicable to ownership of Shares (“**Applicable Restrictions**”), owns, beneficially owns, constructively owns, controls, holds the power to vote or otherwise meets a relevant definition of ownership in excess of a number of Shares equal to (x) the number of Shares that would give rise to reporting or registration obligations or other requirements (including obtaining prior approval by a state or federal regulator) of a Dealer Person, or could result in an adverse effect on a Dealer Person, under Applicable Restrictions, as determined by Dealer in its reasonable discretion, and with respect to which such requirements have not been met or the relevant approval has not been received or that would give rise to any consequences under the constitutive documents of Counterparty or any contract or agreement to which Counterparty is a party, in each case *minus* (y) 1% of the number of Shares outstanding on the date of determination. The “**Equity Percentage**” as of any day is the fraction, expressed as a percentage, (A) the numerator of which is the number of Shares that Dealer and any of its affiliates 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 which Dealer is or may be deemed to be a part (Dealer and any such affiliates, persons and groups, collectively, “**Dealer Group**”) beneficially owns (within the meaning of Section 13 of the Exchange Act), without duplication, on such day (or, to the extent that, as a result of a change in law, regulation or interpretation after the date hereof, the equivalent calculation under Section 16 of the Exchange Act and the rules and regulations thereunder results in a higher number, such number) and (B) the denominator of which is the number of Shares outstanding on such day.

(f) *Staggered Settlement.* 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**”) or at two or more times on the Nominal Settlement Date as follows:

(i) in such notice, Dealer will specify to Counterparty the related Staggered Settlement Dates (each of which will be on or prior to such Nominal Settlement Date, but not prior to the beginning of the related “Observation Period”, as defined in the Indenture) or delivery times and how it will allocate the Shares it is required to deliver under “Delivery Obligation” (above) among the Staggered Settlement Dates or delivery times; and

(ii) the aggregate number of Shares that Dealer will deliver to Counterparty hereunder on all such Staggered Settlement Dates and delivery times will equal the number of Shares that Dealer would otherwise be required to deliver on such Nominal Settlement Date.

(g) *Right to Extend.* Dealer may postpone or add, in whole or in part, any Exercise Date or Settlement Date or any other date of valuation or delivery by Dealer, with respect to some or all of the relevant Options (in which event the Calculation Agent shall make appropriate adjustments in a commercially reasonable manner to the Delivery Obligation), if Dealer determines, in its good faith, commercially reasonable discretion, that such extension or addition 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 cash market, the stock loan market or any other market in which Dealer, in the exercise of its commercially reasonable discretion, deems it advisable to hedge its exposure to the Transaction or (ii) to enable Dealer to effect purchases of Shares in connection with its 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 applicable to Dealer that are applicable to bond hedges or similar transactions and consistently applied (whether or not such requirements, policies or procedures are imposed by law or have been voluntarily adopted by Dealer); *provided* that any such extension pursuant to clause (i) shall not exceed 45 Exchange Business Days.

(h) *Adjustments.* For the avoidance of doubt, whenever the Calculation Agent, Determining Party or Hedging Party is called upon to make an adjustment, determination or election (for the avoidance of doubt, including, but not limited to, any determinations with respect to any amounts) pursuant to the terms of this Confirmation or the Definitions to take into account the effect of an event, the Calculation Agent, Determining Party or Hedging Party, as the case may be, shall make such adjustment, determination or election in a commercially reasonable manner by taking into account the effect of such event on the Hedging Party’s Hedge Position, assuming that the Hedging Party maintains a commercially reasonable Hedge Position.

(i) *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.

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

(k) *No Netting and Set-off.* Each party waives any and all rights it may have to set off obligations arising under the Agreement and the Transaction against other obligations between the parties, whether arising under any other agreement, applicable law or otherwise.

(l) *Equity Rights.* Dealer acknowledges and agrees that this Confirmation is not intended to convey to it rights with respect to the Transaction that are senior to the claims of common stockholders in the event of Counterparty's bankruptcy. For the avoidance of doubt, the parties agree that the preceding sentence shall not apply at any time other than during Counterparty's bankruptcy to any claim arising as a result of a breach by Counterparty of any of its obligations under this Confirmation or the Agreement. For the avoidance of doubt, the parties acknowledge that none of the obligations of Counterparty or Dealer under this Confirmation are secured by any collateral that would otherwise secure the obligations of Counterparty herein under or pursuant to any other agreement.

(m) *Early Unwind.* In the event the sale by Counterparty of the New Notes (as defined in the Exchange and Subscription Agreements) is not consummated with the New Notes Investors (as defined in the Exchange and Subscription Agreements) pursuant to the Exchange and Subscription Agreements for any reason by the close of business in New York on January []¹, 2024, or such later date as agreed upon by the parties (January []², 2024 or such later date, the "**Early Unwind Date**"), the Transaction shall automatically terminate (the "**Early Unwind**"), on the Early Unwind Date and the Transaction and all of the respective rights and obligations of Dealer and Counterparty thereunder shall be cancelled and terminated. Following such termination and cancellation, each party shall be released and discharged by the other party from and agrees not to make any claim against the other party with respect to any obligations or liabilities of either party arising out of and to be performed in connection with the Transaction either prior to or after the Early Unwind Date. Dealer and Counterparty represent and acknowledge to the other that upon an Early Unwind, all obligations with respect to the Transaction shall be deemed fully and finally discharged.

(n) *Payments by Counterparty upon Early Termination.* The parties hereby agree that, notwithstanding anything to the contrary herein, in the Definitions or in the Agreement, following the payment of the Premium, in the event that an Early Termination Date (whether as a result of an Event of Default or a Termination Event (other than an Event of Default arising under Section 5(a)(ii) or 5(a)(iv) of the Agreement)) occurs or is designated with respect to the Transaction or the Transaction is terminated or cancelled pursuant to Article 12 of the Equity Definitions and, as a result, Counterparty would owe to Dealer an amount calculated under Section 6(e) of the Agreement or Article 12 of the Equity Definitions, such amount shall be deemed to be zero.

(o) *Wall Street Transparency and Accountability Act of 2010.* The parties hereby agree that none of (v) Section 739 of the Wall Street Transparency and Accountability Act of 2010 ("**WSTAA**"), (w) any similar legal certainty provision in any legislation enacted, or rule or regulation promulgated, on or after the Trade Date, (x) the enactment of WSTAA or any regulation under the WSTAA, (y) any requirement under WSTAA nor (z) an amendment made by WSTAA, shall limit or otherwise impair either party's rights to terminate, renegotiate, modify, amend or supplement this Confirmation or the Agreement, as applicable, arising from a termination event, force majeure, illegality, increased costs, regulatory change or similar event under this Confirmation, the Equity Definitions incorporated herein, or the Agreement (including, but not limited to, rights arising from Change in Law, Hedging Disruption, Increased Cost of Hedging, an Excess Ownership Position or Illegality (as defined in the Agreement)).

(p) *Tax Matters*

(i) *Withholding Tax imposed on payments to non-US counterparties under the United States Foreign Account Tax Compliance Act.* "Tax" and "Indemnifiable Tax", each as defined in Section 14 of the Agreement, shall not include any U.S. federal withholding tax imposed or collected pursuant to Sections 1471 through 1474 of the Code, any current or future regulations or official interpretations thereof, any agreement entered into pursuant to

¹ NTD: To the be closing date.

² NTD: To the be closing date.

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.

(ii) To the extent that either party to the Agreement with respect to this Transaction is not an adhering party to the ISDA 2015 Section 871(m) Protocol published by the International Swaps and Derivatives Association, Inc. on November 2, 2015 and available at www.isda.org, as may be amended, supplemented, replaced or superseded from time to time (the “**871(m) Protocol**”), the parties agree that the provisions and amendments contained in the Attachment to the 871(m) Protocol are incorporated into and apply to the Agreement with respect to this Transaction as if set forth in full herein. The parties further agree that, solely for purposes of applying such provisions and amendments to the Agreement with respect to this Transaction, references to “each Covered Master Agreement” in the 871(m) Protocol will be deemed to be references to the Agreement with respect to this Transaction, and references to the “Implementation Date” in the 871(m) Protocol will be deemed to be references to the Trade Date of this Transaction.

(iii) *Tax documentation.* For the purpose of Section 4(a)(i) of the Agreement, Counterparty shall provide to Dealer a valid U.S. Internal Revenue Service Form W-9, or any successor thereto, (i) on or before the date of execution of this Confirmation and (ii) promptly upon learning that any such tax form previously provided by Counterparty has become obsolete or incorrect. Additionally, Counterparty shall, promptly upon request by Dealer, provide such other tax forms and documents requested by Dealer.

(iv) *Tax Representations.* For the purpose of Section 3(f) of the Agreement, Counterparty represents that it is a corporation for U.S. federal income tax purposes and is organized under the laws of the State of Delaware and a “U.S. person” (as that term is used in section 1.1441-4(a)(3)(ii) of United States Treasury Regulations) for U.S. federal income tax purposes and an exempt recipient under Treasury Regulation Section 1.6049-4(c)(1)(ii).

