

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

**FORM 10-K**

(Mark One)

**ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended December 31, 2020

OR

**TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission File Number: 001-34756

**Tesla, Inc.**

(Exact name of registrant as specified in its charter)

Delaware  
(State or other jurisdiction of  
incorporation or organization)  
3500 Deer Creek Road  
Palo Alto, California  
(Address of principal executive offices)

91-2197729  
(I.R.S. Employer  
Identification No.)

94304  
(Zip Code)

(650) 681-5000

(Registrant's telephone number, including area code)

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	TSLA	The Nasdaq Global Select Market

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

None

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

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or 15(d) of the Act. Yes  No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 ("Exchange Act") during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

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

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

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

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.

Indicate by check mark whether the Registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report.

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes  No

The aggregate market value of voting stock held by non-affiliates of the registrant, as of June 30, 2020, the last day of the registrant's most recently completed second fiscal quarter, was \$160.57 billion (based on the closing price for shares of the registrant's Common Stock as reported by the NASDAQ Global Select Market on June 30, 2020). Shares of Common Stock held by each executive officer, director, and holder of 5% or more of the outstanding Common Stock have been excluded in that such persons may be deemed to be affiliates. This determination of affiliate status is not necessarily a conclusive determination for other purposes.

As of February 1, 2021, there were 959,853,504 shares of the registrant's Common Stock outstanding.

**DOCUMENTS INCORPORATED BY REFERENCE**

Portions of the registrant's Proxy Statement for the 2021 Annual Meeting of Stockholders are incorporated herein by reference in Part III of this Annual Report on Form 10-K to the extent stated herein. Such proxy statement will be filed with the Securities and Exchange Commission within 120 days of the registrant's fiscal year ended December 31, 2020.

TESLA, INC.

ANNUAL REPORT ON FORM 10-K FOR THE YEAR ENDED DECEMBER 31, 2020

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## **Forward-Looking Statements**

*The discussions in this Annual Report on Form 10-K contain forward-looking statements reflecting our current expectations that involve risks and uncertainties. These forward-looking statements include, but are not limited to, statements concerning any potential future impact of the coronavirus disease ("COVID-19") pandemic on our business, our strategy, future operations, future financial position, future revenues, projected costs, profitability, expected cost reductions, capital adequacy, expectations regarding demand and acceptance for our technologies, growth opportunities and trends in the market in which we operate, prospects and plans and objectives of management. The words "anticipates," "believes," "could," "estimates," "expects," "intends," "may," "plans," "projects," "will," "would" and similar expressions are intended to identify forward-looking statements, although not all forward-looking statements contain these identifying words. We may not actually achieve the plans, intentions or expectations disclosed in our forward-looking statements and you should not place undue reliance on our forward-looking statements. Actual results or events could differ materially from the plans, intentions and expectations disclosed in the forward-looking statements that we make. These forward-looking statements involve risks and uncertainties that could cause our actual results to differ materially from those in the forward-looking statements, including, without limitation, the risks set forth in Part I, Item 1A, "Risk Factors" in this Annual Report on Form 10-K and in our other filings with the Securities and Exchange Commission. We do not assume any obligation to update any forward-looking statements.*

**ITEM 1. BUSINESS**

**Overview**

We design, develop, manufacture, sell and lease high-performance fully electric vehicles and energy generation and storage systems, and offer services related to our sustainable energy products. We generally sell our products directly to customers, including through our website and retail locations. We also continue to grow our customer-facing infrastructure through a global network of vehicle service centers, Mobile Service technicians, body shops, Supercharger stations and Destination Chargers to accelerate the widespread adoption of our products. We emphasize performance, attractive styling and the safety of our users and workforce in the design and manufacture of our products and are continuing to develop full self-driving technology for improved safety. We also strive to lower the cost of ownership for our customers through continuous efforts to reduce manufacturing costs and by offering financial services tailored to our products. Our mission to accelerate the world's transition to sustainable energy, engineering expertise, vertically integrated business model and focus on user experience differentiate us from other companies.

**Segment Information**

We operate as two reportable segments: (i) automotive and (ii) energy generation and storage.

The automotive segment includes the design, development, manufacturing, sales and leasing of electric vehicles as well as sales of automotive regulatory credits. Additionally, the automotive segment is also comprised of services and other, which includes non-warranty after-sales vehicle services, sales of used vehicles, retail merchandise, sales by our acquired subsidiaries to third party customers and vehicle insurance revenue. The energy generation and storage segment includes the design, manufacture, installation, sales and leasing of solar energy generation and energy storage products and related services and sales of solar energy systems incentives.

**Our Products and Services**

**Automotive**

***Model 3***

Model 3 is a four-door mid-size sedan that we designed for manufacturability with a base price for mass-market appeal, which we began delivering in July 2017. We currently manufacture Model 3 at the Fremont Factory and at Gigafactory Shanghai.

***Model Y***

Model Y is a compact sport utility vehicle ("SUV") built on the Model 3 platform with seating for up to seven adults, which we began delivering in March 2020. We currently manufacture Model Y at the Fremont Factory and at Gigafactory Shanghai.

***Model S and Model X***

Model S is a four-door full-size sedan that we began delivering in June 2012. Model X is a mid-size SUV with seating for up to seven adults, which we began delivering in September 2015. Model S and Model X feature the highest performance characteristics and longest ranges that we offer in a sedan and SUV, respectively, and we manufacture both models at the Fremont Factory.

***Future Consumer and Commercial Electric Vehicles***

We have also announced several planned electric vehicles to address additional vehicle markets, including specialized consumer electric vehicles in Cybertruck and the new Tesla Roadster and a commercial electric vehicle in Tesla Semi. We also plan to introduce in the future a lower-cost vehicle to leverage developments in our proprietary Full Self-Driving ("FSD"), battery cell and other technologies.

**Energy Generation and Storage**

***Energy Storage Products***

We began deliveries of the most recent generations of Powerwall, Powerpack and Megapack, which are our lithium-ion battery energy storage products integrated with inverters and control technology, in 2016, 2017 and 2019, respectively. Powerwall is designed to store energy at a home or small commercial facility. Megapack and Powerpack are energy storage solutions for commercial, industrial, utility and energy generation customers, which may be grouped together to form larger installations capable of reaching gigawatt hours ("GWh") or greater. We also offer integrated systems combining energy generation and storage. Our energy storage products are currently assembled at Gigafactory Nevada.

We have also developed software capabilities for remotely controlling and dispatching our energy storage systems across a wide range of markets and applications, including through our real-time energy trading platform.

### ***Solar Energy Offerings***

We sell retrofit solar energy systems to customers and channel partners and also make them available through lease and power purchase agreement (“PPA”) arrangements and a subscription-based sale of solar power, which is currently available in limited U.S. markets. We purchase most of the components for our retrofit solar energy systems from multiple sources to ensure competitive pricing and adequate supply. We also design and manufacture certain components for our solar energy products.

In 2019, we commenced direct customer and channel partner sales of the third generation of our Solar Roof, which combines premium glass roof tiles with energy generation. We are ramping the volume production of Solar Roof at Gigafactory New York, and we are improving our installation capability and efficiency.

## **Technology**

### **Automotive**

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

Our core vehicle technology competencies include powertrain engineering and manufacturing and our ability to design vehicles that utilize the unique advantages of an electric powertrain. We have designed our proprietary powertrain systems to be adaptable, efficient, reliable and cost-effective while withstanding the rigors of an automotive environment. We offer dual motor powertrain vehicles, which use two electric motors to maximize traction and performance in an all-wheel drive configuration, and are introducing vehicle powertrain technology featuring three electric motors for further increased performance.

Among other things, we maintain extensive testing and R&D capabilities for battery cells, packs and systems, and have built an expansive body of knowledge on lithium-ion cell chemistry types and performance characteristics. In order to enable a greater supply of cells for our products with higher energy density at lower costs, we are currently using our expertise to develop a new proprietary lithium-ion battery cell and improved manufacturing processes.

#### ***Vehicle Control and Infotainment Software***

The performance and safety systems of our vehicles and their battery packs require sophisticated control software. Control systems in our vehicles optimize performance, customize vehicle behavior, manage charging and control all infotainment functions. We develop almost all of this software, including most of the user interfaces, internally and update our vehicles’ software regularly through over-the-air updates.

#### ***Self-Driving Development***

We have expertise in developing technologies, systems and software to enable self-driving vehicles using primarily vision and radar-based sensors. Our FSD Computer runs our neural networks in our vehicles, and we are also developing additional computer hardware to better enable the massive amounts of field data captured by our vehicles to continually train and improve these neural networks for real-world performance.

Currently, we offer in our vehicles certain advanced driver assist systems under our Autopilot and FSD options. Although at present the driver is ultimately responsible for controlling the vehicle, our systems provide safety and convenience functionality that relieves drivers of the most tedious and potentially dangerous aspects of road travel much like the system that airplane pilots use, when conditions permit. As with other vehicle systems, we improve these functions in our vehicles over time through over-the-air updates.

We intend to establish in the future an autonomous Tesla ride-hailing network, which we expect would also allow us to access a new customer base even as modes of transportation evolve.

## **Energy Generation and Storage**

### ***Energy Storage Products***

We leverage many of the component-level technologies from our vehicles in our energy storage products. By taking a modular approach to the design of battery systems, we can optimize manufacturing capacity among our energy storage products. Additionally, our expertise in power electronics enables us to interconnect our battery systems seamlessly with global electricity grids while providing fast-acting systems for power injection and absorption. We have also developed the software to remotely control and dispatch our energy storage systems using our real-time energy trading platform.

## ***Solar Energy Systems***

We have engineered Solar Roof over numerous iterations to combine aesthetic appeal and durability with power generation. The efficiency of our solar energy products is aided by our own solar inverter, which also incorporates our power electronics technologies. We designed both products to integrate with Powerwall.

## **Design and Engineering**

### **Automotive**

We have established significant in-house capabilities in the design and test engineering of electric vehicles and their components and systems. Our team has core competencies in computer aided design as well as durability, strength and crash test simulations, which reduces the product development time of new models. Additionally, our team has expertise in selecting and working with a range of materials for our vehicles to balance performance, cost and durability in ways that are best suited for our vehicles' target demographics and utility. We have also used our capabilities to achieve complex engineering feats in stamping, casting and thermal systems, and are currently developing designs that integrate batteries directly with vehicle body structures without separate battery packs to optimize manufacturability, weight, range and cost characteristics.

We are also expanding our manufacturing operations globally while exploring ways to localize our vehicle designs and production for particular markets, including country-specific market demands and factory optimizations for local workforces. As we increase our capabilities, particularly in the areas of automation, die-making and line-building, we are also making strides in the simulations modeling these capabilities prior to construction.

### **Energy Generation and Storage**

Our expertise in electrical, mechanical, civil and software engineering allows us to design and manufacture our energy generation and storage products and components. We also employ our design and engineering expertise to customize solutions including our energy storage products, solar energy systems and/or Solar Roof for customers to meet their specific needs. We have developed software that simplifies and expedites the design process and maximizes the energy production of each solar energy system, as well as mounting hardware that facilitates solar panel installation.

## **Sales and Marketing**

Historically, we have been able to generate significant media coverage of our company and our products, and we believe we will continue to do so. Such media coverage and word of mouth are the current primary drivers of our sales leads and have helped us achieve sales without traditional advertising and at relatively low marketing costs.

### **Automotive**

#### ***Direct Sales***

Our vehicle sales channels currently include our website and an international network of company-owned stores. In some jurisdictions, we also have galleries to educate and inform customers about our products, but such locations do not actually transact in the sale of vehicles. We believe this infrastructure enables us to better control costs of inventory, manage warranty service and pricing, educate consumers about electric vehicles, maintain and strengthen the Tesla brand and obtain rapid customer feedback.

We reevaluate our sales strategy both globally and at a location-by-location level from time to time to optimize our current sales channels. Sales of vehicles in the automobile industry tend to be cyclical in many markets, which may expose us to volatility from time to time.

#### ***Used Vehicle Sales***

Our used vehicle business supports new vehicle sales by integrating the trade-in of a customer's existing Tesla or non-Tesla vehicle with the sale of a new or used Tesla vehicle. The Tesla and non-Tesla vehicles we acquire as trade-ins are subsequently remarketed, either directly by us or through third parties. We also remarket used Tesla vehicles acquired from other sources including lease returns.

#### ***Public Charging***

We have a growing global network of Tesla Superchargers, which are our industrial grade, high-speed vehicle chargers. Where possible, we co-locate Superchargers with our solar and energy storage systems to reduce costs and promote renewable power. Supercharger stations are typically placed along well-traveled routes and in and around dense city centers to allow Tesla vehicle owners the ability to enjoy quick, reliable and ubiquitous charging with convenient, minimal stops. Use of the Supercharger network either requires payment of a fee or is free under certain sales programs.

We also work with a wide variety of hospitality, retail and public destinations, as well as businesses with commuting employees, to offer additional charging options for our customers. These Destination Charging and workplace locations deploy Tesla Wall Connectors to provide charging to Tesla vehicle owners who patronize or are employed at their businesses. We also work with single-family homeowners and multi-family residential entities to deploy home charging solutions.

### ***In-App Upgrades***

As our vehicles are capable of being updated remotely over-the-air, our customers may purchase additional paid options and features through the Tesla app. We expect that this functionality will also allow us to offer certain options and features on a subscription basis in the future.

## **Energy Generation and Storage**

We market and sell our solar and energy storage products to residential, commercial and industrial customers and utilities through a variety of channels. We emphasize simplicity, standardization and accessibility to make it easy and cost-effective for customers to adopt clean energy, while reducing our customer acquisition costs.

In the U.S., we offer residential solar and energy storage products directly through our website, stores and galleries, as well as through our network of channel partners. Outside of the U.S., we use our international sales organization and a network of channel partners to market and sell these products for the residential market. We also sell Powerwall directly to utilities. In the case of products sold to utilities or channel partners, such partners typically sell the product and manage the installation in customer homes.

We sell our commercial and utility-scale energy storage systems to customers through our U.S. and international sales organization and our channel partner network. In certain jurisdictions, we also sell installed solar energy systems (with or without energy storage) to commercial customers through cash, lease and PPA transactions.

## **Service and Warranty**

### **Automotive**

#### ***Service***

We provide service for our electric vehicles at our company-owned service locations and through Tesla Mobile Service technicians who perform work remotely at customers' homes or other locations. Performing vehicle service ourselves provides us with the capability to identify problems and implement solutions and improvements faster, and optimize logistics and inventory better, than traditional automobile manufacturers and their dealer networks. The connectivity of our vehicles also allows us to diagnose and remedy many problems remotely and proactively.