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

(r) *Governing Law; Jurisdiction.* **THIS CONFIRMATION AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS CONFIRMATION SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK. THE PARTIES HERETO IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND THE UNITED STATES COURT FOR THE SOUTHERN DISTRICT OF NEW YORK IN CONNECTION WITH ALL MATTERS RELATING HERETO AND WAIVE ANY OBJECTION TO THE LAYING OF VENUE IN, AND ANY CLAIM OF INCONVENIENT FORUM WITH RESPECT TO, THESE COURTS.**

(s) *Financial Assistance.* Counterparty represents and warrants that it has not applied, and shall not, without the consent of Dealer, until after the first date on which no portion of the Transaction remains outstanding following any final exercise and settlement, cancellation or early termination of the Transaction, apply, for a loan, loan guarantee, direct loan (as that term is defined in the Coronavirus Aid, Relief and Economic Security Act (the “**CARES Act**”)) or other investment, or to receive any financial assistance or relief under any program or facility (collectively “**Financial Assistance**”) that (a) is established under applicable law (whether in existence as of the Trade Date or subsequently enacted, adopted or amended), including without limitation the CARES Act and the Federal Reserve Act, as amended, and (b) (i) requires under applicable law (or any regulation, guidance, interpretation or other pronouncement of a governmental authority with jurisdiction for such program or facility) as a condition of such Financial Assistance, that the Counterparty agree, attest, certify or warrant that it has not, as of the date specified in such condition, repurchased, or will not repurchase, any equity security of Counterparty, and that it has not, as of the date specified in the condition, made a capital distribution or will make a capital distribution, or (ii)

where the terms of the Transaction would cause Counterparty under any circumstances to fail to satisfy any condition for application for or receipt or retention of the Financial Assistance (collectively “**Restricted Financial Assistance**”); provided, that Counterparty may apply for Restricted Financial Assistance if (x) Counterparty either (a) determines based on advice of outside counsel reasonably satisfactory to the Dealer that the terms of the Transaction would not cause Counterparty to fail to satisfy any condition for application for or receipt or retention of such Financial Assistance based on the terms of the program or facility as of the date of such advice or (b) delivers to Dealer evidence or other guidance from a governmental authority with jurisdiction for such program or facility that the Transaction is permitted under such program or facility (either by specific reference to the Transaction or by general reference to transactions with the attributes of the Transaction in all relevant respects) and (y) on the basis of which Dealer consents to Counterparty’s application for such Restricted Financial Assistance (such consent not to be unreasonably withheld or delayed). Counterparty further represents and warrants that the Premium is not being paid, in whole or in part, directly or indirectly, with funds received under or pursuant to any program or facility, including the U.S. Small Business Administration’s “Paycheck Protection Program”, that (a) is established under applicable law (whether in existence as of the Trade Date or subsequently enacted, adopted or amended), including without limitation the CARES Act and the Federal Reserve Act, as amended, and (b) requires under such applicable law (or any regulation, guidance, interpretation or other pronouncement of a governmental authority with jurisdiction for such program or facility) that such funds be used for specified or enumerated purposes that do not include the purchase of the Transaction (either by specific reference to the Transaction or by general reference to transactions with the attributes of the Transaction in all relevant respects).

(t) [Dealer Boilerplate. Insert additional Dealer boilerplate, if applicable.]

[Signature Page Follows]

Counterparty hereby agrees (a) to check this Confirmation carefully and immediately upon receipt so that errors or discrepancies can be promptly identified and rectified and (b) to confirm that the foregoing (in the exact form provided by Dealer) correctly sets forth the terms of the agreement between Dealer and Counterparty with respect to the Transaction, by manually signing this Confirmation or this page hereof as evidence of agreement to such terms and providing the other information requested herein and immediately returning an executed copy to Dealer.

Yours faithfully,

[]

By: _____

Name:

Title:

[Signature Page to Bond Hedge Confirmation]

Agreed and Accepted By:

GUESS?, INC.

By:

Name:

Title:

[Signature Page to Bond Hedge Confirmation]

Premium: USD [] (Premium per Option USD []).

January [], 2024

To: Guess?, Inc.
1444 South Alameda Street
Los Angeles, California 90021
Attn:
Telephone:

From: [Dealer Contact]

Re: Issuer Warrant Transaction

Ladies and Gentlemen:

The purpose of this communication (this “**Confirmation**”) is to set forth the terms and conditions of the above- referenced transaction entered into on the Trade Date specified below (the “**Transaction**”) between [Dealer] (“**Dealer**”) and Guess?, Inc. (“**Issuer**”). This communication constitutes a “Confirmation” as referred to in the ISDA Master Agreement specified below.

1. This Confirmation is subject to, and incorporates, the definitions and provisions of the 2006 ISDA Definitions (including the Annex thereto) (the “**2006 Definitions**”) and the definitions and provisions of the 2002 ISDA Equity Derivatives Definitions (the “**Equity Definitions**”, and together with the 2006 Definitions, the “**Definitions**”), in each case as published by the International Swaps and Derivatives Association, Inc. (“**ISDA**”). In the event of any inconsistency between the 2006 Definitions and the Equity Definitions, the Equity Definitions will govern. For purposes of the Equity Definitions, each reference herein to a Warrant shall be deemed to be a reference to a Call Option or an Option, as context requires.

This Confirmation evidences a complete and binding agreement between Dealer and Issuer as to the terms of the Transaction to which this Confirmation relates. This Confirmation shall be subject to an agreement (the “**Agreement**”) in the form of the ISDA 2002 Master Agreement as if Dealer and Issuer had executed an agreement in such form but without any Schedule except for (i) the election of US Dollars (“**USD**”) as the Termination Currency and (ii) the election that the “Cross Default” provisions of Section 5(a)(vi) of the Agreement shall apply to Issuer and to Dealer (a) with a “Threshold Amount” of USD 35 million applicable to Issuer and 3% of [Dealer’s][the Dealer’s ultimate parent’s] shareholders equity applicable to Dealer, (b) the phrase “or becoming capable at such time of being declared” shall be deleted from clause (1) of such Section 5(a)(vi), (c) the following language shall be added to the end such section: “Notwithstanding the foregoing, a default under subsection (2) hereof shall not constitute an Event of Default if (x) the default was caused solely by error or omission of an administrative or operational nature; (y) funds were available to enable the party to make the payment when due; and (z) the payment is made within two Local Business Days of such party’s receipt of written notice of its failure to pay” and (d) “Specified Indebtedness” shall have the meaning specified in Section 14 of the Agreement, except that such term shall not include obligations in respect of deposits received in the ordinary course of Dealer’s banking business. For the avoidance of doubt, the Transaction shall be the only transaction under the Agreement. If there exists any ISDA Master Agreement between Dealer and Issuer or any confirmation or other agreement between Dealer and Issuer pursuant to which an ISDA Master Agreement is deemed to exist between Dealer and Issuer, then notwithstanding anything to the contrary in such ISDA Master Agreement, such confirmation or agreement or any other agreement to which Dealer and Issuer are parties, the Transaction shall not be considered a Transaction under, or otherwise governed by, such existing or deemed ISDA Master Agreement.

All provisions contained in, or incorporated by reference to, the Agreement will govern this Confirmation except as expressly modified herein. In the event of any inconsistency between this Confirmation and either the Definitions or the Agreement, this Confirmation shall govern. For the avoidance of doubt, except to the extent of an express conflict, the application of any provision of this Confirmation, the Agreement or the Equity Definitions shall not be construed to exclude or limit the application of any other provision of this Confirmation, the Agreement or the Equity Definitions.

2. The Transaction is a Warrant Transaction, which shall be considered a Share Option Transaction for purposes of the Equity Definitions. The terms of the particular Transaction to which this Confirmation relates are as follows:

General Terms:

Trade Date:	January [], 2024
Effective Date:	January [], 2024, or such other date as agreed between the parties, subject to Section 8(n) below
Components:	The Transaction will be divided into individual Components, each with the terms set forth in this Confirmation, and, in particular, with the Number of Warrants and Expiration Date set forth in this Confirmation. The payments and deliveries to be made upon settlement of the Transaction will be determined separately for each Component as if each Component were a separate Transaction under the Agreement.
Warrant Style:	European
Warrant Type:	Call
Seller:	Issuer
Buyer:	Dealer
Shares:	The common stock of Issuer, par value USD 0.01 per share (Ticker Symbol: "GES").
Number of Warrants:	For each Component, as provided in Annex A to this Confirmation.
Warrant Entitlement:	One Share per Warrant
Strike Price:	As provided in Annex A to this Confirmation. Notwithstanding anything to the contrary in the Agreement, this Confirmation or the Equity Definitions, in no event shall the Strike Price be subject to adjustment to the extent that, after giving effect to such adjustment, the Strike Price would be less than USD 19.00, except for any adjustment pursuant to the terms of this Confirmation and the Equity Definitions in connection with stock splits or similar changes to Issuer's capitalization.
Premium:	As provided in Annex A to this Confirmation.
Premium Payment Date:	The Effective Date
Exchange:	The New York Stock Exchange
Related Exchange:	All Exchanges
Procedures for Exercise:	
<i>In respect of any Component:</i>	
Expiration Time:	Valuation Time
Expiration Date:	As provided in <u>Annex A</u> to this Confirmation (or, if such date is not a Scheduled Trading Day, the next following Scheduled Trading Day that is not already an Expiration Date for another Component); <i>provided</i> that if that date is a Disrupted Day, the Expiration Date for

such Component shall be the first succeeding Scheduled Trading Day that is not a Disrupted Day and is not or is not deemed to be an Expiration Date in respect of any other Component of the Transaction hereunder; and *provided further* that if the Expiration Date has not occurred pursuant to the preceding proviso as of the Final Disruption Date, Dealer may elect in its reasonable discretion that the Final Disruption Date shall be the Expiration Date (irrespective of whether such date is an Expiration Date in respect of any other Component for the Transaction) and, notwithstanding anything to the contrary in this Confirmation or the Definitions, the Relevant Price for such Expiration Date shall be the prevailing market value per Share determined by the Calculation Agent in a commercially reasonable manner. “**Final Disruption Date**” means December 16, 2028. Notwithstanding the foregoing and anything to the contrary in the Equity Definitions, if a Market Disruption Event occurs on any Expiration Date, the Calculation Agent may reasonably determine that such Expiration Date is a Disrupted Day only in part, in which case (i) the Calculation Agent shall make reasonable adjustments to the Number of Warrants for the relevant Component for which such day shall be the Expiration Date and shall designate the Scheduled Trading Day determined in the manner described in the second preceding sentence as the Expiration Date for the remaining Warrants for such Component, and (ii) the VWAP Price for such Disrupted Day shall be reasonably determined by the Calculation Agent based on transactions in the Shares on such Disrupted Day taking into account the nature and duration of such Market Disruption Event on such day. Any Scheduled Trading Day on which, as of the date hereof, the Exchange is scheduled to close prior to its normal close of trading shall be deemed not to be a Scheduled Trading Day; if a closure of the Exchange prior to its normal close of trading on any Scheduled Trading Day is scheduled following the date hereof, then such Scheduled Trading Day shall be deemed to be a Disrupted Day in full. Section 6.6 of the Equity Definitions shall not apply to any Valuation Date occurring on an Expiration Date.