#### ***Vehicle Limited Warranties and Extended Service Plans***

We provide a manufacturer's limited warranty on all new and used Tesla vehicles we sell, which may include separate limited warranties on certain components, specific types of damage or battery capacity retention. We also currently offer extended service plans that provide coverage beyond the new vehicle limited warranties for certain models in specified regions.

## **Energy Generation and Storage**

We provide service and repairs to our energy product customers, including under warranty where applicable.

### ***Energy Storage Systems***

We generally provide manufacturer's limited warranties with every new energy storage product and offer certain extended limited warranties that are available at the time of purchase of the system. If we install a system, we also provide certain limited warranties on our installation workmanship. As part of our energy storage system contracts, we may provide the customer with performance guarantees that warrant that the underlying system will meet or exceed the minimum energy performance requirements specified in the contract.

### ***Solar Energy Systems***

For retrofit solar energy systems, we provide separate limited warranties for workmanship and against roof leaks, and for Solar Roof, we provide limited warranties for defects and weatherization. For components not manufactured by us, we generally pass-through the applicable manufacturers' warranties. As part of our solar energy system contracts, we may provide the customer with performance guarantees that warrant that the underlying system will meet or exceed the minimum energy generation requirements specified in the contract.

## **Financial Services**

### **Automotive**

#### ***Purchase Financing and Leases***

We offer leasing and/or loan financing arrangements for our vehicles in certain jurisdictions in North America, Europe and Asia through various financial institutions. Under certain of such programs, we have provided resale value guarantees or buyback guarantees that may obligate us to repurchase the subject vehicles at pre-determined values. We also offer vehicle financing arrangements in certain markets for specified vehicle models directly through our local subsidiaries.

#### ***Insurance***

In August 2019, we launched an insurance product designed for our customers, which offers rates that are often better than other alternatives. This product is currently available in California, and we plan to expand both the markets in which we offer insurance products and our ability to offer such products, as part of our ongoing effort to decrease the total cost of ownership for our customers.

### **Energy Generation and Storage**

#### ***Energy Storage Systems***

We currently offer certain loan, lease and/or PPA options to residential or commercial customers who pair energy storage systems with solar energy systems. We intend to introduce financial services offerings for customers who purchase standalone energy storage products in the future.

#### ***Solar Energy Systems***

We offer various financing options to our solar customers. Our solar loan offers third-party financing to enable the customer to purchase and own a solar energy system. We are not a party to the loan agreement, and the third-party lender has no recourse against us with respect to the loan. Our solar lease offers customers a fixed monthly fee at rates that typically translate into lower monthly utility bills and an electricity production guarantee. Our solar PPA charges customers a fee per kilowatt-hour based on the amount of electricity produced by our solar energy systems. We monetize the customer payments we receive from our leases and PPAs through funds we have formed with investors. We also intend to introduce financial services offerings for our Solar Roof customers in the future.

### **Manufacturing**

#### **Manufacturing Facilities in the Bay Area, California**

We manufacture and test our vehicles at our manufacturing facilities in the Bay Area in California, including the Fremont Factory and other local manufacturing facilities. We also manufacture and develop certain parts and components that are critical to our intellectual property and quality standards, such as Model S and Model X battery packs and our proprietary lithium-ion battery cells, at these locations.

#### **Gigafactory Nevada near Reno, Nevada**

We have integrated battery material, cell, module and battery pack production for Model 3, Model Y and our energy products in one location at Gigafactory Nevada. In addition, we manufacture vehicle drive units and our energy storage products there. Gigafactory Nevada allows us to access high volumes of lithium-ion battery cells manufactured by our partner Panasonic there while achieving a significant reduction in the cost of our battery packs. We continue to invest in Gigafactory Nevada to achieve additional output there, including through our agreement with Panasonic.

#### **Gigafactory New York in Buffalo, New York**

We use Gigafactory New York for the development and production of our Solar Roof and other solar products and components, energy storage components and Supercharger components, and for other lessor-approved functions.

#### **Gigafactory Shanghai in China**

We established Gigafactory Shanghai to increase the affordability of our vehicles for customers in local markets by reducing transportation and manufacturing costs and eliminating the impact of unfavorable tariffs. We continue to increase the degree of localized procurement and manufacturing there. Gigafactory Shanghai is representative of our plan to iteratively improve our manufacturing operations as we establish new factories, as we implemented the learnings from our Model 3 ramp at the Fremont Factory to commence and ramp our production there quickly and cost-effectively.



## **Other Manufacturing**

Generally, we continue to expand production capacity at our existing facilities. We also intend to further increase cost-competitiveness in our significant markets by strategically adding local manufacturing, including at Gigafactory Berlin in Germany and Gigafactory Texas in Austin, Texas, which are under construction.

## **Supply Chain**

Our products use thousands of purchased parts that are sourced from hundreds of suppliers across the world. We have developed close relationships with vendors of key parts such as battery cells, electronics and complex vehicle assemblies. Certain components purchased from these suppliers are shared or are similar across many product lines, allowing us to take advantage of pricing efficiencies from economies of scale.

As is the case for most automotive companies, most of our procured components and systems are sourced from single suppliers. Where multiple sources are available for certain key components, we work to qualify multiple suppliers for them where it is sensible to do so in order to minimize production risks owing to disruptions in their supply. We also mitigate risk by maintaining safety stock for key parts and assemblies and die banks for components with lengthy procurement lead times.

Our products use various raw materials including aluminum, steel, cobalt, lithium, nickel and copper. Pricing for these materials is governed by market conditions and may fluctuate due to various factors outside of our control, such as supply and demand and market speculation. We strive to execute long-term supply contracts for such materials at competitive pricing when feasible, and we currently believe that we have adequate access to raw materials supplies in order to meet the needs of our operations.

## **Governmental Programs, Incentives and Regulations**

Globally, both the operation of our business by us and the ownership of our products by our customers are impacted by various government programs, incentives and other arrangements. Our business and products are also subject to numerous governmental regulations that vary among jurisdictions.

### **Programs and Incentives**

#### ***California Alternative Energy and Advanced Transportation Financing Authority Tax Incentives***

We have agreements with the California Alternative Energy and Advanced Transportation Financing Authority that provide multi-year sales tax exclusions on purchases of manufacturing equipment that will be used for specific purposes, including the expansion and ongoing development of electric vehicles and powertrain production in California.

#### ***Gigafactory Nevada—Nevada Tax Incentives***

In connection with the construction of Gigafactory Nevada, we entered into agreements with the State of Nevada and Storey County in Nevada that provide abatements for specified taxes, discounts to the base tariff energy rates and transferable tax credits in consideration of capital investment and hiring targets that were met at Gigafactory Nevada. These incentives are available until June 2024 or June 2034, depending on the incentive.

#### ***Gigafactory New York—New York State Investment and Lease***

We have a lease through the Research Foundation for the State University of New York (the "SUNY Foundation") with respect to Gigafactory New York. Under the lease and a related research and development agreement, we are continuing to designate further buildouts at the facility. We are required to comply with certain covenants, including hiring and cumulative investment targets.

As we temporarily suspended most of our manufacturing operations at Gigafactory New York pursuant to a New York State executive order issued in March 2020 as a result of the COVID-19 pandemic, we were granted a one-year deferral of our obligation to be compliant with our applicable targets under such agreement on April 30, 2020, which was memorialized in an amendment to our agreement with the SUNY Foundation in July 2020.

#### ***Gigafactory Shanghai—Land Use Rights and Economic Benefits***

We have an agreement with the local government of Shanghai for land use rights at Gigafactory Shanghai. Under the terms of the arrangement, we are required to meet a cumulative capital expenditure target and an annual tax revenue target starting at the end of 2023. In addition, the Shanghai government has granted to our Gigafactory Shanghai subsidiary in 2019 and 2020 certain incentives to be used in connection with eligible capital investments at Gigafactory Shanghai. Finally, the Shanghai government granted a beneficial corporate income tax rate of 15% to certain eligible enterprises, which is lower than the 25% statutory corporate income tax rate in China. Our Gigafactory Shanghai subsidiary was granted this lower rate for 2019 through 2023.

### ***Gigafactory Berlin - Pending Grant***

We have applied for a grant with the German government to improve the design, chemistry, manufacturing technology and recycling of lithium-ion battery cells for Gigafactory Berlin. The grant was approved by the European Commission in January 2021 and its implementation will be subject to a grant agreement with the German government.

### ***Gigafactory Texas - Tax Incentives***

In connection with the construction of Gigafactory Texas, we entered into a 20-year agreement with Travis County in Texas pursuant to which we would receive grant funding equal to 70-80% of property taxes paid by us to Travis County and a separate 10-year agreement with the Del Valle Independent School District in Texas pursuant to which a portion of the taxable value of our property would be capped at a specified amount, in each case subject to our meeting certain minimum economic development metrics through our construction and operations at Gigafactory Texas.

### ***Regulatory Credits***

We earn tradable credits in the operation of our business under various regulations related to zero-emission vehicles (“ZEVs”), greenhouse gas, fuel economy, renewable energy and clean fuel. We sell these credits to other regulated entities who can use the credits to comply with emission standards, renewable energy procurement standards and other regulatory requirements.

### ***Energy Storage System Incentives and Policies***

While the regulatory regime for energy storage projects is still under development, there are various policies, incentives and financial mechanisms at the federal, state and local levels that support the adoption of energy storage.

For example, energy storage systems that are charged using solar energy may be eligible for the solar energy-related U.S. federal tax credits described below. The Federal Energy Regulatory Commission (“FERC”) has also taken steps to enable the participation of energy storage in wholesale energy markets. In addition, California and a number of other states have adopted procurement targets for energy storage, and behind-the-meter energy storage systems qualify for funding under the California Self Generation Incentive Program.

### ***Solar Energy System Incentives and Policies***

U.S. federal, state and local governments have established various policies, incentives and financial mechanisms to reduce the cost of solar energy and to accelerate the adoption of solar energy. These incentives include tax credits, cash grants, tax abatements and rebates.

In particular, Sections 48 and 25D of the U.S. Internal Revenue Code currently provide a tax credit of 26% of qualified commercial or residential expenditures for solar energy systems, which may be claimed by our customers for systems they purchase, or by us for arrangements where we own the systems. These tax credits are currently scheduled to decline and/or expire in 2023 and beyond.

## **Regulations**

### ***Vehicle Safety and Testing***

In the U.S., our vehicles are subject to regulation by the National Highway Traffic Safety Administration (“NHTSA”), including all applicable Federal Motor Vehicle Safety Standards (“FMVSS”) and the NHTSA bumper standard. Numerous FMVSS apply to our vehicles, such as crash-worthiness requirements, crash avoidance requirements and electric vehicle requirements. While our current vehicles fully comply and we expect that our vehicles in the future will fully comply with all applicable FMVSS with limited or no exemptions, FMVSS are subject to change from time to time. As a manufacturer, we must self-certify that our vehicles meet all applicable FMVSS and the NHTSA bumper standard, or otherwise are exempt, before the vehicles may be imported or sold in the U.S.

We are also required to comply with other federal laws administered by NHTSA, including the CAFE standards, Theft Prevention Act requirements, consumer information labeling requirements, Early Warning Reporting requirements regarding warranty claims, field reports, death and injury reports and foreign recalls, owner’s manual requirements and additional requirements for cooperating with safety investigations and defect and recall reporting. The U.S. Automobile Information and Disclosure Act also requires manufacturers of motor vehicles to disclose certain information regarding the manufacturer’s suggested retail price, optional equipment and pricing. In addition, federal law requires inclusion of fuel economy ratings, as determined by the U.S. Department of Transportation and the Environmental Protection Agency (the “EPA”), and 5-star safety ratings as determined by NHTSA, if available.

Our vehicles sold outside of the U.S. are subject to similar foreign safety, environmental and other regulations. Many of those regulations are different from those applicable in the U.S. and may require redesign and/or retesting. Some of those regulations impact or prevent the rollout of new vehicle features. Additionally, the European Union has established new rules regarding additional compliance oversight that commenced in 2020, and there is also regulatory uncertainty related to the United Kingdom's withdrawal from the European Union.

### ***Self-Driving Vehicles***

Generally, laws pertaining to self-driving vehicles are evolving globally, and in some cases may create restrictions on self-driving features that we develop. While there are currently no federal U.S. regulations specifically pertaining to self-driving vehicles or self-driving equipment, NHTSA has published recommended guidelines on self-driving vehicles, and retains the authority to investigate and/or take action on the safety of any vehicle, equipment or features operating on public roads. Certain U.S. states have legal restrictions on the operation, registration or licensure of self-driving vehicles, and many other states are considering them. This regulatory patchwork increases the legal complexity with respect to self-driving vehicles in the U.S.

In markets that follow the regulations of the United Nations Economic Commission for Europe, some requirements restrict the design of advanced driver-assistance or self-driving features, which can compromise or prevent their use entirely. Other applicable laws, both current and proposed, may hinder the path and timeline to introducing self-driving vehicles for sale and use in the markets where they apply.

Other key markets, including China, continue to consider self-driving regulation. Any implemented regulations may differ materially from those in the U.S. and Europe, which may further increase the legal complexity of self-driving vehicles and limit or prevent certain features.

### ***Automobile Manufacturer and Dealer Regulation***

In the U.S., state laws regulate the manufacture, distribution, sale and service of automobiles, and generally require motor vehicle manufacturers and dealers to be licensed in order to sell vehicles directly to residents. Certain states have asserted that the laws in such states do not permit automobile manufacturers to be licensed as dealers or to act in the capacity of a dealer, or that they otherwise restrict a manufacturer's ability to deliver or service vehicles. To sell vehicles to residents of states where we are not licensed as a dealer, we generally conduct the transfer of title out of the state. In certain such states, we have opened "galleries" that serve an educational purpose and where the title transfer may not occur.

Some automobile dealer trade associations have both challenged the legality of our operations in court and used administrative and legislative processes to attempt to prohibit or limit our ability to operate existing stores or expand to new locations. Certain dealer associations have also actively lobbied state licensing agencies and legislators to interpret existing laws or enact new laws in ways not favorable to our ownership and operation of our own retail and service locations. We expect such challenges to continue, and we intend to actively fight any such efforts.

### ***Battery Safety and Testing***

Our battery packs are subject to various U.S. and international regulations that govern transport of "dangerous goods," defined to include lithium-ion batteries, which may present a risk in transportation. We conduct testing to demonstrate our compliance with such regulations.

We use lithium-ion cells in our high voltage battery packs in our vehicles and energy storage products. The use, storage and disposal of our battery packs are regulated under existing laws and are the subject of ongoing regulatory changes that may add additional requirements in the future. We have agreements with third party battery recycling companies to recycle our battery packs and we are also piloting our own recycling technology.

### ***Solar Energy—General***

We are not a "regulated utility" in the U.S., although we are subject to certain state and federal regulations applicable to solar and battery storage providers. To operate our systems, we enter into standard interconnection agreements with applicable utilities. Sales of electricity and non-sale equipment leases by third parties, such as our leases, PPAs and subscription agreements, have faced regulatory challenges in some states and jurisdictions.

### ***Solar Energy—Net Metering***

Most states in the U.S. make net energy metering, or net metering, available to solar customers. Net metering typically allows solar customers to interconnect their solar energy systems to the utility grid and offset their utility electricity purchases by receiving a bill credit for excess energy generated by their solar energy system that is exported to the grid. In certain jurisdictions, regulators or utilities have reduced or eliminated the benefit available under net metering or have proposed to do so.

## **Competition**

### **Automotive**

The worldwide automotive market is highly competitive and we expect it will become even more competitive in the future as we introduce additional vehicles in a broader cross-section of the passenger and commercial vehicle market and expand our vehicles' capabilities.

We believe that our vehicles compete in the market both based on their traditional segment classification as well as based on their propulsion technology. For example, Model S and Model X compete primarily with premium sedans and premium SUVs and Model 3 and Model Y compete with small to medium-sized sedans and compact SUVs, which are extremely competitive markets. Competing products typically include internal combustion vehicles from more established automobile manufacturers; however, many established and new automobile manufacturers have entered or have announced plans to enter the market for electric and other alternative fuel vehicles. Overall, we believe these announcements and vehicle introductions promote the development of the electric vehicle market by highlighting the attractiveness of electric vehicles relative to the internal combustion vehicle. Many major automobile manufacturers have electric vehicles available today in major markets including the U.S., China and Europe, and other current and prospective automobile manufacturers are also developing electric vehicles. In addition, several manufacturers offer hybrid vehicles, including plug-in versions.

We also believe that there is increasing competition for our vehicle offerings as a platform for delivering self-driving technologies, charging solutions and other features and services, and we expect to compete in this developing market through continued progress on our Autopilot, FSD and neural network capabilities, Supercharger network and our infotainment offerings.

### **Energy Generation and Storage**

#### ***Energy Storage Systems***

The market for energy storage products is also highly competitive, and both established and emerging companies have introduced products that are similar to our product portfolio or that are alternatives to the elements of our systems. We compete with these companies based on price, energy density and efficiency. We believe that the specifications and features of our products, our strong brand and the modular, scalable nature of our energy storage products give us a competitive advantage in our markets.

#### ***Solar Energy Systems***

The primary competitors to our solar energy business are the traditional local utility companies that supply energy to our potential customers. We compete with these traditional utility companies primarily based on price and the ease by which customers can switch to electricity generated by our solar energy systems. We also compete with solar energy companies that provide products and services similar to ours. Many solar energy companies only install solar energy systems, while others only provide financing for these installations. We believe we have a significant expansion opportunity with our offerings and that the regulatory environment is increasingly conducive to the adoption of renewable energy systems.

### **Intellectual Property**

We place a strong emphasis on our innovative approach and proprietary designs which bring intrinsic value and uniqueness to our product portfolio. As part of our business, we seek to protect the underlying intellectual property rights of these innovations and designs such as with respect to patents, trademarks, copyrights, trade secrets and other measures, including through employee and third-party nondisclosure agreements and other contractual arrangements. For example, we place a high priority on obtaining patents to provide the broadest and strongest possible protection to enable our freedom to operate our innovations and designs within our products and technologies in the electric vehicle market as well as to protect and defend our product portfolio. We have also adopted a patent policy in which we irrevocably pledged that we will not initiate a lawsuit against any party for infringing our patents through activity relating to electric vehicles or related equipment for so long as such party is acting in good faith. We made this pledge in order to encourage the advancement of a common, rapidly-evolving platform for electric vehicles, thereby benefiting ourselves, other companies making electric vehicles and the world.

### **Human Capital Resources**

As of December 31, 2020, our full-time count for our and our subsidiaries' employees worldwide was 70,757. To date, we have not experienced any work stoppages as a result of labor disputes, and we consider our relationship with our employees to be good. Our key human capital objectives in managing our business include attracting, developing and retaining top talent while integrating diversity, equity and inclusion principles and practices into our core values.

We want to attract a pool of diverse and exceptional candidates and support their career growth once they become employees. Our efforts begin at the entry level with development, apprenticeship and internship programs in local high schools, community colleges and four-year colleges. In addition, we seek to hire based on talent rather than solely on educational pedigree, and have provided thousands of job openings, including in our local communities, for capable workers from various backgrounds to learn valuable skills in critical operations such as in manufacturing, vehicle service and energy product installation. We also emphasize in our evaluation and career development efforts internal mobility opportunities for employees to drive professional development. Our goal is a long-term, upward-bound career at Tesla for every employee, which we believe also drives our retention efforts.

We also believe that our ability to retain our workforce is dependent on our ability to foster an environment that is sustainably safe, respectful, fair and inclusive of everyone and promotes diversity, equity and inclusion inside and outside of our business. From our outreach to Historically Black Colleges and Universities and Hispanic Serving Institutions to sponsoring employee resource groups across numerous locations, including Asian Pacific Islanders at Tesla, Black at Tesla, Intersectionality, Latinos at Tesla, LGBTQ at Tesla, Veterans at Tesla and Women in Tesla, we engage these networks as key business resources and sources of actionable feedback. We are also working on diversity efforts in our supply chain to expand our outreach and support to small- and large-scale suppliers from underrepresented communities to emphasize this culture with our own employees.

#### **Available Information**

We file or furnish periodic reports and amendments thereto, including our Annual Reports on Form 10-K, our Quarterly Reports on Form 10-Q and Current Reports on Form 8-K, proxy statements and other information with the Securities and Exchange Commission (“SEC”). In addition, the SEC maintains a website ([www.sec.gov](http://www.sec.gov)) that contains reports, proxy and information statements, and other information regarding issuers that file electronically. Our website is located at [www.tesla.com](http://www.tesla.com), and our reports, amendments thereto, proxy statements and other information are also made available, free of charge, on our investor relations website at [ir.tesla.com](http://ir.tesla.com) as soon as reasonably practicable after we electronically file or furnish such information with the SEC. The information posted on our website is not incorporated by reference into this Annual Report on Form 10-K.

## ITEM 1A. RISK FACTORS

*You should carefully consider the risks described below together with the other information set forth in this report, which could materially affect our business, financial condition and future results. The risks described below are not the only risks facing our company. Risks and uncertainties not currently known to us or that we currently deem to be immaterial also may materially adversely affect our business, financial condition and operating results.*

### Risks Related to Our Ability to Grow Our Business

#### ***We may be impacted by macroeconomic conditions resulting from the global COVID-19 pandemic.***

Since the first quarter of 2020, there has been a worldwide impact from the COVID-19 pandemic. Government regulations and shifting social behaviors have limited or closed non-essential transportation, government functions, business activities and person-to-person interactions. In some cases, the relaxation of such trends has recently been followed by actual or contemplated returns to stringent restrictions on gatherings or commerce, including in parts of the U.S. and a number of areas in Europe.

We temporarily suspended operations at each of our manufacturing facilities worldwide for a part of the first half of 2020. Some of our suppliers and partners also experienced temporary suspensions before resuming, including Panasonic, which manufactures battery cells for our products at our Gigafactory Nevada. We also instituted temporary employee furloughs and compensation reductions while our U.S. operations were scaled back. Reduced operations or closures at motor vehicle departments, vehicle auction houses and municipal and utility company inspectors have resulted in challenges in or postponements for our new vehicle deliveries, used vehicle sales and energy product deployments. Global trade conditions and consumer trends may further adversely impact us and our industries. For example, pandemic-related issues have exacerbated port congestion and intermittent supplier shutdowns and delays, resulting in additional expenses to expedite delivery of critical parts. Similarly, increased demand for personal electronics has created a shortfall of microchip supply, and it is yet unknown how we may be impacted. Sustaining our production trajectory will require the readiness and solvency of our suppliers and vendors, a stable and motivated production workforce and ongoing government cooperation, including for travel and visa allowances. The contingencies inherent in the construction of and ramp at new facilities such as Gigafactory Shanghai, Gigafactory Berlin and Gigafactory Texas may be exacerbated by these challenges.

We cannot predict the duration or direction of current global trends, the sustained impact of which is largely unknown, is rapidly evolving and has varied across geographic regions. Ultimately, we continue to monitor macroeconomic conditions to remain flexible and to optimize and evolve our business as appropriate, and we will have to accurately project demand and infrastructure requirements globally and deploy our production, workforce and other resources accordingly. If current global market conditions continue or worsen, or if we cannot or do not maintain operations at a scope that is commensurate with such conditions or are later required to or choose to suspend such operations again, our business, prospects, financial condition and operating results may be harmed.

#### ***We may experience delays in launching and ramping the production of our products and features, or we may be unable to control our manufacturing costs.***

We have previously experienced and may in the future experience launch and production ramp delays for new products and features. For example, we encountered unanticipated supplier issues that led to delays during the ramp of Model X and experienced challenges with a supplier and with ramping full automation for certain of our initial Model 3 manufacturing processes. In addition, we may introduce in the future new or unique manufacturing processes and design features for our products. There is no guarantee that we will be able to successfully and timely introduce and scale such processes or features.

In particular, our future business depends in large part on increasing the production of mass-market vehicles including Model 3 and Model Y, which we are planning to achieve through multiple factories worldwide. We have relatively limited experience to date in manufacturing Model 3 and Model Y at high volumes and even less experience building and ramping vehicle production lines across multiple factories in different geographies. In order to be successful, we will need to implement, maintain and ramp efficient and cost-effective manufacturing capabilities, processes and supply chains and achieve the design tolerances, high quality and output rates we have planned at our manufacturing facilities in California, Nevada, Texas, China and Germany. We will also need to hire, train and compensate skilled employees to operate these facilities. Bottlenecks and other unexpected challenges such as those we experienced in the past may arise during our production ramps, and we must address them promptly while continuing to improve manufacturing processes and reducing costs. If we are not successful in achieving these goals, we could face delays in establishing and/or sustaining our Model 3 and Model Y ramps or be unable to meet our related cost and profitability targets.

We may also experience similar future delays in launching and/or ramping production of our energy storage products and Solar Roof; new product versions or variants; new vehicles such as Tesla Semi, Cybertruck and the new Tesla Roadster; and future features and services such as new Autopilot or FSD features and the autonomous Tesla ride-hailing network. Likewise, we may encounter delays with the design, construction and regulatory or other approvals necessary to build and bring online future manufacturing facilities and products.

Any delay or other complication in ramping the production of our current products or the development, manufacture, launch and production ramp of our future products, features and services, or in doing so cost-effectively and with high quality, may harm our brand, business, prospects, financial condition and operating results.

***We may be unable to grow our global product sales, delivery and installation capabilities and our servicing and vehicle charging networks, or we may be unable to accurately project and effectively manage our growth.***

Our success will depend on our ability to continue to expand our sales capabilities. We also frequently adjust our retail operations and product offerings in order to optimize our reach, costs, product line-up and model differentiation and customer experience. However, there is no guarantee that such steps will be accepted by consumers accustomed to traditional sales strategies. For example, marketing methods such as touchless test drives that we have pioneered in certain markets have not been proven at scale. We are targeting with Model 3 and Model Y a global mass demographic with a broad range of potential customers, in which we have relatively limited experience projecting demand and pricing our products. We currently produce numerous international variants at a limited number of factories, and if our specific demand expectations for these variants prove inaccurate, we may not be able to timely generate deliveries matched to the vehicles that we produce in the same timeframe or that are commensurate with the size of our operations in a given region. Likewise, as we develop and grow our energy products and services worldwide, our success will depend on our ability to correctly forecast demand in various markets.

Because we do not have independent dealer networks, we are responsible for delivering all of our vehicles to our customers. While we have improved our delivery logistics, we may face difficulties with deliveries at increasing volumes, particularly in international markets requiring significant transit times. For example, we saw challenges in ramping our logistics channels in China and Europe to initially deliver Model 3 there in the first quarter of 2019. We have deployed a number of delivery models, such as deliveries to customers' homes and workplaces and touchless deliveries, but there is no guarantee that such models will be scalable or be accepted globally. Likewise, as we ramp Solar Roof, we are working to substantially increase installation personnel and decrease installation times. If we are not successful in matching such capabilities with actual production, or if we experience unforeseen production delays or inaccurately forecast demand for the Solar Roof, our business, financial condition and operating results may be harmed.

Moreover, because of our unique expertise with our vehicles, we recommend that our vehicles be serviced by us or by certain authorized professionals. If we experience delays in adding such servicing capacity or servicing our vehicles efficiently, or experience unforeseen issues with the reliability of our vehicles, particularly higher-volume and newer additions to our fleet such as Model 3 and Model Y, it could overburden our servicing capabilities and parts inventory. Similarly, the increasing number of Tesla vehicles also requires us to continue to rapidly increase the number of our Supercharger stations and connectors throughout the world.

There is no assurance that we will be able to ramp our business to meet our sales, delivery, installation, servicing and vehicle charging targets globally, that our projections on which such targets are based will prove accurate or that the pace of growth or coverage of our customer infrastructure network will meet customer expectations. These plans require significant cash investments and management resources and there is no guarantee that they will generate additional sales or installations of our products, or that we will be able to avoid cost overruns or be able to hire additional personnel to support them. As we expand, we will also need to ensure our compliance with regulatory requirements in various jurisdictions applicable to the sale, installation and servicing of our products, the sale or dispatch of electricity related to our energy products and the operation of Superchargers. If we fail to manage our growth effectively, it may harm our brand, business, prospects, financial condition and operating results.

***Our future growth and success are dependent upon consumers' demand for electric vehicles and specifically our vehicles in an automotive industry that is generally competitive, cyclical and volatile.***

If the market for electric vehicles in general and Tesla vehicles in particular does not develop as we expect, develops more slowly than we expect, or if demand for our vehicles decreases in our markets or our vehicles compete with each other, our business, prospects, financial condition and operating results may be harmed.