Market Disruption Event:

Section 6.3(a) of the Equity Definitions is hereby amended (A) by deleting the words “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,” in clause (ii) 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, based upon advice of counsel, determines makes it appropriate with regard to any U.S. federal or state legal, regulatory or self-regulatory requirements or related policies and procedures applicable to warrant transactions or similar transactions and consistently applied (whether or not such requirements, policies or procedures are imposed by law or have been voluntarily adopted by Dealer), including, without limitation, Rule 10b-18 under the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), for Dealer to refrain from or decrease any market activity in which it would otherwise engage in order to establish or maintain a commercially reasonable Hedge Position in connection

with the Transaction. Dealer shall notify Issuer as soon as reasonably practicable (but in no event later than two Scheduled Trading Days after such Regulatory Disruption) that a Regulatory Disruption has occurred and the Expiration Dates affected by it.

Automatic Exercise:

Applicable; and means that the Number of Warrants for each Component will be deemed to be automatically exercised at the Expiration Time on the Expiration Date for such Component unless Dealer notifies Seller (by telephone or in writing) prior to the Expiration Time on the Expiration Date that it does not wish Automatic Exercise to occur, in which case Automatic Exercise will not apply.

Issuer's Telephone Number and Telex and/or Facsimile Number and Contact Details for purpose of Giving Notice:

To be provided by Issuer.

Settlement Terms:

In respect of any Component:

Settlement Currency:

USD

Settlement Method Election:

Applicable; *provided* that (i) Issuer may elect Cash Settlement only if, on or prior to the Settlement Method Election Date, Issuer delivers written notice to Dealer stating that Issuer has elected that Cash Settlement apply to every Component of the Transaction; (ii) on such notice delivery date, Issuer represents and warrants to Dealer in writing that, as of such notice delivery date, (A) none of Issuer and its officers or directors, or any person that "controls" (within the meaning of the definition of an "affiliate" under Rule 144 under the Securities Act) any of the foregoing, is aware of any material nonpublic information regarding Issuer or the Shares, (B) Issuer is electing Cash Settlement in good faith and not as part of a plan or scheme to evade compliance with the federal securities laws, (C) the Issuer is not "insolvent" (as such term is defined under Section 101(32) of the U.S. Bankruptcy Code (Title 11 of the United States Code) (the "**Bankruptcy Code**")), (D) it would be able to purchase the Number of Shares, in compliance with the laws of Issuer's jurisdiction or organization, (E) Issuer has the requisite corporate power to make such election and to execute and deliver any documentation relating to such election that it is required by this Confirmation to deliver and to perform its obligations under this Confirmation and has taken all necessary corporate action to authorize such election, execution, delivery and performance, (F) 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 (G) any transaction that Dealer makes with respect to the Shares during the period beginning at the time that Issuer delivers notice of its Cash Settlement election and ending at the close of business on the final day of the Settlement Period shall be made by Dealer at Dealer's sole discretion for Dealer's own account and Issuer shall not have, and shall not attempt to exercise, any influence over how, when, whether or at what price Dealer effects such transactions, including, without limitation, the prices paid or received by Dealer per Share pursuant to such

transactions, or whether such transactions are made on any securities exchange or privately; and (iii) such Settlement Method Election shall apply to every Component. At any time prior to making a Settlement Method Election Issuer may, without the consent of Dealer, amend this Confirmation by notice to Dealer to eliminate Issuer's right to elect Cash Settlement.

Electing Party: Issuer

Settlement Method Election Date: The third Scheduled Trading Day immediately preceding the scheduled Expiration Date for the Component with the earliest scheduled Expiration Date.

Default Settlement Method: Net Share Settlement

VWAP Price: For any Valuation Date, the dollar volume weighted average price per Share for such Valuation Date based on transactions executed during such Valuation Date, as reported on Bloomberg Page "GES <Equity> AQR" (or any successor thereto) or, in the event such price is not so reported on such Valuation Date for any reason or is manifestly incorrect, as reasonably determined by the Calculation Agent using a volume weighted method.

Net Share Settlement:

Net Share Settlement: On each Settlement Date, Issuer shall deliver to Dealer a number of Shares equal to the Number of Shares to be Delivered for such Settlement Date to the account specified by Dealer and cash in lieu of any fractional shares valued at the Relevant Price on the Valuation Date corresponding to such Settlement Date.

Number of Shares to be Delivered: In respect of any Exercise Date, subject to the last sentence of Section 9.5 of the Equity Definitions, the product of (i) the number of Warrants exercised or deemed exercised on such Exercise Date, (ii) the Warrant Entitlement and (iii) (A) the excess, if any, of the VWAP Price on the Valuation Date occurring on such Exercise Date over the Strike Price (or if there is no such excess, zero) *divided by* (B) such VWAP Price.

The Number of Shares to be Delivered shall be delivered by Issuer to Dealer no later than noon (local time in New York City) on the relevant Settlement Date.

Settlement Date: The Settlement Date, determined as if Physical Settlement applied.

Other Applicable Provisions: If Net Share Settlement is applicable, the provisions of Sections 9.1(c), 9.8, 9.9, 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 Seller is the Issuer of the Shares) and 9.12 of the Equity Definitions will be applicable as if "Physical Settlement" applied to the Transaction.

Cash Settlement:

Option Cash Settlement Amount: For any Exercise Date, the product of (i) the number of Warrants exercised or deemed exercised on such Exercise Date, (ii) the Warrant Entitlement and (iii) the excess of the VWAP Price on the Valuation Date occurring on such Exercise Date over the Strike Price (or, if there is no such excess, zero).

Adjustments:

In respect of any Component:

Method of Adjustment:	Calculation Agent Adjustment; <i>provided</i> that the parties hereto agree that any Share repurchases by Issuer, that are not Tender Offers including those pursuant to Rule 10b-18 of the Exchange Act, Rule 10b5-1 of the Exchange Act or pursuant to forward contracts or accelerated stock repurchase contracts or similar derivatives transactions (all such repurchases, “ Repurchase Transactions ” and all such repurchased Shares, the “ Repurchased Shares ”) on customary terms, at prevailing market prices, volume-average weighted prices or discounts thereto shall not be considered Potential Adjustment Events; <i>provided, further</i> , that the preceding proviso shall not apply to the extent that the aggregate Repurchased Shares during the term of the Transaction would exceed 20% of the number of Shares outstanding as of the Trade Date, as determined in good faith and in a commercially reasonable manner by Calculation Agent; <i>provided, further</i> , that the Initially Contemplated Repurchases shall not be counted for purposes of the immediately preceding proviso. “Initially Contemplated Repurchases” means up to \$42.52 million aggregate amount of share repurchases executed from and after the Trade Date, to the extent that they are executed pursuant to Repurchase Transactions or other repurchase plans initially entered into within six months of the Trade Date.
Extraordinary Dividend:	Any Dividend (i) that has an ex-dividend date occurring on or after the Trade Date and on or prior to the date on which Issuer satisfies all of its delivery obligations hereunder and (ii) the amount or value of which differs from the Ordinary Dividend Amount for such Dividend, as determined by the Calculation Agent. If no ex-dividend date for a Dividend on the Shares occurs in any regular quarterly dividend period of Issuer that falls, in whole or in part, after the Trade Date and on or prior to the Expiration Date, then an Extraordinary Dividend of USD 0.00 shall be deemed to have been paid during such period.
Dividend:	Any dividend or distribution on the Shares (other than any dividend or distribution of the type described in Sections 11.2(e)(i), 11.2(e)(ii)(A) or 11.2(e)(ii)(B) of the Equity Definitions).
Ordinary Dividend Amount:	For the first Dividend on the Shares for which the ex-dividend date occurs during any regular quarterly dividend period of Issuer, USD 0.225, and for any other Dividend on the Shares for which the ex- dividend date occurs during the same regular quarterly dividend period, USD 0.00.
Extraordinary Events:	
Merger Event:	Applicable; <i>provided</i> that if an event occurs that constitutes both a Merger Event under Section 12.1(b) of the Equity Definitions and an Additional Termination Event under Section 8(l) of this Confirmation, Dealer may elect whether the provisions of Section 12.2 of the Equity Definitions or Section 8(l) of this Confirmation will apply.
Consequences of Merger Events:	
(a) Share-for-Share:	Modified Calculation Agent Adjustment
(b) Share-for-Other:	Cancellation and Payment (Calculation Agent Determination)

(c) Share-for-Combined:	Modified Calculation Agent Adjustment
Tender Offer:	Applicable; <i>provided</i> that if an event occurs that constitutes both a Tender Offer under Section 12.1(d) of the Equity Definitions and an Additional Termination Event under Section 8(l) of this Confirmation, Dealer may elect whether the provisions of Section 12.3 of the Equity Definitions or Section 8(l) of this Confirmation will apply; and <i>provided further</i> that for purposes of Section 12.3(d) of the Equity Definitions, references in the definition of Tender Offer under the Equity Definitions to 10% shall be replaced with 20%.
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, in respect of any Merger Event to which Modified Calculation Agent Adjustment applies, the adjustments to be made in accordance with Section 12.2(e)(i) of the Equity Definitions would result in Issuer being different from the issuer of the Shares, then with respect to such Merger Event, as a condition precedent to the adjustments contemplated in Section 12.2(e)(i) of the Equity Definitions, Dealer, the Issuer of the Affected Shares and the entity that will be the Issuer of the New Shares shall, prior to the Merger Date, have entered into such documentation containing representations, warranties and agreements relating to securities law and other issues as requested by Dealer that Dealer has determined, in its reasonable discretion, to be reasonably necessary or appropriate to allow Dealer to continue as a party to the Transaction, as adjusted under Section 12.2(e)(i) of the Equity Definitions in a commercially reasonable manner, and to preserve its commercially reasonable hedging or hedge unwind activities in connection with the Transaction in a manner compliant with applicable U.S. federal or state legal, regulatory or self-regulatory requirements, and with related policies and procedures applicable to Dealer applicable to warrant transactions or similar transactions and consistently applied (whether or not such requirements, policies or procedures are imposed by law or have been voluntarily adopted by Dealer), and if such conditions are not met or if the Calculation Agent reasonably determines that no adjustment that it could make under Section 12.2(e)(i) of the Equity Definitions will produce a commercially reasonable result, then the consequences set forth in Section 12.2(e)(ii) of the Equity Definitions shall apply.
Consequences of Announcement Events:	Modified Calculation Agent Adjustment as set forth in Section 12.3(d) of the Equity Definitions; <i>provided</i> that references to “Tender Offer” shall be replaced by references to “Announcement Event” and references to “Tender Offer Date” shall be replaced by references to “date of such Announcement Event”. An Announcement Event shall be an “Extraordinary Event” for purposes of the Equity Definitions, to which Article 12 of the Equity Definitions is applicable.
Announcement Event:	(i) The public announcement by Issuer, any of its subsidiaries or a Valid Third Party Entity (as defined below) of (x) any transaction or event that, if completed, would constitute a Merger Event or Tender Offer, (y) any acquisition or disposal by Issuer or any of its subsidiaries where the aggregate consideration payable or receivable exceeds 35% of the market capitalization of Issuer as of the date of

such announcement (a “**Transformative Transaction**”) or (z) the intention to enter into a Merger Event or Tender Offer or a Transformative Transaction, (ii) the public announcement by Issuer or any of its subsidiaries 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 Issuer, any of its subsidiaries or a Valid Third Party Entity of a withdrawal, discontinuation, termination or other 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, as determined, in each case, by the Calculation Agent. For purposes of this definition of “Announcement Event,” 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. A “**Valid Third Party Entity**” means any entity or an affiliate or an agent of any entity that would reasonably be expected to become a party to any event listed in clauses (i)(x) through (i)(z) above if such event were consummated, as determined by the Calculation Agent.

New Shares:

In the definition of New Shares in Section 12.1(i) of the Equity Definitions, (a) the text in clause (i) thereof shall be deleted in its entirety (including the word “and” following such clause (i)) 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),” and (b) the phrase “and (iii) issued by a corporation organized under the laws of the United States, any State thereof or the District of Columbia” shall be inserted immediately prior to the period.

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 shall also constitute a Delisting if the Exchange is located in the United States and the Shares are not immediately re-listed, re-traded or re-quoted on any of the New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or their respective successors); if the Shares are immediately re-listed, re-traded or re-quoted on any such exchange or quotation system, such exchange or quotation system shall thereafter be deemed to be the Exchange.

Additional Disruption Events:

(a) Change in Law:

Applicable; *provided that* Section 12.9(a)(ii) of the Equity Definitions is hereby amended by (i) replacing the parenthetical after the word “regulation” in the second line thereof with “(including, for the avoidance of doubt and without limitation, any tax law or the adoption or promulgation of new regulations authorized or mandated by existing statute)”; (ii) replacing the phrase “the interpretation” in the third line thereof with the phrase “, or public announcement of, the formal or informal interpretation”; (iii) adding the words “or any Hedge Positions” after the word “Shares” in the clause (X) thereof; (iv) by immediately following the word “Transaction” in clause (X) thereof, adding the phrase “in the manner contemplated by the Hedging Party on the Trade Date” and (v) adding the words “, or holding, acquiring or disposing of Shares or any Hedge Positions relating to,” after the words “obligations under” in clause (Y) thereof.

(b) Failure to Deliver:	Applicable
(c) Insolvency Filing:	Applicable
(d) Hedging Disruption:	Applicable; <i>provided that</i> : (i) Section 12.9(a)(v) of the Equity Definitions is hereby amended by (a) inserting the following words at the end of clause (A) thereof: “in the manner contemplated by the Hedging Party on the Trade Date” and (b) inserting the following two phrases at the end of such Section: “For the avoidance of doubt, the term “equity price risk” shall be deemed to include, but shall not be limited to, stock price and volatility risk. And, for the further avoidance of doubt, any such transactions or assets referred to in phrases (A) or (B) above must be available on commercially reasonable pricing terms. For purposes of the immediately preceding sentence, solely a <i>de minimis</i> increase in the cost of acquiring, establishing, re-establishing, substituting, maintaining, unwinding or disposing of any transaction(s) or asset(s) that the Hedging Party deems necessary to hedge the equity price risk of entering into and performing its obligations with respect to the relevant Transaction shall not give rise to a Hedging Disruption.”; and “(ii) 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”.”
(e) Increased Cost of Hedging:	Not Applicable
(f) Loss of Stock Borrow:	Applicable
Maximum Stock Loan Rate:	As provided in Annex A to this Confirmation.
(g) Increased Cost of Stock Borrow:	Applicable
Initial Stock Loan Rate:	As provided in Annex A to this Confirmation.
Hedging Party:	Dealer for all applicable Potential Adjustment Events and Extraordinary Events; <i>provided that</i> , when making any election, determination or calculation, the Hedging Party shall be bound by the same obligations applicable to the Calculation Agent as set forth in Section 1.40 of the Equity Definitions as if the Hedging Party were the Calculation Agent.
Determining Party:	Dealer for all applicable Extraordinary Events; <i>provided that</i> , when making any election, determination or calculation, the Determining Party shall be bound by the same obligations applicable to the Calculation Agent as set forth in Section 1.40 of the Equity Definitions as if the Determining Party were the Calculation Agent. Following any determination or calculation by the Determining Party hereunder, upon a written request by Issuer, the Determining Party will promptly provide to Issuer a written explanation (including, if applicable, a report in a commonly used file format for the storage and manipulation of financial data) describing in reasonable detail the basis for the relevant calculation, adjustment or determination (including any quotations, market data or information from internal or external sources used in making such calculation, adjustment or determination, as the case may be, but without disclosing Determining Party’s proprietary models or other information that may be proprietary or subject to contractual, legal or regulatory obligations to not disclose such information) and shall use commercially reasonable

efforts to provide such written explanation within five (5) Exchange Business Days after the receipt of any such request.

Non-Reliance: Applicable

Agreements and Acknowledgments Regarding Hedging Activities: Applicable

Additional Acknowledgments: Applicable

3. Calculation Agent: Dealer; *provided* that (i) if an Event of Default as a result of Section 5(a)(vii) of the Agreement has occurred and is continuing with respect to Dealer, then the Issuer shall have the right to designate a Calculation Agent that is a leading recognized dealer in equity derivatives (as determined in good faith by the Issuer) for so long as such Event of Default is continuing; *provided, further*, that all determinations made by the Calculation Agent shall be made in good faith and in a commercially reasonable manner. Following any calculation, adjustment or determination by the Calculation Agent hereunder, upon a written request by Issuer, the Calculation Agent will promptly provide to Issuer a written explanation (including, if applicable, a report in a commonly used file format for the storage and manipulation of financial data) describing in reasonable detail the basis for the relevant calculation, adjustment or determination (including any quotations, market data or information from internal or external sources used in making such calculation, adjustment or determination, as the case may be, but without disclosing Dealer's proprietary models or other information that may be proprietary or subject to contractual, legal or regulatory obligations to not disclose such information) and shall use commercially reasonable efforts to provide such written explanation within five (5) Exchange Business Days after the receipt of any such request.

4. Account Details:

Dealer Payment Instructions: []

Issuer Payment Instructions:
SWIFT:
Bank Routing:
Account Name:
Account No.:

5. Offices:

The Office of Dealer for the Transaction is: []

The Office of Issuer for the Transaction is: Not applicable

6. Notices: For purposes of this Confirmation:

(a) Address for notices or communications to Issuer:

To: Guess?, Inc.
1444 South Alameda Street

Los Angeles, California 90021
Attn:
Telephone:
Email:

With a copy to:

To: Guess?, Inc.
1444 South Alameda Street
Los Angeles, California 90021
Attn:
Telephone:
Email:

(b) Address for notices or communications to Dealer:

To: []

7. Representations, Warranties and Agreements:

(a) In addition to the representations and warranties in the Agreement and those contained elsewhere herein, Issuer represents and warrants to and for the benefit of, and agrees with, Dealer as follows:

(i) On the Trade Date, (A) none of Issuer and its officers and directors is aware of any material nonpublic information regarding Issuer or the Shares and (B) all reports and other documents filed by Issuer with the Securities and Exchange Commission pursuant to the Exchange Act, when considered as a whole (with the more recent such reports and documents deemed to amend inconsistent statements contained in any earlier such reports and documents), do not contain any untrue statement of a material fact or any omission of a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances in which they were made, not misleading.

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

(iii) Prior to the Trade Date, Issuer shall deliver to Dealer a resolution of Issuer's board of directors authorizing the Transaction and such other certificate or certificates as Dealer shall reasonably request.

(iv) Issuer is not entering into this Confirmation to create actual or apparent trading activity in the Shares (or any security convertible into or exchangeable for Shares) or to raise or depress or otherwise manipulate the price of the Shares (or any security convertible into or exchangeable for Shares) or otherwise in violation of the Exchange Act.

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

(vi) On the Trade Date, (A) the assets of Issuer at their fair valuation exceed the liabilities of Issuer, including contingent liabilities, (B) the capital of Issuer is adequate to conduct the business of Issuer and (C) Issuer 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.

(vii) Issuer shall not take any action to decrease the number of Available Shares below the Capped Number (each as defined below).

(viii) The representations and warranties of Issuer set forth in Section 3 of the Agreement and Section 4 of the Exchange and Subscription Agreements dated as of January [], 2024, between the Issuer and the New Notes Investors (as defined therein) party thereto (the "**Exchange and Subscription Agreements**") are true and correct and are hereby deemed to be repeated to Dealer as if set forth herein.