We are still at an earlier stage and have limited resources and production relative to established competitors that offer internal combustion engine vehicles. In addition, electric vehicles still comprise a small percentage of overall vehicle sales. As a result, the market for our vehicles could be negatively affected by numerous factors, such as:

- perceptions about electric vehicle features, quality, safety, performance and cost;
- perceptions about the limited range over which electric vehicles may be driven on a single battery charge, and access to charging facilities;
- competition, including from other types of alternative fuel vehicles, plug-in hybrid electric vehicles and high fuel-economy internal combustion engine vehicles;
- volatility in the cost of oil and gasoline, such as wide fluctuations in crude oil prices during 2020;

- government regulations and economic incentives; and
- concerns about our future viability.

Finally, the target demographics for our vehicles, particularly Model 3 and Model Y, are highly competitive. Sales of vehicles in the automotive industry tend to be cyclical in many markets, which may expose us to further volatility as we expand and adjust our operations and retail strategies. Moreover, the COVID-19 pandemic may negatively impact the transportation and automotive industries long-term. It is uncertain as to how such macroeconomic factors will impact us as a company that has been experiencing growth and increasing market share in an industry that has globally been experiencing a recent decline in sales.

***Our suppliers may fail to deliver components according to schedules, prices, quality and volumes that are acceptable to us, or we may be unable to manage these components effectively.***

Our products contain thousands of parts that we purchase globally from hundreds of mostly single-source direct suppliers, generally without long-term supply agreements. This exposes us to multiple potential sources of component shortages, such as those that we experienced in 2012 and 2016 with our Model S and Model X ramps. Unexpected changes in business conditions, materials pricing, labor issues, wars, governmental changes, tariffs, natural disasters such as the March 2011 earthquakes in Japan, health epidemics such as the global COVID-19 pandemic, trade and shipping disruptions and other factors beyond our or our suppliers' control could also affect these suppliers' ability to deliver components to us or to remain solvent and operational. For example, a global shortage of microchips has been reported since early 2021, and the impact to us is yet unknown. The unavailability of any component or supplier could result in production delays, idle manufacturing facilities, product design changes and loss of access to important technology and tools for producing and supporting our products. Moreover, significant increases in our production, such as for Model 3 and Model Y, or product design changes by us have required and may in the future require us to procure additional components in a short amount of time. Our suppliers may not be willing or able to sustainably meet our timelines or our cost, quality and volume needs, or to do so may cost us more, which may require us to replace them with other sources. Finally, we have limited vehicle manufacturing experience outside of the Fremont Factory and we may experience issues increasing the level of localized procurement at our Gigafactory Shanghai and at future factories such as Gigafactory Berlin and Gigafactory Texas. While we believe that we will be able to secure additional or alternate sources or develop our own replacements for most of our components, there is no assurance that we will be able to do so quickly or at all. Additionally, we may be unsuccessful in our continuous efforts to negotiate with existing suppliers to obtain cost reductions and avoid unfavorable changes to terms, source less expensive suppliers for certain parts and redesign certain parts to make them less expensive to produce. Any of these occurrences may harm our business, prospects, financial condition and operating results.

As the scale of our vehicle production increases, we will also need to accurately forecast, purchase, warehouse and transport components at high volumes to our manufacturing facilities and servicing locations internationally. If we are unable to accurately match the timing and quantities of component purchases to our actual needs or successfully implement automation, inventory management and other systems to accommodate the increased complexity in our supply chain and parts management, we may incur unexpected production disruption, storage, transportation and write-off costs, which may harm our business and operating results.

***We may be unable to meet our projected construction timelines, costs and production ramps at new factories, or we may experience difficulties in generating and maintaining demand for products manufactured there.***

Our ability to increase production of our vehicles on a sustained basis, make them affordable globally by accessing local supply chains and workforces and streamline delivery logistics is dependent on the construction and ramp of Gigafactory Shanghai, Gigafactory Berlin and Gigafactory Texas. The construction of and commencement and ramp of production at these factories are subject to a number of uncertainties inherent in all new manufacturing operations, including ongoing compliance with regulatory requirements, procurement and maintenance of construction, environmental and operational licenses and approvals for additional expansion, potential supply chain constraints, hiring, training and retention of qualified employees and the pace of bringing production equipment and processes online with the capability to manufacture high-quality units at scale. For example, we are currently constructing Gigafactory Berlin under conditional permits. Moreover, we intend to incorporate sequential design and manufacturing changes into vehicles manufactured at each new factory. We have limited experience to date with developing and implementing vehicle manufacturing innovations outside of the Fremont Factory, as we only recently began production at Gigafactory Shanghai. In particular, the majority of our design and engineering resources are currently located in California. In order to meet our expectations for our new factories, we must expand and manage localized design and engineering talent and resources. If we experience any issues or delays in meeting our projected timelines, costs, capital efficiency and production capacity for our new factories, expanding and managing teams to implement iterative design and production changes there, maintaining and complying with the terms of any debt financing that we obtain to fund them or generating and maintaining demand for the vehicles we manufacture there, our business, prospects, operating results and financial condition may be harmed.



***We will need to maintain and significantly grow our access to battery cells, including through the development and manufacture of our own cells, and control our related costs.***

We are dependent on the continued supply of lithium-ion battery cells for our vehicles and energy storage products, and we will require substantially more cells to grow our business according to our plans. Currently, we rely on suppliers such as Panasonic for these cells. However, we have to date fully qualified only a very limited number of such suppliers and have limited flexibility in changing suppliers. Any disruption in the supply of battery cells from our suppliers could limit production of our vehicles and energy storage products. In the long term, we intend to supplement cells from our suppliers with cells manufactured by us, which we believe will be more efficient, manufacturable at greater volumes and cost-effective than currently available cells. However, our efforts to develop and manufacture such battery cells have required and may require significant investments, and there can be no assurance that we will be able to achieve these targets in the timeframes that we have planned or at all. If we are unable to do so, we may have to curtail our planned vehicle and energy storage product production or procure additional cells from suppliers at potentially greater costs, either of which may harm our business and operating results.

In addition, the cost of battery cells, whether manufactured by our suppliers or by us, depends in part upon the prices and availability of raw materials such as lithium, nickel, cobalt and/or other metals. The prices for these materials fluctuate and their available supply may be unstable, depending on market conditions and global demand for these materials, including as a result of increased global production of electric vehicles and energy storage products. Any reduced availability of these materials may impact our access to cells and any increases in their prices may reduce our profitability if we cannot recoup the increased costs through increased vehicle prices. Moreover, any such attempts to increase product prices may harm our brand, prospects and operating results.

***We face strong competition for our products and services from a growing list of established and new competitors.***

The worldwide automotive market is highly competitive today and we expect it will become even more so in the future. For example, Model 3 and Model Y face competition from existing and future automobile manufacturers in the extremely competitive entry-level premium sedan and compact SUV markets. A significant and growing number of established and new automobile manufacturers, as well as other companies, have entered or are reported to have plans to enter the market for electric and other alternative fuel vehicles, including hybrid, plug-in hybrid and fully electric vehicles, as well as the market for self-driving technology and other vehicle applications and software platforms. In some cases, our competitors offer or will offer electric vehicles in important markets such as China and Europe, and/or have announced an intention to produce electric vehicles exclusively at some point in the future. Many of our competitors have significantly greater or better-established resources than we do to devote to the design, development, manufacturing, distribution, promotion, sale and support of their products. Increased competition could result in our lower vehicle unit sales, price reductions, revenue shortfalls, loss of customers and loss of market share, which may harm our business, financial condition and operating results.

We also face competition in our energy generation and storage business from other manufacturers, developers, installers and service providers of competing energy systems, as well as from large utilities. Decreases in the retail or wholesale prices of electricity from utilities or other renewable energy sources could make our products less attractive to customers and lead to an increased rate of residential customer defaults under our existing long-term leases and PPAs.

## **Risks Related to Our Operations**

***We may experience issues with lithium-ion cells or other components manufactured at Gigafactory Nevada, which may harm the production and profitability of our vehicle and energy storage products.***

Our plan to grow the volume and profitability of our vehicles and energy storage products depends on significant lithium-ion battery cell production by our partner Panasonic at Gigafactory Nevada. Although Panasonic has a long track record of producing high-quality cells at significant volume at its factories in Japan, it has relatively limited experience with cell production at Gigafactory Nevada, which began in 2017. Moreover, although Panasonic is co-located with us at Gigafactory Nevada, it is free to make its own operational decisions, such as its determination to temporarily suspend its manufacturing there in response to the COVID-19 pandemic. In addition, we produce several vehicle components, such as battery modules and packs incorporating the cells produced by Panasonic for Model 3 and Model Y and drive units (including to support Gigafactory Shanghai production), at Gigafactory Nevada, and we also manufacture energy storage products there. In the past, some of the manufacturing lines for certain product components took longer than anticipated to ramp to their full capacity, and additional bottlenecks may arise in the future as we continue to increase the production rate and introduce new lines. If we or Panasonic are unable to or otherwise do not maintain and grow our respective operations at Gigafactory Nevada production, or if we are unable to do so cost-effectively or hire and retain highly-skilled personnel there, our ability to manufacture our products profitably would be limited, which may harm our business and operating results.

Finally, the high volumes of lithium-ion cells and battery modules and packs manufactured at Gigafactory Nevada are stored and recycled at our various facilities. Any mishandling of battery cells may cause disruption to the operation of such facilities. While

we have implemented safety procedures related to the handling of the cells, there can be no assurance that a safety issue or fire related to the cells would not disrupt our operations. Any such disruptions or issues may harm our brand and business.

***We face risks associated with maintaining and expanding our international operations, including unfavorable and uncertain regulatory, political, economic, tax and labor conditions.***

We are subject to legal and regulatory requirements, political uncertainty and social, environmental and economic conditions in numerous jurisdictions, over which we have little control and which are inherently unpredictable. Our operations in such jurisdictions, particularly as a company based in the U.S., create risks relating to conforming our products to regulatory and safety requirements and charging and other electric infrastructures; organizing local operating entities; establishing, staffing and managing foreign business locations; attracting local customers; navigating foreign government taxes, regulations and permit requirements; enforceability of our contractual rights; trade restrictions, customs regulations, tariffs and price or exchange controls; and preferences in foreign nations for domestically manufactured products. Such conditions may increase our costs, impact our ability to sell our products and require significant management attention, and may harm our business if we unable to manage them effectively.

***Our business may suffer if our products or features contain defects, fail to perform as expected or take longer than expected to become fully functional.***

If our products contain design or manufacturing defects that cause them not to perform as expected or that require repair, or certain features of our vehicles such as new Autopilot or FSD features take longer than expected to become enabled, are legally restricted or become subject to onerous regulation, our ability to develop, market and sell our products and services may be harmed, and we may experience delivery delays, product recalls, product liability, breach of warranty and consumer protection claims and significant warranty and other expenses. In particular, our products are highly dependent on software, which is inherently complex and may contain latent defects or errors or be subject to external attacks. Issues experienced by our customers have included those related to the Model S and Model X 17-inch display screen, the panoramic roof and the 12-volt battery in the Model S, the seats and doors in the Model X and the operation of solar panels installed by us. Although we attempt to remedy any issues we observe in our products as effectively and rapidly as possible, such efforts may not be timely, may hamper production or may not completely satisfy our customers. While we have performed extensive internal testing on our products and features, we currently have a limited frame of reference by which to evaluate their long-term quality, reliability, durability and performance characteristics. There can be no assurance that we will be able to detect and fix any defects in our products prior to their sale to or installation for customers.

***We may be required to defend or insure against product liability claims.***

The automobile industry generally experiences significant product liability claims, and as such we face the risk of such claims in the event our vehicles do not perform or are claimed to not have performed as expected. As is true for other automakers, our vehicles have been involved and we expect in the future will be involved in accidents resulting in death or personal injury, and such accidents where Autopilot or FSD features are engaged are the subject of significant public attention. We have experienced and we expect to continue to face claims arising from or related to misuse or claimed failures of such new technologies that we are pioneering. In addition, the battery packs that we produce make use of lithium-ion cells. On rare occasions, lithium-ion cells can rapidly release the energy they contain by venting smoke and flames in a manner that can ignite nearby materials as well as other lithium-ion cells. While we have designed our battery packs to passively contain any single cell's release of energy without spreading to neighboring cells, there can be no assurance that a field or testing failure of our vehicles or other battery packs that we produce will not occur, in particular due to a high-speed crash. Likewise, as our solar energy systems and energy storage products generate and store electricity, they have the potential to fail or cause injury to people or property. Any product liability claim may subject us to lawsuits and substantial monetary damages, product recalls or redesign efforts, and even a meritless claim may require us to defend it, all of which may generate negative publicity and be expensive and time-consuming. In most jurisdictions, we generally self-insure against the risk of product liability claims for vehicle exposure, meaning that any product liability claims will likely have to be paid from company funds and not by insurance.

***We will need to maintain public credibility and confidence in our long-term business prospects in order to succeed.***

In order to maintain and grow our business, we must maintain credibility and confidence among customers, suppliers, analysts, investors, ratings agencies and other parties in our long-term financial viability and business prospects. Maintaining such confidence may be challenging due to our limited operating history relative to established competitors; customer unfamiliarity with our products; any delays we may experience in scaling manufacturing, delivery and service operations to meet demand; competition and uncertainty regarding the future of electric vehicles or our other products and services; our quarterly production and sales performance compared with market expectations; and other factors including those over which we have no control. In particular, Tesla's products, business, results of operations, statements and actions are well-publicized by a range of third parties. Such attention includes frequent criticism, which is often exaggerated or unfounded, such as speculation regarding the sufficiency or stability of our management team. Any such negative perceptions, whether caused by us or not, may harm our business and make it more difficult to raise additional funds if needed.

***We may be unable to effectively grow, or manage the compliance, residual value, financing and credit risks related to, our various financing programs.***

We offer financing arrangements for our vehicles in North America, Europe and Asia primarily through various financial institutions. We also currently offer vehicle financing arrangements directly through our local subsidiaries in certain markets. Depending on the country, such arrangements are available for specified models and may include operating leases directly with us under which we typically receive only a very small portion of the total vehicle purchase price at the time of lease, followed by a stream of payments over the term of the lease. We have also offered various arrangements for customers of our solar energy systems whereby they pay us a fixed payment to lease or finance the purchase of such systems or purchase electricity generated by them. If we do not successfully monitor and comply with applicable national, state and/or local financial regulations and consumer protection laws governing these transactions, we may become subject to enforcement actions or penalties.