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

(x) On the Trade Date and during the period starting on the first Expiration Date and ending on the last Expiration Date (the "**Settlement Period**"), (A) the Shares or securities that are convertible into, or exchangeable or exercisable for Shares, are not, and shall not be, subject to a "restricted period," as such term is defined in Regulation

M under the Exchange Act (“**Regulation M**”) unless (x) such Shares or securities are excepted from section 101(a) of Regulation M by sections 101(c)(1) or 101(c)(3) of Regulation M and section 102(a) of Regulation M by sections 102(d)(1) or 102(d)(3) of Regulation M or (y) such Shares or securities are of the kind that may be excepted from the prohibitions of sections 101(a) and 102(a) of Regulation M by sections 101(b)(10) and 102(b)(7) of Regulation M and (B) Issuer shall not engage in any “distribution” (as such term is defined in Regulation M) other than a distribution meeting the requirements of the exceptions set forth in sections 101(b)(10) and 102(b)(7) of Regulation M, until the second Exchange Business Day immediately following the Settlement Period, as applicable.

(xi) On each day during the Settlement Period, neither Issuer nor any “affiliate” or “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 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, except with the consent of Dealer, not to be unreasonably withheld, and except for purchases from its employees that are not “Rule 10b-18 purchases” as defined in Rule 10b-18(a)(13) under the Exchange Act.

(xii) On the Trade Date and at all times until termination or earlier expiration of the Transaction, (A) a number of Shares equal to the Capped Number have been reserved for issuance by all required corporate action of Issuer, (B) the Shares issuable upon exercise of the Warrants (the “**Warrant Shares**”) have been duly authorized and, when delivered against payment therefor (which may include Net Share Settlement in lieu of cash) and otherwise as contemplated by the terms of the Warrant following the exercise of the Warrant in accordance with the terms and conditions of the Warrant, will be validly issued, fully-paid and non-assessable and (C) the issuance of the Warrant Shares will not be subject to any preemptive or similar rights.

(xiii) Issuer acknowledges that the board of directors of Issuer has granted the approval necessary to cause the restrictions set forth in Section 203 of the Delaware General Corporation Law (the “**Business Combinations Statute**”) to be inapplicable to the Transaction, including, without limitation, transactions in, or linked to, Issuer’s securities to be effected by Dealer or its affiliate in connection with hedging the Transaction, and as a result neither Dealer nor any of its affiliates or associates shall be subject to the restrictions in the Business Combinations Statute as an “interested stockholder” of Issuer by virtue of (i) its entry into the Transaction or (ii) any act that Dealer may take in furtherance of the Transaction (including without limitation the hedging transactions to be effected by Dealer or its affiliates in connection with the Transaction, whether in Shares or transactions that references the Shares).

(b) Each of Dealer and Issuer agrees and represents that it is an “eligible contract participant” as defined in Section 1a(18) of the U.S. Commodity Exchange Act, as amended.

(c) Each of Dealer and Issuer 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, Dealer represents and warrants to Issuer 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.

(d) Issuer agrees and acknowledges that Dealer is a “financial participant” within the meaning of Section 101(22A) of the Bankruptcy Code. The parties hereto further agree and acknowledge that it is the intent of the parties that (A) this Confirmation is (i) a “securities contract,” as such term is defined in Section 741(7) of the Bankruptcy Code, with respect to which each payment and delivery hereunder or in connection herewith is a “termination value,” “payment amount” or “other transfer obligation” within the meaning of Section 362 of the Bankruptcy Code and a “settlement payment,” within the meaning of Section 546 of the Bankruptcy Code and (ii) a “swap agreement,” as such term is defined in Section 101(53B) of the Bankruptcy Code, with respect to which each payment and delivery hereunder or in connection herewith is a “termination value,” “payment amount” or “other transfer obligation” within the meaning of Section 362 of the Bankruptcy Code and a “transfer,” as such term is defined in Section 101(54) of the Bankruptcy Code and a “payment or other transfer of property” within the meaning of Sections 362 and 546 of the Bankruptcy Code, and (B) Dealer is entitled to the protections afforded by, among other sections, Sections 362(b)(6), 362(b)(27), 362(o), 546(e), 546(j), 548(d)(2), 555 and 561 of the Bankruptcy Code.

(e) Issuer shall deliver to Dealer an opinion of counsel, dated as of the Effective Date and reasonably acceptable to Dealer in form and substance, with respect to the matters set forth in Section 3(a) of the Agreement, Section 7(a)(v) and Section 7(a)(xii) of this Confirmation (replacing, solely for these purposes, the words “On the Trade Date and at all times until termination or earlier expiration of the Transaction” with the words “On the Effective Date”) and such other matters as Dealer

may reasonably request.

8. Other Provisions:

(a) *Alternative Calculations and Payment on Early Termination and on Certain Extraordinary Events.* If Issuer shall owe Dealer any amount pursuant to Sections 12.2, 12.3, 12.6, 12.7 or 12.9 of the Equity Definitions or pursuant to Section 6(d)(ii) of the Agreement (a “**Payment Obligation**”), Issuer shall satisfy such Payment Obligation by Share Termination Alternative (as defined below); *provided* that Issuer shall have the right, in its sole discretion, to satisfy any such Payment Obligation in cash (“**Cash Termination**”) 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 Merger Date, Tender Offer Date, Announcement Date, Early Termination Date or date of cancellation or termination in respect of an Extraordinary Event, as applicable (“**Notice of Cash Termination**”); *provided, further*, that if Issuer elects to satisfy its Payment Obligation by Cash Termination, Dealer shall have the right, in its sole discretion, to elect to require Issuer to satisfy its Payment Obligation by the Share Termination Alternative, notwithstanding Issuer’s election to the contrary; and *provided further* that, in the event of an Insolvency, a Nationalization, a Tender Offer or a Merger Event, in each case, in which the consideration or proceeds to be paid to holders of Shares consists solely of cash, Issuer shall be automatically deemed to elect Cash Termination (but, notwithstanding the foregoing, Dealer shall have the right under such circumstances, in its sole discretion, to elect that the Share Termination Alternative shall apply in lieu of Cash Termination); and *provided further* that Issuer shall not have the right to elect Cash Termination in the event (i) of an Event of Default in which Issuer is the Defaulting Party or a Termination Event in which Issuer is the Affected Party or an Extraordinary Event, which Event of Default, Termination Event or Extraordinary Event resulted from an event or events within Issuer’s control or (ii) that Issuer fails to remake the representation set forth in Section 7(a)(i) of this Confirmation as of the date of such election. If the Share Termination Alternative is applicable, the following provisions shall apply on the Scheduled Trading Day immediately following the Merger Date, the Tender Offer Date, Announcement Date, Early Termination Date or date of cancellation or termination in respect of an Extraordinary Event, as applicable:

Share Termination Alternative:	If applicable, means that Issuer shall deliver to Dealer the Share Termination Delivery Property on the date on which the Payment Obligation would otherwise be due pursuant to Section 12.7 or 12.9 of the Equity Definitions or Section 6(d)(ii) of the Agreement, as applicable, or such later date or dates as the Calculation Agent may reasonably determine (such delivery to occur as soon as reasonably practicable under the circumstances) (the “ Share Termination Payment Date ”), in satisfaction of the Payment Obligation. For the avoidance of doubt, a delay in delivery of the Share Termination Delivery Property shall not result in a change in the composition of such Share Termination Delivery Property.
Share Termination Delivery Property:	A number of Share Termination Delivery Units, as calculated by the Calculation Agent, equal to the Payment Obligation divided by the Share Termination Unit Price. The Calculation Agent shall adjust the Share Termination Delivery Property by replacing any fractional portion of the aggregate amount of a security therein with an amount of cash equal to the value of such fractional security based on the values used to calculate the Share Termination Unit Price.

Share Termination Unit Price:	The value of property contained in one Share Termination Delivery Unit on the date such Share Termination Delivery Units are to be delivered as Share Termination Delivery Property, as determined by the Calculation Agent in its reasonable discretion by commercially reasonable means and notified by the Calculation Agent to Issuer at the time of notification of the Payment Obligation.
Share Termination Delivery Unit	In the case of a Termination Event, Event of Default, Delisting or Additional Disruption Event, one Share or, in the case of an Insolvency, Nationalization, Merger Event or Tender Offer, 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 Merger Event or Tender Offer, as applicable. If such Insolvency, Nationalization, Merger Event or Tender Offer involves a choice of consideration to be received by holders, such holder shall be deemed to have elected to receive the maximum possible amount of cash.
Failure to Deliver:	Applicable
Other applicable provisions:	If Share Termination Alternative is applicable, the provisions of Sections 9.8, 9.9 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 Seller is the issuer of the Shares or any portion of the Share Termination Delivery Units) and 9.12 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.”

(b) *Registration/Private Placement Procedures.* (i) If, in the reasonable judgment of Dealer, based on the advice of counsel, for any reason, any Shares or any securities of Issuer or its affiliates comprising any Share Termination Delivery Units deliverable to Dealer hereunder (any such Shares or securities, “**Delivered Securities**”) would not be immediately freely transferable by Dealer under Rule 144 under the Securities Act, then the provisions set forth in this Section 8(b) shall apply. At the election of Issuer by notice to Dealer within one Exchange Business Day after the relevant delivery obligation arises, but in any event at least one Exchange Business Day prior to the date on which such delivery obligation is due, either (A) all Delivered Securities delivered by Issuer to Dealer shall be, at the time of such delivery, covered by an effective registration statement of Issuer for immediate resale by Dealer (such registration statement and the corresponding prospectus (the “**Prospectus**”) (including, without limitation, any sections describing the plan of distribution) in form and content commercially reasonably satisfactory to Dealer) or (B) Issuer shall deliver additional Delivered Securities so that the value of such Delivered Securities, as reasonably determined by the Calculation Agent to reflect a commercially reasonable liquidity discount, equals the value of the number of Delivered Securities that would otherwise be deliverable if such Delivered Securities were freely tradeable (without prospectus delivery) upon receipt by Dealer (such value, the “**Freely Tradeable Value**”); *provided* that Issuer may not make the election described in this clause (B) if, on the date of its election, it has taken, or caused to be taken, any action that would make unavailable either the exemption pursuant to Section 4(a)(2) of the Securities Act for the delivery by Issuer to Dealer (or any affiliate designated by Dealer) of the Delivered Securities or the exemption pursuant to Section 4(a)(1) or Section 4(a)(3) of the Securities Act for resales of the Delivered Securities by Dealer (or any such affiliate of Dealer). (For the avoidance of doubt, as used in this paragraph (b) only, the term “Issuer” shall mean the issuer of the relevant securities, as the context shall require.)