The profitability of any directly-leased vehicles returned to us at the end of their leases depends on our ability to accurately project our vehicles' residual values at the outset of the leases, and such values may fluctuate prior to the end of their terms depending on various factors such as supply and demand of our used vehicles, economic cycles and the pricing of new vehicles. We have made in the past and may make in the future certain adjustments to our prices from time to time in the ordinary course of business, which may impact the residual values of our vehicles and reduce the profitability of our vehicle leasing program. The funding and growth of this program also relies on our ability to secure adequate financing and/or business partners. If we are unable to adequately fund our leasing program through internal funds, partners or other financing sources, and compelling alternative financing programs are not available for our customers who may expect or need such options, we may be unable to grow our vehicle deliveries. Furthermore, if our vehicle leasing business grows substantially, our business may suffer if we cannot effectively manage the resulting greater levels of residual risk.

Similarly, we have provided resale value guarantees to vehicle customers and partners for certain financing programs, under which such counterparties may sell their vehicles back to us at certain points in time at pre-determined amounts. However, actual resale values are subject to fluctuations over the term of the financing arrangements, such as from the vehicle pricing changes discussed above. If the actual resale values of any vehicles resold or returned to us pursuant to these programs are materially lower than the pre-determined amounts we have offered, our financial condition and operating results may be harmed.

Finally, our vehicle and solar energy system financing programs and our energy storage sales programs also expose us to customer credit risk. In the event of a widespread economic downturn or other catastrophic event, our customers may be unable or unwilling to satisfy their payment obligations to us on a timely basis or at all. If a significant number of our customers default, we may incur substantial credit losses and/or impairment charges with respect to the underlying assets.

***We must manage ongoing obligations under our agreement with the Research Foundation for the State University of New York relating to our Gigafactory New York.***

We are party to an operating lease and a research and development agreement through the SUNY Foundation. These agreements provide for the construction and use of our Gigafactory New York, which we have primarily used for the development and production of our Solar Roof and other solar products and components, energy storage components and Supercharger components, and for other lessor-approved functions. Under this agreement, we are obligated to, among other things, meet employment targets as well as specified minimum numbers of personnel in the State of New York and in Buffalo, New York and spend or incur \$5.00 billion in combined capital, operational expenses, costs of goods sold and other costs in the State of New York during the 10-year period beginning April 30, 2018. As we temporarily suspended most of our manufacturing operations at Gigafactory New York pursuant to a New York State executive order issued in March 2020 as a result of the COVID-19 pandemic, we were granted a one-year deferral of our obligation to be compliant with our applicable targets under such agreement on April 30, 2020, which was memorialized in an amendment to our agreement with the SUNY Foundation in July 2020. While we expect to have and grow significant operations at Gigafactory New York and the surrounding Buffalo area, any failure by us in any year over the course of the term of the agreement to meet all applicable future obligations may result in our obligation to pay a "program payment" of \$41 million to the SUNY Foundation for such year, the termination of our lease at Gigafactory New York which may require us to pay additional penalties and/or the need to adjust certain of our operations, in particular our production ramp of the Solar Roof or other components. Any of the foregoing events may harm our business, financial condition and operating results.

***If we are unable to attract, hire and retain key employees and qualified personnel, our ability to compete may be harmed.***

The loss of the services of any of our key employees or any significant portion of our workforce could disrupt our operations or delay the development, introduction and ramp of our products and services. In particular, we are highly dependent on the services of Elon Musk, our Chief Executive Officer. None of our key employees is bound by an employment agreement for any specific term and we may not be able to successfully attract and retain senior leadership necessary to grow our business. Our future success also depends upon our ability to attract, hire and retain a large number of engineering, manufacturing, marketing, sales and delivery, service, installation, technology and support personnel, especially to support our planned high-volume product sales, market and geographical

expansion and technological innovations. Recruiting efforts, particularly for senior employees, may be time-consuming, which may delay the execution of our plans. If we are not successful in managing these risks, our business, financial condition and operating results may be harmed.

Employees may leave Tesla or choose other employers over Tesla due to various factors, such as a very competitive labor market for talented individuals with automotive or technology experience, or any negative publicity related to us. In California, Nevada and other regions where we have operations, there is increasing competition for individuals with skillsets needed for our business, including specialized knowledge of electric vehicles, software engineering, manufacturing engineering and electrical and building construction expertise. Moreover, we may be impacted by perceptions relating to reductions in force that we have conducted in the past in order to optimize our organizational structure and reduce costs and the departure of certain senior personnel for various reasons. Likewise, as a result of our temporary suspension of various U.S. manufacturing operations in the first half of 2020, in April 2020 we temporarily furloughed certain hourly employees and reduced most salaried employees' base salaries. We also compete with both mature and prosperous companies that have far greater financial resources than we do and start-ups and emerging companies that promise short-term growth opportunities.

Finally, our compensation philosophy for all of our personnel reflects our startup origins, with an emphasis on equity-based awards and benefits in order to closely align their incentives with the long-term interests of our stockholders. We periodically seek and obtain approval from our stockholders for future increases to the number of awards available under our equity incentive and employee stock purchase plans. If we are unable to obtain the requisite stockholder approvals for such future increases, we may have to expend additional cash to compensate our employees and our ability to retain and hire qualified personnel may be harmed.

***We are highly dependent on the services of Elon Musk, our Chief Executive Officer.***

We are highly dependent on the services of Elon Musk, our Chief Executive Officer and largest stockholder. Although Mr. Musk spends significant time with Tesla and is highly active in our management, he does not devote his full time and attention to Tesla. Mr. Musk also currently serves as Chief Executive Officer and Chief Technical Officer of Space Exploration Technologies Corp., a developer and manufacturer of space launch vehicles, and is involved in other emerging technology ventures.

***We must manage risks relating to our information technology systems and the threat of intellectual property theft, data breaches and cyber-attacks.***

We must continue to expand and improve our information technology systems as our operations grow, such as product data management, procurement, inventory management, production planning and execution, sales, service and logistics, dealer management, financial, tax and regulatory compliance systems. This includes the implementation of new internally developed systems and the deployment of such systems in the U.S. and abroad. We must also continue to maintain information technology measures designed to protect us against intellectual property theft, data breaches, sabotage and other external or internal cyber-attacks or misappropriation. However, the implementation, maintenance, segregation and improvement of these systems require significant management time, support and cost, and there are inherent risks associated with developing, improving and expanding our core systems as well as implementing new systems and updating current systems, including disruptions to the related areas of business operation. These risks may affect our ability to manage our data and inventory, procure parts or supplies or manufacture, sell, deliver and service products, adequately protect our intellectual property or achieve and maintain compliance with, or realize available benefits under, tax laws and other applicable regulations.

Moreover, if we do not successfully implement, maintain or expand these systems as planned, our operations may be disrupted, our ability to accurately and/or timely report our financial results could be impaired and deficiencies may arise in our internal control over financial reporting, which may impact our ability to certify our financial results. Moreover, our proprietary information or intellectual property could be compromised or misappropriated and our reputation may be adversely affected. If these systems or their functionality do not operate as we expect them to, we may be required to expend significant resources to make corrections or find alternative sources for performing these functions.

***Any unauthorized control or manipulation of our products' systems could result in loss of confidence in us and our products.***

Our products contain complex information technology systems. For example, our vehicles and energy storage products are designed with built-in data connectivity to accept and install periodic remote updates from us to improve or update their functionality. While we have implemented security measures intended to prevent unauthorized access to our information technology networks, our products and their systems, malicious entities have reportedly attempted, and may attempt in the future, to gain unauthorized access to modify, alter and use such networks, products and systems to gain control of, or to change, our products' functionality, user interface and performance characteristics or to gain access to data stored in or generated by our products. We encourage reporting of potential vulnerabilities in the security of our products through our security vulnerability reporting policy, and we aim to remedy any reported and verified vulnerability. However, there can be no assurance that any vulnerabilities will not be exploited before they can be identified, or that our remediation efforts are or will be successful.

Any unauthorized access to or control of our products or their systems or any loss of data could result in legal claims or government investigations. In addition, regardless of their veracity, reports of unauthorized access to our products, their systems or data, as well as other factors that may result in the perception that our products, their systems or data are capable of being hacked, may harm our brand, prospects and operating results. We have been the subject of such reports in the past.

***Our business may be adversely affected by any disruptions caused by union activities.***

It is not uncommon for employees of certain trades at companies such as us to belong to a union, which can result in higher employee costs and increased risk of work stoppages. Moreover, regulations in some jurisdictions outside of the U.S. mandate employee participation in industrial collective bargaining agreements and work councils with certain consultation rights with respect to the relevant companies' operations. Although we work diligently to provide the best possible work environment for our employees, they may still decide to join or seek recognition to form a labor union, or we may be required to become a union signatory. From time to time, labor unions have engaged in campaigns to organize certain of our operations, as part of which such unions have filed unfair labor practice charges against us with the National Labor Relations Board, and they may do so in the future. In September 2019, an administrative law judge issued a recommended decision for Tesla on certain issues and against us on certain others. The National Labor Relations Board has not yet adopted the recommendation and we have appealed certain aspects of the recommended decision. Any unfavorable ultimate outcome for Tesla may have a negative impact on the perception of Tesla's treatment of our employees. Furthermore, we are directly or indirectly dependent upon companies with unionized work forces, such as suppliers and trucking and freight companies. Any work stoppages or strikes organized by such unions could delay the manufacture and sale of our products and may harm our business and operating results.

***We may choose to or be compelled to undertake product recalls or take other similar actions.***

As a manufacturing company, we must manage the risk of product recalls with respect to our products. Recalls for our vehicles have resulted from, for example, industry-wide issues with airbags from a particular supplier, concerns of corrosion in Model S and Model X power steering assist motor bolts, certain suspension failures in Model S and Model X and issues with Model S and Model X media control units. In addition to recalls initiated by us for various causes, testing of or investigations into our products by government regulators or industry groups may compel us to initiate product recalls or may result in negative public perceptions about the safety of our products, even if we disagree with the defect determination or have data that shows the actual safety risk to be non-existent. In the future, we may voluntarily or involuntarily initiate recalls if any of our products are determined by us or a regulator to contain a safety defect or be noncompliant with applicable laws and regulations, such as U.S. federal motor vehicle safety standards. Such recalls, whether voluntary or involuntary or caused by systems or components engineered or manufactured by us or our suppliers, could result in significant expense, supply chain complications and service burdens, and may harm our brand, business, prospects, financial condition and operating results.

***Our current and future warranty reserves may be insufficient to cover future warranty claims.***

We provide a manufacturer's warranty on all new and used Tesla vehicles we sell. We also provide certain warranties with respect to the energy generation and storage systems we sell, including on their installation and maintenance, and for components not manufactured by us, we generally pass through to our customers the applicable manufacturers' warranties. As part of our energy generation and storage system contracts, we may provide the customer with performance guarantees that warrant that the underlying system will meet or exceed the minimum energy generation or other energy performance requirements specified in the contract. Under these performance guarantees, we bear the risk of electricity production or other performance shortfalls, even if they result from failures in components from third party manufacturers. These risks are exacerbated in the event such manufacturers cease operations or fail to honor their warranties.

If our warranty reserves are inadequate to cover future warranty claims on our products, our financial condition and operating results may be harmed. Warranty reserves include our management's best estimates of the projected costs to repair or to replace items under warranty, which are based on actual claims incurred to date and an estimate of the nature, frequency and costs of future claims. Such estimates are inherently uncertain and changes to our historical or projected experience, especially with respect to products such as Model 3, Model Y and Solar Roof that we have recently introduced and/or that we expect to produce at significantly greater volumes than our past products, may cause material changes to our warranty reserves in the future.

***Our insurance coverage strategy may not be adequate to protect us from all business risks.***

We may be subject, in the ordinary course of business, to losses resulting from products liability, accidents, acts of God and other claims against us, for which we may have no insurance coverage. As a general matter, we do not maintain as much insurance coverage as many other companies do, and in some cases, we do not maintain any at all. Additionally, the policies that we do have may include significant deductibles or self-insured retentions, policy limitations and exclusions, and we cannot be certain that our insurance coverage will be sufficient to cover all future losses or claims against us. A loss that is uninsured or which exceeds policy limits may require us to pay substantial amounts, which may harm our financial condition and operating results.

***There is no guarantee that we will have sufficient cash flow from our business to pay our substantial indebtedness or that we will not incur additional indebtedness.***

As of December 31, 2020, we and our subsidiaries had outstanding \$10.57 billion in aggregate principal amount of indebtedness (see Note 12, *Debt*, to the consolidated financial statements included elsewhere in this Annual Report on Form 10-K). Our substantial consolidated indebtedness may increase our vulnerability to any generally adverse economic and industry conditions. We and our subsidiaries may, subject to the limitations in the terms of our existing and future indebtedness, incur additional debt, secure existing or future debt or recapitalize our debt.

Holders of convertible senior notes issued by us or our subsidiary may convert such notes at their option prior to the scheduled maturities of the respective convertible senior notes under certain circumstances pursuant to the terms of such notes. Upon conversion of the applicable convertible senior notes, we will be obligated to deliver cash and/or shares pursuant to the terms of such notes. For example, as our stock price has significantly increased recently, we have seen higher levels of early conversions of such “in-the-money” convertible senior notes. Moreover, holders of such convertible senior notes may have the right to require us to repurchase their notes upon the occurrence of a fundamental change pursuant to the terms of such notes.

Our ability to make scheduled payments of the principal and interest on our indebtedness when due, to make payments upon conversion or repurchase demands with respect to our convertible senior notes or to refinance our indebtedness as we may need or desire, depends on our future performance, which is subject to economic, financial, competitive and other factors beyond our control. Our business may not continue to generate cash flow from operations in the future sufficient to satisfy our obligations under our existing indebtedness and any future indebtedness we may incur, and to make necessary capital expenditures. If we are unable to generate such cash flow, we may be required to adopt one or more alternatives, such as reducing or delaying investments or capital expenditures, selling assets, refinancing or obtaining additional equity capital on terms that may be onerous or highly dilutive. Our ability to refinance existing or future indebtedness will depend on the capital markets and our financial condition at such time. In addition, our ability to make payments may be limited by law, by regulatory authority or by agreements governing our future indebtedness. We may not be able to engage in these activities on desirable terms or at all, which may result in a default on our existing or future indebtedness and harm our financial condition and operating results.