(i) If Issuer makes the election described in clause (b)(i)(A) above (and clause (b)(iii) below does not apply):

(a) Dealer (or an Affiliate of Dealer designated by Dealer) shall be afforded a reasonable opportunity to conduct a due diligence investigation with respect to Issuer that is customary in scope for underwritten follow-on offerings of equity securities of companies of comparable size, maturity and lines of business and that yields results that are satisfactory to Dealer or such Affiliate, as the case may be, in its reasonable discretion subject to execution by such recipients of customary confidentiality agreements reasonably acceptable to Issuer; and

(b) Dealer (or an Affiliate of Dealer designated by Dealer) and Issuer shall enter into an agreement (a “**Registration Agreement**”) on commercially reasonable terms in connection with the public resale

of such Delivered Securities by Dealer or such Affiliate substantially similar to underwriting agreements customary for underwritten follow-on offerings of equity securities of companies of comparable size, maturity and lines of business, in form and substance commercially reasonably satisfactory to Dealer or such Affiliate and Issuer, which Registration Agreement shall include, without limitation, provisions substantially similar to those contained in such underwriting agreements of companies of comparable size, maturity and lines of business relating to the indemnification of, and contribution in connection with the liability of, Dealer and its Affiliates and Issuer, shall provide for the payment by Issuer of all reasonable expenses in connection with such resale, including all registration costs and all reasonable fees and expenses of counsel for Dealer, and in connection with an underwritten offering of Delivered Securities shall use its commercially reasonable efforts to provide for the delivery of accountants' "comfort letters" to Dealer or such Affiliate in customary form and substance of companies of comparable size, maturity and lines of business with respect to the financial statements and certain financial information contained in or incorporated by reference into the Prospectus.

(B) If Issuer makes the election described in clause (b)(i)(B) above or if Issuer makes the election described in clause (b)(i)(A) but fails to comply with (ii) above or if applicable legal, regulatory or self-regulatory requirements, or related policies and procedures applicable to Dealer similarly applicable to warrant transactions and consistently applied (whether or not such requirements, policies or procedures are imposed by law or have been voluntarily adopted by Dealer) would preclude or impose liability for the public resale of the Delivered Securities pursuant to the Prospectus:

Dealer (or an Affiliate of Dealer designated by Dealer) and any potential institutional purchaser of any such Delivered Securities from Dealer or such Affiliate identified by Dealer shall be afforded a commercially reasonable opportunity to conduct a due diligence investigation in compliance with applicable law with respect to Issuer customary in scope for private placements of equity securities of companies of comparable size, maturity and lines of business (including, without limitation, the right to have made available to them for inspection all financial and other records, pertinent corporate documents and other information reasonably requested by them subject to execution by such recipients of customary confidentiality agreements reasonably acceptable to Issuer);

Dealer (or an Affiliate of Dealer designated by Dealer) and Issuer shall enter into an agreement (a "**Private Placement Agreement**") on commercially reasonable terms in connection with the private placement of such Delivered Securities by Issuer to Dealer or such Affiliate and the private resale of such Delivered Securities by Dealer or such Affiliate, substantially similar to private placement purchase agreements customary for private placements of equity securities of similar size, in form and substance commercially reasonably satisfactory to Dealer and Issuer, which Private Placement Agreement shall include, without limitation, provisions substantially similar to those contained in such private placement purchase agreements relating to the indemnification of, and contribution in connection with the liability of, Dealer and its Affiliates and Issuer, shall provide for the payment by Issuer of all reasonable expenses in connection with such resale, including all reasonable fees and expenses of counsel for Dealer (which such expenses, at the election of the Issuer, may be paid in Shares by including the amount of such expenses as an additional component of Required Proceeds), shall contain representations, warranties and agreements of Issuer reasonably necessary or advisable to establish and maintain the availability of an exemption from the registration requirements of the Securities Act for such resales, and shall use commercially reasonable efforts to provide for the delivery of accountants' "comfort letters" to Dealer or such Affiliate with respect to the financial statements and certain financial information contained in or incorporated by reference into the offering memorandum prepared for the resale of such Delivered Securities as are customarily requested in comfort letters covering private placements of equity securities of companies of comparable size, maturity and lines of business;

Issuer agrees that under applicable law as it currently exists any Delivered Securities so delivered to Dealer, (i) may be transferred by and among Dealer and its Affiliates, and Issuer shall effect such transfer without any further action by Dealer and (ii) after the minimum "holding period" within the meaning of Rule 144(d) under the Securities Act has elapsed with respect to such Delivered Securities, Issuer shall promptly remove, or cause the transfer agent for such Shares or securities to remove, any legends referring to any such restrictions or requirements from such Delivered Securities upon delivery by Dealer (or such Affiliate of Dealer) to Issuer or such transfer agent of seller's and broker's representation letters customarily delivered by Dealer in connection with resales of restricted securities pursuant to Rule 144 under the Securities Act, without any further requirement for the delivery of any certificate, consent, agreement, opinion of counsel, notice or any other document, any transfer tax stamps or payment of any other amount or any other action by Dealer (or such affiliate of Dealer); and

Issuer shall not take, or cause to be taken, any action that would make unavailable either the exemption pursuant to Section 4(a)(2) of the Securities Act for the sale by Issuer to Dealer (or any affiliate designated by Dealer) of the Shares or Share Termination Delivery Units, as the case may be, or the exemption pursuant to Section 4(a)(1) or Section 4(a)(3) of the

(ii) Dealer or its affiliate may sell such Shares or Share Termination Delivery Units, as the case may be, during a period (the “**Resale Period**”) commencing on the Exchange Business Day following delivery of such Shares or Share Termination Delivery Units, as the case may be, and ending on the Exchange Business Day on which Dealer completes the sale of all such Shares or Share Termination Delivery Units, as the case may be, or a sufficient number of Shares or Share Termination Delivery Units, as the case may be, so that the realized net proceeds of such sales exceed the Freely Tradeable Value (such amount of the Freely Tradeable Value, the “**Required Proceeds**”). If any of such delivered Shares or Share Termination Delivery Units remain after such realized net proceeds exceed the Required Proceeds, Dealer shall return such remaining Shares or Share Termination Delivery Units to Issuer. If the Required Proceeds exceed the realized net proceeds from such resale, Issuer shall transfer to Dealer by the open of the regular trading session on the Exchange on the Exchange Trading Day immediately following the last day of the Resale Period the amount of such excess (the “**Additional Amount**”) in cash or in a number of additional Shares or Share Termination Delivery Units, as the case may be, (“**Make-whole Shares**”) in an amount that, based on the Relevant Price on the last day of the Resale Period (as if such day was the “Valuation Date” for purposes of computing such Relevant Price), has a dollar value equal to the Additional Amount. The Resale Period shall continue to enable the sale of the Make-whole Shares in the manner contemplated by this Section 8(b)(iii). This provision shall be applied successively until the Additional Amount is equal to zero, subject to Section 8(d).

(c) *Beneficial Ownership.* Notwithstanding anything to the contrary in the Agreement or this Confirmation, in no event shall Dealer be entitled to receive, or shall be deemed to receive, any Shares in connection with this Transaction if, immediately upon giving effect to such receipt of such Shares, (i) Dealer’s Beneficial Ownership would be equal to or greater than 8.5% of the outstanding Shares, (ii) Dealer, or any “affiliate” or “associate” of Dealer, would be an “interested stockholder” of Issuer, as all such terms are defined in Section 203 of the Delaware General Corporation Law or (iii) Dealer, Dealer Group (as defined below) or any person whose ownership position would be aggregated with that of Dealer or Dealer Group (Dealer, Dealer Group or any such person, a “Dealer Person”) under any federal, state or local laws, regulations, regulatory orders or organizational documents or contracts of Issuer that are, in each case, applicable to ownership of Shares (“**Applicable Restrictions**”), owns, beneficially owns, constructively owns, controls, holds the power to vote or otherwise meets a relevant definition of ownership in excess of a number of Shares equal to (x) the number of Shares that would give rise to reporting or registration obligations or other requirements (including obtaining prior approval by a state or federal regulator) of a Dealer Person, or could result in an adverse effect on a Dealer Person, under Applicable Restrictions, as determined by Dealer in its reasonable discretion, and with respect to which such requirements have not been met or the relevant approval has not been received or that would give rise to any consequences under the constitutive documents of Issuer or any contract or agreement to which Issuer is a party, in each case *minus* (y) 1% of the number of Shares outstanding on the date of determination (each of clause (i), (ii) and (iii) above, an “**Ownership Limitation**”). If any delivery owed to Dealer hereunder is not made, in whole or in part, as a result of an Ownership Limitation, Dealer’s right to receive such delivery shall not be extinguished and Issuer shall make such delivery as promptly as practicable after, but in no event later than one Exchange Business Day after, Dealer gives notice to Issuer that such delivery would not result in any of such Ownership Limitations being breached. “**Dealer’s Beneficial Ownership**” means the “beneficial ownership” (within the meaning of Section 13 of the Exchange Act and the rules promulgated thereunder (collectively, “**Section 13**”)) of Shares, without duplication, by Dealer, together with any of its affiliates or other person subject to aggregation with Dealer under Section 13 for purposes of “beneficial ownership”, or by any “group” (within the meaning of Section 13) of which Dealer is or may be deemed to be a part (Dealer and any such affiliates, persons and groups, collectively, “**Dealer Group**”) (or, to the extent that, as a result of a change in law, regulation or interpretation after the date hereof, the equivalent calculation under Section 16 of the Exchange Act and the rules and regulations thereunder results in a higher number, such number). Notwithstanding anything in the Agreement or this Confirmation to the contrary, Dealer (or the affiliate designated by Dealer pursuant to Section 8(k) below) shall not become the record or beneficial owner, or otherwise have any rights as a holder, of any Shares that Dealer (or such affiliate) is not entitled to receive at any time pursuant to this Section 8(c), until such time as such Shares are delivered pursuant to this Section 8(c).