***Our debt agreements contain covenant restrictions that may limit our ability to operate our business.***

The terms of certain of our credit facilities, including our senior asset-based revolving credit agreement, contain, and any of our other future debt agreements may contain, covenant restrictions that limit our ability to operate our business, including restrictions on our ability to, among other things, incur additional debt or issue guarantees, create liens, repurchase stock, or make other restricted payments, and make certain voluntary prepayments of specified debt. In addition, under certain circumstances we are required to comply with a fixed charge coverage ratio. As a result of these covenants, our ability to respond to changes in business and economic conditions and engage in beneficial transactions, including to obtain additional financing as needed, may be restricted. Furthermore, our failure to comply with our debt covenants could result in a default under our debt agreements, which could permit the holders to accelerate our obligation to repay the debt. If any of our debt is accelerated, we may not have sufficient funds available to repay it.

***Additional funds may not be available to us when we need or want them.***

Our business and our future plans for expansion are capital-intensive, and the specific timing of cash inflows and outflows may fluctuate substantially from period to period. We may need or want to raise additional funds through the issuance of equity, equity-related or debt securities or through obtaining credit from financial institutions to fund, together with our principal sources of liquidity, the costs of developing and manufacturing our current or future products, to pay any significant unplanned or accelerated expenses or for new significant strategic investments, or to refinance our significant consolidated indebtedness, even if not required to do so by the terms of such indebtedness. We cannot be certain that additional funds will be available to us on favorable terms when required, or at all. If we cannot raise additional funds when we need them, our financial condition, results of operations, business and prospects could be materially and adversely affected.

***We may be negatively impacted by any early obsolescence of our manufacturing equipment.***

We depreciate the cost of our manufacturing equipment over their expected useful lives. However, product cycles or manufacturing technology may change periodically, and we may decide to update our products or manufacturing processes more quickly than expected. Moreover, improvements in engineering and manufacturing expertise and efficiency may result in our ability to manufacture our products using less of our currently installed equipment. Alternatively, as we ramp and mature the production of our products to higher levels, we may discontinue the use of already installed equipment in favor of different or additional equipment. The useful life of any equipment that would be retired early as a result would be shortened, causing the depreciation on such equipment to be accelerated, and our results of operations may be harmed.

***We hold and may acquire digital assets that may be subject to volatile market prices, impairment and unique risks of loss.***

In January 2021, we updated our investment policy to provide us with more flexibility to further diversify and maximize returns on our cash that is not required to maintain adequate operating liquidity. As part of the policy, which was duly approved by the Audit Committee of our Board of Directors, we may invest a portion of such cash in certain alternative reserve assets including digital assets, gold bullion, gold exchange-traded funds and other assets as specified in the future. Thereafter, we invested an aggregate \$1.50 billion in bitcoin under this policy and may acquire and hold digital assets from time to time or long-term. Moreover, we expect to begin accepting bitcoin as a form of payment for our products in the near future, subject to applicable laws and initially on a limited basis, which we may or may not liquidate upon receipt.

The prices of digital assets have been in the past and may continue to be highly volatile, including as a result of various associated risks and uncertainties. For example, the prevalence of such assets is a relatively recent trend, and their long-term adoption by investors, consumers and businesses is unpredictable. Moreover, their lack of a physical form, their reliance on technology for their creation, existence and transactional validation and their decentralization may subject their integrity to the threat of malicious attacks and technological obsolescence. Finally, the extent to which securities laws or other regulations apply or may apply in the future to such assets is unclear and may change in the future. If we hold digital assets and their values decrease relative to our purchase prices, our financial condition may be harmed.

Moreover, digital assets are currently considered indefinite-lived intangible assets under applicable accounting rules, meaning that any decrease in their fair values below our carrying values for such assets at any time subsequent to their acquisition will require us to recognize impairment charges, whereas we may make no upward revisions for any market price increases until a sale, which may adversely affect our operating results in any period in which such impairment occurs. Moreover, there is no guarantee that future changes in GAAP will not require us to change the way we account for digital assets held by us.

Finally, as intangible assets without centralized issuers or governing bodies, digital assets have been, and may in the future be, subject to security breaches, cyberattacks or other malicious activities, as well as human errors or computer malfunctions that may result in the loss or destruction of private keys needed to access such assets. While we intend to take all reasonable measures to secure any digital assets, if such threats are realized or the measures or controls we create or implement to secure our digital assets fail, it could result in a partial or total misappropriation or loss of our digital assets, and our financial condition and operating results may be harmed.

***We are exposed to fluctuations in currency exchange rates.***

We transact business globally in multiple currencies and have foreign currency risks related to our revenue, costs of revenue, operating expenses and localized subsidiary debt denominated in currencies other than the U.S. dollar, currently primarily the Chinese yuan, euro, Canadian dollar and British pound. To the extent we have significant revenues denominated in such foreign currencies, any strengthening of the U.S. dollar would tend to reduce our revenues as measured in U.S. dollars, as we have historically experienced. In addition, a portion of our costs and expenses have been, and we anticipate will continue to be, denominated in foreign currencies, including the Chinese yuan and Japanese yen. If we do not have fully offsetting revenues in these currencies and if the value of the U.S. dollar depreciates significantly against these currencies, our costs as measured in U.S. dollars as a percent of our revenues will correspondingly increase and our margins will suffer. Moreover, while we undertake limited hedging activities intended to offset the impact of currency translation exposure, it is impossible to predict or eliminate such impact. As a result, our operating results may be harmed.

***We may need to defend ourselves against intellectual property infringement claims, which may be time-consuming and expensive.***

Our competitors or other third parties may hold or obtain patents, copyrights, trademarks or other proprietary rights that could prevent, limit or interfere with our ability to make, use, develop, sell or market our products and services, which could make it more difficult for us to operate our business. From time to time, the holders of such intellectual property rights may assert their rights and urge us to take licenses and/or may bring suits alleging infringement or misappropriation of such rights, which could result in substantial costs, negative publicity and management attention, regardless of merit. While we endeavor to obtain and protect the intellectual property rights that we expect will allow us to retain or advance our strategic initiatives, there can be no assurance that we will be able to adequately identify and protect the portions of intellectual property that are strategic to our business, or mitigate the risk of potential suits or other legal demands by our competitors. Accordingly, we may consider the entering into licensing agreements with respect to such rights, although no assurance can be given that such licenses can be obtained on acceptable terms or that litigation will not occur, and such licenses and associated litigation could significantly increase our operating expenses. In addition, if we are determined to have or believe there is a high likelihood that we have infringed upon a third party's intellectual property rights, we may be required to cease making, selling or incorporating certain components or intellectual property into the goods and services we offer, to pay substantial damages and/or license royalties, to redesign our products and services and/or to establish and maintain alternative

branding for our products and services. In the event that we are required to take one or more such actions, our brand, business, financial condition and operating results may be harmed.

***Our operations could be adversely affected by events outside of our control, such as natural disasters, wars or health epidemics.***

We may be impacted by natural disasters, wars, health epidemics or other events outside of our control. For example, our corporate headquarters, the Fremont Factory and Gigafactory Nevada are located in seismically active regions in Northern California and Nevada, and our Gigafactory Shanghai is located in a flood-prone area. If major disasters such as earthquakes, floods or other events occur, or our information system or communications network breaks down or operates improperly, our headquarters and production facilities may be seriously damaged, or we may have to stop or delay production and shipment of our products. In addition, the global COVID-19 pandemic has impacted economic markets, manufacturing operations, supply chains, employment and consumer behavior in nearly every geographic region and industry across the world, and we have been, and may in the future be, adversely affected as a result. We may incur expenses or delays relating to such events outside of our control, which could have a material adverse impact on our business, operating results and financial condition.

**Risks Related to Government Laws and Regulations**

***Demand for our products and services may be impacted by the status of government and economic incentives supporting the development and adoption of such products.***

Government and economic incentives that support the development and adoption of electric vehicles in the U.S. and abroad, including certain tax exemptions, tax credits and rebates, may be reduced, eliminated or exhausted from time to time. For example, a \$7,500 federal tax credit that was available in the U.S. for the purchase of our vehicles was reduced in phases during and ultimately ended in 2019. We believe that this sequential phase-out likely pulled forward some vehicle demand into the periods preceding each reduction. Moreover, previously available incentives favoring electric vehicles in areas including Ontario, Canada, Germany, Hong Kong, Denmark and California have expired or were cancelled or temporarily unavailable, and in some cases were not eventually replaced or reinstated, which may have negatively impacted sales. Any similar developments could have some negative impact on demand for our vehicles, and we and our customers may have to adjust to them.

In addition, certain governmental rebates, tax credits and other financial incentives that are currently available with respect to our solar and energy storage product businesses allow us to lower our costs and encourage customers to buy our products and investors to invest in our solar financing funds. However, these incentives may expire when the allocated funding is exhausted, reduced or terminated as renewable energy adoption rates increase, sometimes without warning. For example, the U.S. federal government currently offers certain tax credits for the installation of solar power facilities and energy storage systems that are charged from a co-sited solar power facility; however, these tax credits are currently scheduled to decline and/or expire in 2023 and beyond. Likewise, in jurisdictions where net metering is currently available, our customers receive bill credits from utilities for energy that their solar energy systems generate and export to the grid in excess of the electric load they use. The benefit available under net metering has been or has been proposed to be reduced, altered or eliminated in several jurisdictions, and has also been contested and may continue to be contested before the FERC. Any reductions or terminations of such incentives may harm our business, prospects, financial condition and operating results by making our products less competitive for potential customers, increasing our cost of capital and adversely impacting our ability to attract investment partners and to form new financing funds for our solar and energy storage assets.

Finally, we and our fund investors claim these U.S. federal tax credits and certain state incentives in amounts based on independently appraised fair market values of our solar and energy storage systems. Nevertheless, the relevant governmental authorities have audited such values and in certain cases have determined that these values should be lower, and they may do so again in the future. Such determinations may result in adverse tax consequences and/or our obligation to make indemnification or other payments to our funds or fund investors.

***We are subject to evolving laws and regulations that could impose substantial costs, legal prohibitions or unfavorable changes upon our operations or products.***

As we grow our manufacturing operations in additional regions, we are or will be subject to complex environmental, manufacturing, health and safety laws and regulations at numerous jurisdictional levels in the U.S., China, Germany and other locations abroad, including laws relating to the use, handling, storage, recycling, disposal and/or human exposure to hazardous materials, product material inputs and post-consumer products and with respect to constructing, expanding and maintaining our facilities. The costs of compliance, including remediations of any discovered issues and any changes to our operations mandated by new or amended laws, may be significant, and any failures to comply could result in significant expenses, delays or fines. We are also subject to laws and regulations applicable to the supply, manufacture, import, sale and service of automobiles both domestically and abroad. For example, in countries outside of the U.S., we are required to meet standards relating to vehicle safety, fuel economy and



emissions that are often materially different from requirements in the U.S., thus resulting in additional investment into the vehicles and systems to ensure regulatory compliance in those countries. This process may include official review and certification of our vehicles by foreign regulatory agencies prior to market entry, as well as compliance with foreign reporting and recall management systems requirements.

In particular, we offer in our vehicles Autopilot and FSD features that today assist drivers with certain tedious and potentially dangerous aspects of road travel, but which currently require drivers to remain fully engaged in the driving operation. We are continuing to develop our FSD technology with the goal of achieving full self-driving capability in the future. There are a variety of international, federal and state regulations that may apply to self-driving vehicles, which include many existing vehicle standards that were not originally intended to apply to vehicles that may not have a driver. Such regulations continue to rapidly change, which increases the likelihood of a patchwork of complex or conflicting regulations, or may delay products or restrict self-driving features and availability, which could adversely affect our business.

Finally, as a manufacturer, installer and service provider with respect to solar generation and energy storage systems and a supplier of electricity generated and stored by the solar energy and energy storage systems we install for customers, we are impacted by federal, state and local regulations and policies concerning electricity pricing, the interconnection of electricity generation and storage equipment with the electric grid and the sale of electricity generated by third party-owned systems. If regulations and policies that adversely impact the interconnection or use of our solar and energy storage systems are introduced, they could deter potential customers from purchasing our solar and energy storage products, threaten the economics of our existing contracts and cause us to cease solar and energy storage system sales and operations in the relevant jurisdictions, which may harm our business, financial condition and operating results.

***Any failure by us to comply with a variety of U.S. and international privacy and consumer protection laws may harm us.***

Any failure by us or our vendor or other business partners to comply with our public privacy notice or with federal, state or international privacy, data protection or security laws or regulations relating to the processing, collection, use, retention, security and transfer of personally identifiable information could result in regulatory or litigation-related actions against us, legal liability, fines, damages, ongoing audit requirements and other significant costs. Substantial expenses and operational changes may be required in connection with maintaining compliance with such laws, and in particular certain emerging privacy laws are still subject to a high degree of uncertainty as to their interpretation and application. For example, in May 2018, the General Data Protection Regulation began to fully apply to the processing of personal information collected from individuals located in the European Union, and has created new compliance obligations and significantly increased fines for noncompliance. Similarly, as of January 2020, the California Consumer Privacy Act imposes certain legal obligations on our use and processing of personal information related to California residents. Finally, new privacy and cybersecurity laws are coming into effect in China. Notwithstanding our efforts to protect the security and integrity of our customers' personal information, we may be required to expend significant resources to comply with data breach requirements if, for example, third parties improperly obtain and use the personal information of our customers or we otherwise experience a data loss with respect to customers' personal information. A major breach of our network security and systems may result in fines, penalties and damages and harm our brand, prospects and operating results.

***We could be subject to liability, penalties and other restrictive sanctions and adverse consequences arising out of certain governmental investigations and proceedings.***

We are cooperating with certain government investigations as discussed in Note 16, *Commitments and Contingencies*, to the consolidated financial statements included elsewhere in this Annual Report on Form 10-K. To our knowledge, no government agency in any such ongoing investigation has concluded that any wrongdoing occurred. However, we cannot predict the outcome or impact of any such ongoing matters, and there exists the possibility that we could be subject to liability, penalties and other restrictive sanctions and adverse consequences if the SEC, the U.S. Department of Justice or any other government agency were to pursue legal action in the future. Moreover, we expect to incur costs in responding to related requests for information and subpoenas, and if instituted, in defending against any governmental proceedings.

For example, on October 16, 2018, the U.S. District Court for the Southern District of New York entered a final judgment approving the terms of a settlement filed with the Court on September 29, 2018, in connection with the actions taken by the SEC relating to Mr. Musk's statement on August 7, 2018 that he was considering taking Tesla private. Pursuant to the settlement, we, among other things, paid a civil penalty of \$20 million, appointed an independent director as the chair of our board of directors, appointed two additional independent directors to our board of directors and made further enhancements to our disclosure controls and other corporate governance-related matters. On April 26, 2019, this settlement was amended to clarify certain of the previously-agreed disclosure procedures, which was subsequently approved by the Court. All other terms of the prior settlement were reaffirmed without modification. Although we intend to continue to comply with the terms and requirements of the settlement, if there is a lack of compliance or an alleged lack of compliance, additional enforcement actions or other legal proceedings may be instituted against us.

***We may face regulatory challenges to or limitations on our ability to sell vehicles directly.***

While we intend to continue to leverage our most effective sales strategies, including sales through our website, we may not be able to sell our vehicles through our own stores in certain states in the U.S. with laws that may be interpreted to impose limitations on this direct-to-consumer sales model. It has also been asserted that the laws in some states limit our ability to obtain dealer licenses from state motor vehicle regulators, and such assertions persist. In certain locations, decisions by regulators permitting us to sell vehicles have been and may be challenged by dealer associations and others as to whether such decisions comply with applicable state motor vehicle industry laws. We have prevailed in many of these lawsuits and such results have reinforced our continuing belief that state laws were not intended to apply to a manufacturer that does not have franchise dealers. In some states, there have also been regulatory and legislative efforts by dealer associations to propose laws that, if enacted, would prevent us from obtaining dealer licenses in their states given our current sales model. A few states have passed legislation that clarifies our ability to operate, but at the same time limits the number of dealer licenses we can obtain or stores that we can operate. The application of state laws applicable to our operations continues to be difficult to predict.

Internationally, there may be laws in jurisdictions we have not yet entered or laws we are unaware of in jurisdictions we have entered that may restrict our sales or other business practices. Even for those jurisdictions we have analyzed, the laws in this area can be complex, difficult to interpret and may change over time. Continued regulatory limitations and other obstacles interfering with our ability to sell vehicles directly to consumers may harm our financial condition and operating results.

**Risks Related to the Ownership of Our Common Stock**

***The trading price of our common stock is likely to continue to be volatile.***

The trading price of our common stock has been highly volatile and could continue to be subject to wide fluctuations in response to various factors, some of which are beyond our control. Our common stock has experienced over the last 52 weeks an intra-day trading high of \$900.40 per share and a low of \$70.10 per share, as adjusted to give effect to the reflect the five-for-one stock split effected in the form of a stock dividend in August 2020 (the "Stock Split"). The stock market in general, and the market for technology companies in particular, has experienced extreme price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of those companies. In particular, a large proportion of our common stock has been historically and may in the future be traded by short sellers which may put pressure on the supply and demand for our common stock, further influencing volatility in its market price. Public perception and other factors outside of our control may additionally impact the stock price of companies like us that garner a disproportionate degree of public attention, regardless of actual operating performance. In addition, in the past, following periods of volatility in the overall market or the market price of our shares, securities class action litigation has been filed against us. While we defend such actions vigorously, any judgment against us or any future stockholder litigation could result in substantial costs and a diversion of our management's attention and resources.

***Our financial results may vary significantly from period to period due to fluctuations in our operating costs and other factors.***

We expect our period-to-period financial results to vary based on our operating costs, which we anticipate will fluctuate as the pace at which we continue to design, develop and manufacture new products and increase production capacity by expanding our current manufacturing facilities and adding future facilities, may not be consistent or linear between periods. Additionally, our revenues from period to period may fluctuate as we introduce existing products to new markets for the first time and as we develop and introduce new products. As a result of these factors, we believe that quarter-to-quarter comparisons of our financial results, especially in the short term, are not necessarily meaningful and that these comparisons cannot be relied upon as indicators of future performance. Moreover, our financial results may not meet expectations of equity research analysts, ratings agencies or investors, who may be focused only on short-term quarterly financial results. If any of this occurs, the trading price of our stock could fall substantially, either suddenly or over time.

***We may fail to meet our publicly announced guidance or other expectations about our business, which could cause our stock price to decline.***

We may provide from time to time guidance regarding our expected financial and business performance. Correctly identifying key factors affecting business conditions and predicting future events is inherently an uncertain process, and our guidance may not ultimately be accurate and has in the past been inaccurate in certain respects, such as the timing of new product manufacturing ramps. Our guidance is based on certain assumptions such as those relating to anticipated production and sales volumes (which generally are not linear throughout a given period), average sales prices, supplier and commodity costs and planned cost reductions. If our guidance varies from actual results due to our assumptions not being met or the impact on our financial performance that could occur as a result of various risks and uncertainties, the market value of our common stock could decline significantly.

***Transactions relating to our convertible senior notes may dilute the ownership interest of existing stockholders, or may otherwise depress the price of our common stock.***

The conversion of some or all of the convertible senior notes issued by us or our subsidiaries would dilute the ownership interests of existing stockholders to the extent we deliver shares upon conversion of any of such notes by their holders, and we may be required to deliver a significant number of shares. Any sales in the public market of the common stock issuable upon such conversion could adversely affect their prevailing market prices. In addition, the existence of the convertible senior notes may encourage short selling by market participants because the conversion of such notes could be used to satisfy short positions, or the anticipated conversion of such notes into shares of our common stock could depress the price of our common stock.

Moreover, in connection with certain of the convertible senior notes, we entered into convertible note hedge transactions, which are expected to reduce the potential dilution and/or offset potential cash payments we are required to make in excess of the principal amount upon conversion of the applicable notes. We also entered into warrant transactions with the hedge counterparties, which could separately have a dilutive effect on our common stock to the extent that the market price per share of our common stock exceeds the applicable strike price of the warrants on the applicable expiration dates. In addition, the hedge counterparties or their affiliates may enter into various transactions with respect to their hedge positions, which could also affect the market price of our common stock or the convertible senior notes.

***If Elon Musk were forced to sell shares of our common stock that he has pledged to secure certain personal loan obligations, such sales could cause our stock price to decline.***

Certain banking institutions have made extensions of credit to Elon Musk, our Chief Executive Officer, a portion of which was used to purchase shares of common stock in certain of our public offerings and private placements at the same prices offered to third-party participants in such offerings and placements. We are not a party to these loans, which are partially secured by pledges of a portion of the Tesla common stock currently owned by Mr. Musk. If the price of our common stock were to decline substantially, Mr. Musk may be forced by one or more of the banking institutions to sell shares of Tesla common stock to satisfy his loan obligations if he could not do so through other means. Any such sales could cause the price of our common stock to decline further.

***Anti-takeover provisions contained in our governing documents, applicable laws and our convertible senior notes could impair a takeover attempt.***

Our certificate of incorporation and bylaws afford certain rights and powers to our board of directors that may facilitate the delay or prevention of an acquisition that it deems undesirable. We are also subject to Section 203 of the Delaware General Corporation Law and other provisions of Delaware law that limit the ability of stockholders in certain situations to effect certain business combinations. In addition, the terms of our convertible senior notes may require us to repurchase such notes in the event of a fundamental change, including a takeover of our company. Any of the foregoing provisions and terms that has the effect of delaying or deterring a change in control could limit the opportunity for our stockholders to receive a premium for their shares of our common stock, and could also affect the price that some investors are willing to pay for our common stock.

**ITEM 1B. UNRESOLVED STAFF COMMENTS**

None.

**ITEM 2. PROPERTIES**

We are headquartered in Palo Alto, California. Our principal facilities include a large number of properties in North America, Europe and Asia utilized for manufacturing and assembly, warehousing, engineering, retail and service locations, Supercharger sites and administrative and sales offices. Our facilities are used to support both of our reporting segments, and are suitable and adequate for the conduct of our business. We primarily lease such facilities with the exception of some manufacturing facilities. The following table sets forth the location of our primary owned and leased manufacturing facilities.

<b>Primary Manufacturing Facilities</b>	<b>Location</b>	<b>Owned or Leased</b>
Fremont Factory	Fremont, California	Owned
Gigafactory Nevada	Sparks, Nevada	Owned
Gigafactory New York	Buffalo, New York	Leased
Gigafactory Shanghai	Shanghai, China	*
Gigafactory Berlin	Grunheide, Germany	Owned
Gigafactory Texas	Austin, Texas	Owned

\* We own the building and the land use rights with an initial term of 50 years. The land use rights are treated as operating lease right-of-use assets.

**ITEM 3. LEGAL PROCEEDINGS**

For a description of our material pending legal proceedings, please see Note 16, *Commitments and Contingencies*, to the consolidated financial statements included elsewhere in this Annual Report on Form 10-K.

In addition, each of the matters below is being disclosed pursuant to Item 103 of Regulation S-K because it relates to environmental regulations and aggregate civil penalties that could potentially exceed \$1 million. We believe that any proceeding that is material to our business or financial condition is likely to have potential penalties far in excess of such amount.

The Bay Area Air Quality Management District (“BAAQMD”) has issued notices of violation to us relating to air permitting and related compliance for the Fremont Factory, but has not initiated formal proceedings. We have disputed certain of these allegations and have asserted that there has been no related adverse community or environmental impact. While we have not yet resolved this matter, we remain in close communication with BAAQMD with respect to it. We do not currently expect any material adverse impact on our business.

The German Umweltbundesamt has issued our subsidiary in Germany a notice and fine in the amount of 12 million euro alleging its non-compliance under applicable laws relating to market participation notifications and take-back obligations with respect to end-of-life battery products required thereunder. This is primarily relating to administrative requirements, but Tesla has continued to take back battery packs, and although we cannot predict the outcome of this matter, including the final amount of any penalties, we have filed our objection and it is not expected to have a material adverse impact on our business.

We have also received a follow-up information request from the EPA under Section 114(a) of the Clean Air Act of 1963, as amended (the “Clean Air Act”). The EPA is reviewing the compliance of our Fremont Factory operations with applicable requirements under the Clean Air Act, and we are working with the EPA in responding its requests for information. While the outcome of this matter cannot be determined at this time, it is not currently expected to have a material adverse impact on our business.

**ITEM 4. MINE SAFETY DISCLOSURES**

Not applicable.

PART II

ITEM 5. MARKET FOR REGISTRANT’S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

Market Information

Our common stock has traded on The NASDAQ Global Select Market under the symbol “TSLA” since it began trading on June 29, 2010. Our initial public offering was priced at \$3.40 per share on June 28, 2010 as adjusted to give effect to the Stock Split.

Holders

As of February 1, 2021, there were 5,353 holders of record of our common stock. A substantially greater number of holders of our common stock are “street name” or beneficial holders, whose shares are held by banks, brokers and other financial institutions.

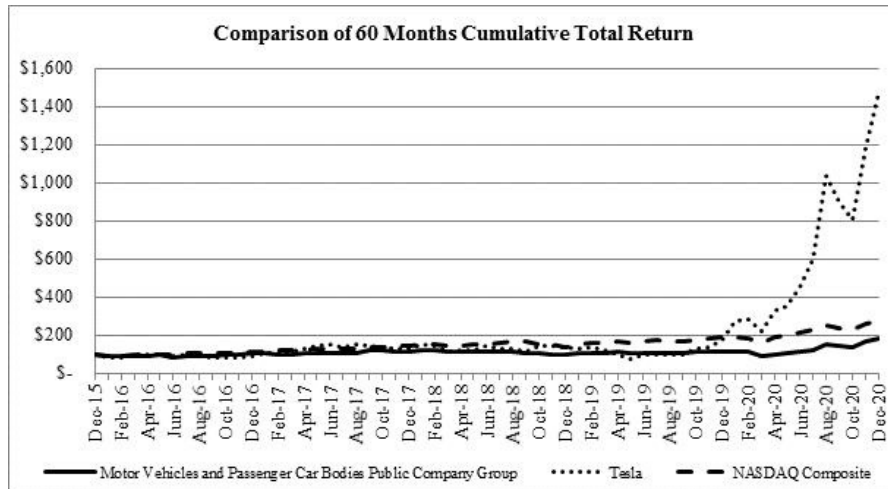
Dividend Policy

We have never declared or paid cash dividends on our common stock. We currently do not anticipate paying any cash dividends in the foreseeable future. Any future determination to declare cash dividends will be made at the discretion of our board of directors, subject to applicable laws, and will depend on our financial condition, results of operations, capital requirements, general business conditions and other factors that our board of directors may deem relevant.

Stock Performance Graph

*This performance graph shall not be deemed “filed” for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), or incorporated by reference into any filing of Tesla, Inc. under the Securities Act of 1933, as amended (the “Securities Act”), or the Exchange Act, except as shall be expressly set forth by specific reference in such filing.*

The following graph shows a comparison, from January 1, 2016 through December 31, 2020, of the cumulative total return on our common stock, The NASDAQ Composite Index and a group of all public companies sharing the same SIC code as us, which is SIC code 3711, “Motor Vehicles and Passenger Car Bodies” (Motor Vehicles and Passenger Car Bodies Public Company Group). Such returns are based on historical results and are not intended to suggest future performance. Data for The NASDAQ Composite Index and the Motor Vehicles and Passenger Car Bodies Public Company Group assumes an investment of \$100 on January 1, 2016 and reinvestment of dividends. We have never declared or paid cash dividends on our common stock nor do we anticipate paying any such cash dividends in the foreseeable future.



Unregistered Sales of Equity Securities and Use of Proceeds

None.

**Purchases of Equity Securities by the Issuer and Affiliated Purchasers**

None.

**ITEM 6. SELECTED CONSOLIDATED FINANCIAL DATA**

The following selected consolidated financial data should be read in conjunction with “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and the consolidated financial statements and the related notes included elsewhere in this Annual Report on Form 10-K and from the historical consolidated financial statements not included herein to fully understand factors that may affect the comparability of the information presented below (in millions, except per share data).