(d) *Limitations on Settlement by Issuer.* Notwithstanding anything herein or in the Agreement to the contrary, in no event shall Issuer be required to deliver Shares in connection with the Transaction in excess of the Capped Number of Shares (as provided in Annex A to this Confirmation), subject to adjustment from time to time in accordance with the provisions of this Confirmation or the Definitions; *provided* that no such adjustment shall cause the Capped Number to exceed the Available Shares, other than an adjustment resulting from actions of Issuer or events within Issuer’s control (the “**Capped Number**”). Issuer represents and warrants to Dealer (which representation and warranty shall be deemed to be repeated on each day that the Transaction is outstanding) that the Capped Number is equal to or less than the number of authorized but unissued Shares

of the Issuer that are not reserved for future issuance in connection with transactions in the Shares (other than the Transaction) on the date of the determination of the Capped Number (such Shares, the “**Available Shares**”). In the event Issuer shall not have delivered the full number of Shares otherwise deliverable as a result of this Section 8(d) (the resulting deficit, the “**Deficit Shares**”), Issuer shall be continually obligated to deliver, from time to time until the full number of Deficit Shares have been delivered pursuant to this paragraph, Shares when, and to the extent, that (i) Shares are repurchased, acquired or otherwise received by Issuer or any of its subsidiaries after the Trade Date (whether or not in exchange for cash, fair value or any other consideration), (ii) authorized and unissued Shares previously reserved for issuance in respect of other transactions become no longer so reserved or (iii) Issuer additionally authorizes any unissued Shares that are not reserved for other transactions. Issuer shall immediately notify Dealer of the occurrence of any of the foregoing events (including the number of Shares subject to clause (i), (ii) or (iii) and the corresponding number of Shares to be delivered) and promptly deliver such Shares thereafter.

(e) *Right to Extend.* Dealer may postpone any Exercise Date or Settlement Date or any other date of valuation or delivery by Dealer, with respect to some or all of the relevant Warrants (in which event the Calculation Agent shall make appropriate adjustments in a commercially reasonable manner to the Number of Shares to be Delivered with respect to one or more Components), if Dealer determines, in its good faith, reasonable discretion, that such extension 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 cash market, the stock loan market or any other market in which Dealer, in the exercise of its commercially reasonable discretion, deems it advisable to hedge its exposure to the Transaction in a commercially reasonable manner or (ii) to enable Dealer to effect purchases of Shares in connection with its hedging, hedge unwind or settlement activity hereunder in a manner that would, if Dealer were Issuer or an affiliated purchaser of Issuer, be in compliance with applicable legal, regulatory or self-regulatory requirements, or with related policies and procedures applicable to Dealer applicable to warrant transactions or similar transactions and consistently applied (whether or not such requirements, policies or procedures are imposed by law or have been voluntarily adopted by Dealer); *provided* that any such extension pursuant to clause (i) shall not exceed 100 Exchange Business Days.

(f) *Equity Rights.* Dealer acknowledges and agrees that this Confirmation is not intended to convey to it rights with respect to the Transaction that are senior to the claims of common stockholders in the event of Issuer’s bankruptcy. For the avoidance of doubt, the parties agree that the preceding sentence shall not apply at any time other than during Issuer’s bankruptcy to any claim arising as a result of a breach by Issuer of any of its obligations under this Confirmation or the Agreement. For the avoidance of doubt, the parties acknowledge that this Confirmation is not secured by any collateral that would otherwise secure the obligations of Issuer herein under or pursuant to any other agreement.

(g) *Amendments to Equity Definitions.* The following amendments shall be made to the Equity Definitions:

(i) Section 11.2(a) of the Equity Definitions is hereby amended by deleting the words “a diluting or concentrative” and replacing them with the words “material”; and adding the phrase “or Warrants” at the end of the sentence.

(ii) The first sentence of Section 11.2(c) of the Equity Definitions, prior to clause (A) thereof, is hereby amended to read as follows: ‘(c) If “Calculation Agent Adjustment” is specified as the Method of Adjustment in the related Confirmation of a Share Option Transaction, then following the announcement or occurrence of any Potential Adjustment Event, the Calculation Agent will determine whether such Potential Adjustment Event has an effect on the theoretical value of the relevant Shares or options on the Shares and, if so, will (i) make appropriate adjustment(s), if any, to any one or more of:’ and, the portion of such sentence immediately preceding clause (ii) thereof is hereby amended by (x) deleting the words “diluting or concentrative” and replacing them with the word “material” and (y) the words “(provided that no adjustments will be made to account solely for changes in volatility, expected dividends, stock loan rate or liquidity relative to the relevant Shares)” and replacing such latter phrase with the words “(and, for the avoidance of doubt, except in the case of a Potential Adjustment Event as described in Section 11.2(e)(i), Section 11.2(e)(iv), or Section 11.2(e)(vii) (other than, in the case of Section 11.2(e)(vii), any corporate event involving the Issuer), adjustments may be made to account solely for changes in volatility, expected dividends, stock loan rate or liquidity relative to the relevant Shares).”;

(iii) Section 11.2(e)(vii) of the Equity Definitions is hereby amended by deleting the words “diluting or concentrative” and replacing them with “material” and adding the phrase “or Warrants” at the end of the sentence;

(iv) Section 12.9(b)(iv) of the Equity Definitions is hereby amended by (A) deleting (1) subsection

(A) in its entirety, (2) the phrase “or (B)” following subsection (A) and (3) the phrase “in each case” in subsection

(B) ; and (B) deleting the phrase “neither the Non-Hedging Party nor the Lending Party lends Shares in

the amount of the Hedging Shares or” in the penultimate sentence; and

(v) Section 12.9(b)(v) of the Equity Definitions is hereby amended by (A) adding the word “or” immediately before subsection “(B)” and deleting the comma at the end of subsection (A); and (B)(1) deleting subsection (C) in its entirety, (2) deleting the word “or” immediately preceding subsection (C) and (3) replacing in the penultimate sentence the words “either party” with “the Hedging Party” and (4) deleting clause (X) in the final sentence.

(h) *Transfer and Assignment.* Dealer may transfer or assign its rights and obligations hereunder and under the Agreement, in whole or in part, at any time to any person or entity which is a recognized dealer in the market for corporate equity derivatives without the consent of Issuer; *provided* that (x) the transferee shall be a “United States person” as determined for U.S. federal income tax purposes or be eligible to provide a valid U.S. Internal revenue Service Form W-8ECI with respect to payments and deliveries hereunder, and (y) Dealer shall have caused the transferee to make such Payee Tax Representations and to provide such tax documentation as may be reasonably requested by Issuer to permit Issuer to determine that such transfer or assignment complies with clause (x) of this sentence. At any time at which any Ownership Limitation or a Hedging Disruption exists, if Dealer, in its discretion, is unable to effect a transfer or assignment to a third party which is a recognized dealer in the market for corporate equity derivatives after using its commercially reasonable efforts on pricing terms and within a time period reasonably acceptable to Dealer such that an Ownership Limitation or a Hedging Disruption, as the case may be, no longer exists, Dealer may designate any Scheduled Trading Day as an Early Termination Date with respect to a portion (the “**Terminated Portion**”) of the Transaction, such that such Ownership Limitation or Hedging Disruption, as the case may be, no longer exists. In the event that Dealer so designates an Early Termination Date with respect to a portion of the Transaction, a payment or delivery shall be made pursuant to Section 6 of the Agreement and Section 8(b) of this Confirmation as if (i) an Early Termination Date had been designated in respect of a Transaction having terms identical to the Terminated Portion of the Transaction, (ii) Issuer shall be the sole Affected Party with respect to such partial termination and (iii) such portion of the Transaction shall be the only Terminated Transaction. For the avoidance of doubt, the right of the Issuer to transfer or assign its rights shall be as set forth in the Agreement and does not alter or limit any provision set forth under Extraordinary Events hereunder.

(i) *Adjustments.* For the avoidance of doubt, whenever the Calculation Agent, Determining Party or Hedging Party is called upon to make an adjustment, determination or election (for the avoidance of doubt, including, but not limited to, any determinations with respect to any amounts) pursuant to the terms of this Confirmation or the Definitions to take into account the effect of an event, the Calculation Agent, Determining Party or Hedging Party, as the case may be, shall make such adjustment, determination or election in a commercially reasonable manner by taking into account the effect of such event on the Hedging Party’s Hedge Position, assuming that the Hedging Party maintains a commercially reasonable Hedge Position.

(j) *Disclosure.* Effective from the date of commencement of discussions concerning the Transaction, Issuer 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 Issuer relating to such tax treatment and tax structure.

(k) *Designation by Dealer.* Notwithstanding any other provision in this Confirmation to the contrary requiring or allowing Dealer to purchase, sell, receive or deliver any Shares or other securities to or from Issuer, Dealer may designate any of its affiliates to purchase, sell, receive or deliver such shares or other securities and otherwise to perform Dealer obligations in respect of the Transaction and any such designee may assume such obligations. Dealer shall be discharged of its obligations to Issuer to the extent of any such performance by any of its affiliates in accordance with the provisions of the immediately preceding sentence.

(l) *Additional Termination Events.* The occurrence of any of the following shall constitute an Additional Termination Event with respect to which the Transaction shall be the sole Affected Transaction and Issuer shall be the sole Affected Party; *provided* that with respect to any Additional Termination Event, Dealer may choose to treat part of the Transaction as the sole Affected Transaction, and, upon the termination of the Affected Transaction, a Transaction with terms identical to those set forth herein except with a Number of Warrants equal to the unaffected number of Warrants shall be treated for all purposes as the Transaction, which shall remain in full force and effect:

(i) Dealer reasonably determines that it is advisable to terminate a portion of the Transaction so that Dealer’s related commercially reasonable hedging activities will comply with applicable securities laws, rules or regulations or related policies and procedures of Dealer similarly applicable to warrant transactions and consistently applied (whether or not such requirements, policies or procedures are imposed by law or have been voluntarily adopted by Dealer);

(ii) any person or group (within the meaning of Section 13(d)(3) of the Exchange Act), other than the Issuer or its wholly owned subsidiaries, or any of Issuer’s or its subsidiaries’ employee benefit plans, files any report with

the SEC indicating that such person or group has become the direct or indirect “beneficial owner” (determined in accordance with Rule 13d-3 under the Exchange Act) of shares of Issuer’s common equity representing more than 50% of the voting power of all of Issuer’s then-outstanding common equity; and

(iii) the consummation of: (1) any sale, lease or other transfer, in one transaction or a series of transactions, of all or substantially all of the consolidated assets of Issuer and its subsidiaries, taken as a whole, to any person other than one or more of Issuer’s wholly owned subsidiaries; or (2) any transaction or series of related transactions in connection with which (whether by means of merger, consolidation, share exchange, combination, reclassification, recapitalization, acquisition, liquidation or otherwise) all of Issuer’s common stock is exchanged for, converted into, acquired for, or constitutes solely the right to receive, other securities, cash or other property.

Notwithstanding the foregoing, a transaction or event described in clause (ii) or (iii) above will not constitute an Additional Termination Event if at least 90% of the consideration received or to be received by holders of the Issuer’s common stock (excluding cash payments for fractional shares or pursuant to dissenters rights), in connection with such transaction or event consists of shares of common stock listed (or depositary receipts evidencing interests in common shares or ordinary shares, which depositary receipts are listed) 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 when issued or exchanged in connection with such transaction or event, and as a result of such event or transaction the Shares will consist of such consideration.

(iv) A default by the Issuer or any of its “significant subsidiaries” (defined as any subsidiary of Issuer that constitutes, or, together with the subsidiaries of such subsidiary, in the aggregate, would constitute, a “significant subsidiary” (as defined in Rule 1-02(w) of Regulation S-X under the Exchange Act) of Issuer) with respect to any one or more mortgages, indentures or other instruments under which there is outstanding, or by which there is secured or evidenced, any indebtedness for money borrowed of at least \$35,000,000 (or its foreign currency equivalent) in the aggregate of Issuer or any of its subsidiaries.

(m) *No Netting and Set-off.* Each party waives any and all rights it may have to set-off, delivery or payment obligations it owes to the other party under the Transaction against any delivery or payment obligations owed to it by the other party, whether arising under the Agreement, under any other agreement between parties hereto, by operation of law or otherwise. The provisions of Section 2(c) of the Agreement shall not apply to the Transaction.

(n) *Early Unwind.* In the event the sale by Issuer of the New Notes (as defined in the Exchange and Subscription Agreements) is not consummated with the New Notes Investors (as defined in the Exchange and Subscription Agreements) pursuant to the Exchange and Subscription Agreements for any reason by the close of business in New York on January []¹, 2024, or such later date as agreed upon by the parties (January []², 2024 or such later date, the “**Early Unwind Date**”), the Transaction shall automatically terminate (the “**Early Unwind**”), on the Early Unwind Date and the Transaction and all of the respective rights and obligations of Dealer and Issuer thereunder shall be cancelled and terminated. Following such termination and cancellation, each party shall be released and discharged by the other party from and agrees not to make any claim against the other party with respect to any obligations or liabilities of either party arising out of and to be performed in connection with the Transaction either prior to or after the Early Unwind Date. Dealer and Issuer represent and acknowledge to the other that upon an Early Unwind, all obligations with respect to the Transaction shall be deemed fully and finally discharged.

(o) *Wall Street Transparency and Accountability Act of 2010.* The parties hereby agree that none of (v) Section 739 of the Wall Street Transparency and Accountability Act of 2010 (“**WSTAA**”), (w) any similar legal certainty provision in any legislation enacted, or rule or regulation promulgated, on or after the Trade Date, (x) the enactment of WSTAA or any regulation under the WSTAA, (y) any requirement under WSTAA nor (z) an amendment made by WSTAA, shall limit or otherwise impair either party’s rights to terminate, renegotiate, modify, amend or supplement this Confirmation or the Agreement, as applicable, arising from a termination event, force majeure, illegality, increased costs, regulatory change or similar event under this Confirmation, the Equity Definitions incorporated herein, or the Agreement (including, but not limited to, rights arising from Change in Law, Hedging Disruption, Increased Cost of Hedging, Loss of Stock Borrow, Increased Cost of Stock Borrow, an Excess Ownership Position or Illegality (as defined in the Agreement)).

(p) *Delivery of Cash.* For the avoidance of doubt, nothing in this Confirmation shall be interpreted as requiring Issuer to deliver cash in respect of the settlement of the Transaction, except in circumstances where the required cash settlement thereof is permitted for classification of the contract as equity by the US GAAP as in effect on the relevant Trade Date

¹ NTD: To be the Effective Date.

² NTD: To be the Effective Date.

(including, without limitation, where Issuer so elects to deliver cash or fails timely to elect to deliver Shares or Share Termination Delivery Property in respect of such settlement).

(q) *Payments by Dealer upon Early Termination.* The parties hereby agree that, notwithstanding anything to the contrary herein, in the Definitions or in the Agreement, following the payment of the Premium, in the event that an Early Termination Date (whether as a result of an Event of Default or a Termination Event (other than an Event of Default arising under Section 5(a)(ii) or 5(a)(iv) of the Agreement)) occurs or is designated with respect to the Transaction or the Transaction is terminated or cancelled pursuant to Article 12 of the Equity Definitions and, as a result, Dealer would owe to Issuer an amount calculated under Section 6(e) of the Agreement or Article 12 of the Equity Definitions, such amount shall be deemed to be zero.

(r) *Tax Matters*

(i) *Withholding Tax imposed on payments to non-US counterparties under the United States Foreign Account Tax Compliance Act.* “Tax” and “Indemnifiable Tax”, each as defined in Section 14 of the 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.

(ii) To the extent that either party to the Agreement with respect to this Transaction is not an adhering party to the ISDA 2015 Section 871(m) Protocol published by the International Swaps and Derivatives Association, Inc. on November 2, 2015 and available at www.isda.org, as may be amended, supplemented, replaced or superseded from time to time (the “871(m) Protocol”), the parties agree that the provisions and amendments contained in the Attachment to the 871(m) Protocol are incorporated into and apply to the Agreement with respect to this Transaction as if set forth in full herein. The parties further agree that, solely for purposes of applying such provisions and amendments to the Agreement with respect to this Transaction, references to “each Covered Master Agreement” in the 871(m) Protocol will be deemed to be references to the Agreement with respect to this Transaction, and references to the “Implementation Date” in the 871(m) Protocol will be deemed to be references to the Trade Date of this Transaction.

(iii) *Tax documentation.* For the purpose of Section 4(a)(i) of the Agreement, Issuer shall provide to Dealer a valid U.S. Internal Revenue Service Form W-9, or any successor thereto, (i) on or before the date of execution of this Confirmation and (ii) promptly upon learning that any such tax form previously provided by Issuer has become obsolete or incorrect. Additionally, Issuer shall, promptly upon request by Dealer, provide such other tax forms and documents requested by Dealer.

(iv) *Tax Representations.* For the purpose of Section 3(f) of the Agreement, Issuer represents that it is a corporation for U.S. federal income tax purposes and is organized under the laws of the State of Delaware and a “U.S. person” (as that term is used in section 1.1441-4(a)(3)(ii) of United States Treasury Regulations) for U.S. federal income tax purposes and an exempt recipient under Treasury Regulation Section 1.6049-4(c)(1)(ii).

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

(t) *Governing Law; Jurisdiction.* **THIS CONFIRMATION AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS CONFIRMATION SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK. THE PARTIES HERETO IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND THE UNITED STATES COURT FOR THE SOUTHERN DISTRICT OF NEW YORK IN CONNECTION WITH ALL MATTERS RELATING HERETO AND WAIVE ANY OBJECTION TO THE LAYING OF VENUE IN, AND ANY CLAIM OF INCONVENIENT FORUM WITH RESPECT TO, THESE COURTS.**

(u) *Amendment.* This Confirmation and the Agreement may not be modified, amended or supplemented, except in a written instrument signed by Issuer and Dealer.

(v) *Counterparts.* This Confirmation may be executed in several counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

(w) [Dealer Boilerplate. Insert additional Dealer boilerplate, if applicable.]

[*Signature Page Follows*]

Issuer hereby agrees (a) to check this Confirmation carefully and immediately upon receipt so that errors or discrepancies can be promptly identified and rectified and (b) to confirm that the foregoing (in the exact form provided by Dealer) correctly sets forth the terms of the agreement between Dealer and Issuer with respect to the Transaction, by manually signing this Confirmation or this page hereof as evidence of agreement to such terms and providing the other information requested herein and immediately returning an executed copy to Dealer.

Yours faithfully,

[]

By: _____

Name:

Title:

[Signature Page to Warrant Confirmation]

Agreed and Accepted By:

GUESS?, INC.

By:

Name:

Title:

[Signature Page to Warrant Confirmation]

For each Component of the Transaction, the Number of Warrants and Expiration Date is set forth below.

Component Number

Number of Warrants

Expiration Date

Strike Price: USD 41.3689
Premium: USD []
Maximum Stock Loan Rate: [] basis points
Initial Stock Loan Rate: [] basis
points Capped Number of Shares: []