	<b>Year Ended December 31,</b>				
	<b>2020</b>	<b>2019 (3)</b>	<b>2018 (2)</b>	<b>2017</b>	<b>2016 (1)</b>
<b>Consolidated Statements of Operations Data:</b>					
Total revenues	\$ 31,536	\$ 24,578	\$ 21,461	\$ 11,759	\$ 7,000
Gross profit	\$ 6,630	\$ 4,069	\$ 4,042	\$ 2,223	\$ 1,599
Income (loss) from operations	\$ 1,994	\$ (69)	\$ (388)	\$ (1,632)	\$ (667)
Net income (loss) attributable to common stockholders	\$ 721	\$ (862)	\$ (976)	\$ (1,962)	\$ (675)
Net income (loss) per share of common stock attributable to common stockholders (4)					
Basic	\$ 0.74	\$ (0.98)	\$ (1.14)	\$ (2.37)	\$ (0.94)
Diluted	\$ 0.64	\$ (0.98)	\$ (1.14)	\$ (2.37)	\$ (0.94)
Weighted average shares used in computing net income (loss) per share of common stock (4)					
Basic	933	887	853	829	721
Diluted	1,083	887	853	829	721

	<b>As of December 31,</b>				
	<b>2020</b>	<b>2019 (3)</b>	<b>2018 (2)</b>	<b>2017</b>	<b>2016 (1)</b>
<b>Consolidated Balance Sheet Data:</b>					
Working capital (deficit)	\$ 12,469	\$ 1,436	\$ (1,686)	\$ (1,104)	\$ 433
Total assets	\$ 52,148	\$ 34,309	\$ 29,740	\$ 28,655	\$ 22,664
Total long-term liabilities	\$ 14,170	\$ 15,532	\$ 13,434	\$ 15,348	\$ 10,923

- (1) We acquired SolarCity Corporation (“SolarCity”) on November 21, 2016. SolarCity’s financial results have been included in our financial results from the acquisition date as previously reported in our Annual Report on Form 10-K for the year ended December 31, 2016.
- (2) We adopted ASC 606 in 2018. Prior periods have not been revised. For further details, refer to Note 2, *Summary of Significant Accounting Policies*, of the notes to the consolidated financial statements included in our Annual Report on Form 10-K for the year ended December 31, 2018.
- (3) We adopted ASC 842 in 2019. Prior periods have not been revised. For further details, refer to Note 2, *Summary of Significant Accounting Policies*, of the notes to the consolidated financial statements included in our Annual Report on Form 10-K for the year ended December 31, 2019.
- (4) Prior period results have been adjusted to give effect to the Stock Split. See Note 1, *Overview*, of the notes to the consolidated financial statements included elsewhere in this Annual Report on Form 10-K for further details.

## ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

*The following discussion and analysis should be read in conjunction with the consolidated financial statements and the related notes included elsewhere in this Annual Report on Form 10-K. For discussion related to changes in financial condition and the results of operations for fiscal year 2018-related items, refer to Part II, Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations in our Annual Report on Form 10-K for fiscal year 2019, which was filed with the Securities and Exchange Commission on February 13, 2020.*

### Overview and 2020 Highlights

Our mission is to accelerate the world's transition to sustainable energy. We design, develop, manufacture, lease and sell high-performance fully electric vehicles, solar energy generation systems and energy storage products. We also offer maintenance, installation, operation, financial and other services related to our products.

In 2020, we produced 509,737 vehicles and delivered 499,647 vehicles. We are currently focused on increasing vehicle production and capacity, developing and ramping our battery cell technology, increasing the affordability of our vehicles, expanding our global infrastructure and introducing our next vehicles.

In 2020, we deployed 3.02 GWh of energy storage products and 205 megawatts of solar energy systems. We are currently focused on ramping production of energy storage products, improving our Solar Roof installation capability and efficiency and increasing market share of retrofit solar energy systems.

In 2020, we recognized total revenues of \$31.54 billion, representing an increase of \$6.96 billion compared to the prior year. We continue to ramp production, build new manufacturing capacity and expand our operations to enable increased deliveries and deployments of our products and further revenue growth.

In 2020, our net income attributable to common stockholders was \$721 million, representing a favorable change of \$1.58 billion compared to the prior year. In 2020, our operating margin was 6.3%, representing a favorable change of 6.6% compared to the prior year. We continue to focus on operational efficiencies, while we have seen an acceleration of non-cash stock-based compensation expense due to a rapid increase in our market capitalization and updates to our business outlook.

We ended 2020 with \$19.38 billion in cash and cash equivalents, representing an increase of \$13.12 billion from the end of 2019. Our cash flows from operating activities during 2020 was \$5.94 billion, compared to \$2.41 billion during 2019, and capital expenditures amounted to \$3.16 billion during 2020, compared to \$1.33 billion during 2019. Sustained growth has allowed our business to generally fund itself, but we will continue a number of capital-intensive projects in upcoming periods.

### Management Opportunities, Challenges and Risks and 2021 Outlook

#### *Impact of COVID-19 Pandemic*

There continues to be worldwide impact from the COVID-19 pandemic. While we have been relatively successful in navigating such impact to date, we have previously been affected by temporary manufacturing closures, employment and compensation adjustments, and impediments to administrative activities supporting our product deliveries and deployments. There are also ongoing related risks to our business depending on the progression of the pandemic, and recent trends in certain regions have indicated potential returns to limited or closed government functions, business activities and person-to-person interactions. Global trade conditions and consumer trends may further adversely impact us and our industries. For example, pandemic-related issues have exacerbated port congestion and intermittent supplier shutdowns and delays, resulting in additional expenses to expedite delivery of critical parts. Similarly, increased demand for personal electronics has created a shortfall of microchip supply, and it is yet unknown how we may be impacted. Please see the "Results of Operations" section of this Item below and certain risk factors described in Part I, Item 1A, Risk Factors in this Annual Report on Form 10-K, particularly the first risk factor included there, for more detailed descriptions of the impact and risks to our business.

We cannot predict the duration or direction of current global trends from this pandemic, the sustained impact of which is largely unknown, is rapidly evolving and has varied across geographic regions. Ultimately, we continue to monitor macroeconomic conditions to remain flexible and to optimize and evolve our business as appropriate, and we will have to accurately project demand and infrastructure requirements globally and deploy our production, workforce and other resources accordingly.

### *Automotive—Production*

The following is a summary of the status of production of each of our announced vehicle models in production and under development, as of the date of this Annual Report on Form 10-K:

<b>Production Location</b>	<b>Vehicle Model(s)</b>	<b>Production Status</b>
Fremont Factory	Model S and Model X	Active
	Model 3 and Model Y	Active
Gigafactory Shanghai	Model 3 and Model Y	Active
Gigafactory Berlin	Model Y	Constructing manufacturing facilities
Gigafactory Texas	Model Y	Constructing manufacturing facilities
	Cybertruck	In development
TBD	Tesla Semi	In development
	Tesla Roadster	In development

We recently announced updated versions of Model S and Model X featuring a redesigned powertrain and other improvements. In 2021, we are focused on ramping these models on new manufacturing equipment, as well as production rates of Model 3 and Model Y, to at least the capacity that we have installed. The next phase of production growth will depend on the construction of Gigafactory Berlin and Gigafactory Texas, each of which is progressing as planned for deliveries beginning in 2021. Our goal is to continuously decrease production costs and increase the affordability of our vehicles. We are continuing to develop and manufacture our own battery cells, with which we are targeting high-volume output, lower capital and production costs and longer range. As cell supply is critical to our business, coupling this strategy with cells from our suppliers will help us stay ahead of any potential constraints.

However, these plans are subject to uncertainties inherent in establishing and ramping manufacturing operations, which may be exacerbated by the number of concurrent international projects and any future impact from events outside of our control such as the COVID-19 pandemic and any industry-wide component constraints. Moreover, we must meet ambitious technological targets with our plans for battery cells as well as for iterative manufacturing and design improvements for our vehicles with each new factory.

### *Automotive—Demand and Sales*

Our cost reduction efforts and additional localized procurement and manufacturing are key to our vehicles' affordability, and for example have allowed us to competitively price our vehicles in China. In addition to opening new factories in 2021, we will also continue to generate demand and brand awareness by improving our vehicles' functionality, including Autopilot, FSD and software features, and introducing anticipated future vehicles. Moreover, we expect to benefit from ongoing electrification of the automotive sector and increasing environmental awareness.

However, we operate in a cyclical industry that is sensitive to trade, environmental and political uncertainty, all of which may also be compounded by any future global impact from the COVID-19 pandemic. On the other hand, there have been recent signs of recovery from competitors that experienced downturns in 2020, meaning that we will have to continue to execute well to maintain the momentum that we have gained relative to an ever-growing competitive landscape.

### *Automotive—Deliveries and Customer Infrastructure*

As our deliveries increase, we must work constantly to prevent our vehicle delivery capability from becoming a bottleneck on our total deliveries. Situating our factories closer to local markets should mitigate the strain on our deliveries. In any case, as we expand, we will have to continue to increase and staff our delivery, servicing and charging infrastructure, maintain our vehicle reliability and optimize our Supercharger locations to ensure cost-effectiveness and customer satisfaction. In particular, we remain focused on increasing the capability and efficiency of our servicing operations.

### *Energy Generation and Storage Demand, Production and Deployment*

The long-term success of this business is dependent upon increasing margins through greater volumes. We continue to increase the production of our energy storage products to meet high levels of demand. For Powerwall, better availability and growing grid stability concerns drive higher interest, and cross-selling with our residential solar energy products will continue to benefit both product lines. We remain committed to increasing our retrofit solar energy business by offering a low-cost and simplified online ordering experience. In addition, we are working to improve our installation capabilities for Solar Roof by on-boarding and training a large number of installers and reducing the installation time dramatically. As these product lines grow, we will have to maintain adequate battery cell supply for our energy storage products and hire additional personnel, particularly skilled electricians to support the ramp of Solar Roof.



### *Cash Flow and Capital Expenditure Trends*

Our capital expenditures are typically difficult to project beyond the short term given the number and breadth of our core projects at any given time, and uncertainties in future global market conditions resulting from the COVID-19 pandemic currently makes projections more challenging. We are simultaneously ramping new products in the new Model S and Model X, Model Y and Solar Roof, constructing or ramping manufacturing facilities on three continents and piloting the development and manufacture of new battery cell technologies, and the pace of our capital spend may vary depending on overall priority among projects, the pace at which we meet milestones, production adjustments to and among our various products, increased capital efficiencies and the addition of new projects. Owing and subject to the foregoing as well as the pipeline of announced projects under development and all other continuing infrastructure growth, we currently expect our capital expenditures to be \$4.50 to \$6.00 billion in 2021 and each of the next two fiscal years.

Our business has recently been consistently generating cash flow from operations in excess of our level of capital spend, and with better working capital management resulting in shorter days sales outstanding than days payable outstanding, our sales growth is also facilitating positive cash generation. On the other hand, we are likely to see heightened levels of capital expenditures during certain periods depending on the specific pace of our capital-intensive projects. Moreover, as our stock price has significantly increased recently, we have seen higher levels of early conversions of “in-the-money” convertible senior notes, which obligates us to deliver cash and or shares pursuant to the terms of those notes. Overall, we expect our ability to be self-funding to continue as long as macroeconomic factors support current trends in our sales. We also opportunistically strengthened our liquidity further through an at-the-market offering of common stock in December 2020, with net proceeds to us of approximately \$4.99 billion.

### *Operating Expense Trends*

As long as we see expanding sales, and excluding the potential impact of non-cash stock compensation expense attributable to the 2018 CEO Performance Award and impairment charges on certain assets as explained below, we generally expect operating expenses relative to revenues to decrease as we additionally increase operational efficiency and process automation.

In March 2018, our stockholders approved a performance-based stock option award to our CEO (the “2018 CEO Performance Award”), consisting of 12 vesting tranches contingent on the achievement of specified market capitalization and operational milestones. We incur non-cash stock-based compensation expense for each tranche only after the related operational milestone initially becomes probable of being met based on a subjective assessment of our future financial performance, and if this happens following the grant date, we record at such time a cumulative catch-up expense that may be significant based on the length of time elapsed from the grant date. Moreover, the remaining expense for that tranche is ratably recorded over the period remaining until the later of (i) the expected achievement of the relevant operational milestone (if it has not yet been achieved) and (ii) the expected achievement of the related market capitalization milestone (if it has not yet been achieved). Upon vesting of a tranche, all remaining associated expense is recognized immediately. Because the expected market capitalization achievements are generally later than the related expected operational milestone achievements, the achievement of the former earlier than expected may increase the magnitude of any catch-up expense and/or accelerate the rate at which the remaining expense is recognized. During 2020, several operational milestones became probable and several tranches vested, including as a result of our market capitalization increasing rapidly, resulting in the recognition or acceleration of related expense earlier than anticipated and within a relatively short period of time. See Note 14, *Equity Incentive Plans—2018 CEO Performance Award*, to the consolidated financial statements included elsewhere in this Annual Report on Form 10-K for further details regarding the stock-based compensation relating to the 2018 CEO Performance Award. As our market capitalization is unpredictable and our financial performance improves, it is possible that the earlier-than-planned recognition of such expenses will continue in the near term.

In January 2021, we updated our investment policy to provide us with more flexibility to further diversify and maximize returns on our cash that is not required to maintain adequate operating liquidity. As part of the policy, we may invest a portion of such cash in certain specified alternative reserve assets. Thereafter, we invested an aggregate \$1.50 billion in bitcoin under this policy. Moreover, we expect to begin accepting bitcoin as a form of payment for our products in the near future, subject to applicable laws and initially on a limited basis, which we may or may not liquidate upon receipt. Digital assets are considered indefinite-lived intangible assets under applicable accounting rules. Accordingly, any decrease in their fair values below our carrying values for such assets at any time subsequent to their acquisition will require us to recognize impairment charges, whereas we may make no upward revisions for any market price increases until a sale. As we currently intend to hold these assets long-term, these charges may negatively impact our profitability in the periods in which such impairments occur even if the overall market values of these assets increase.

## Critical Accounting Policies and Estimates

The consolidated financial statements are prepared in accordance with accounting principles generally accepted in the U.S. ("GAAP"). The preparation of the consolidated financial statements requires us to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenues, costs and expenses and related disclosures. We base our estimates on historical experience, as appropriate, and on various other assumptions that we believe to be reasonable under the circumstances. Changes in the accounting estimates are reasonably likely to occur from period to period. Accordingly, actual results could differ significantly from the estimates made by our management. We evaluate our estimates and assumptions on an ongoing basis. To the extent that there are material differences between these estimates and actual results, our future financial statement presentation, financial condition, results of operations and cash flows may be affected.

Due to the COVID-19 pandemic, there has been uncertainty and disruption in the global economy and financial markets. The estimates used for, but not limited to, determining significant economic incentive for resale value guarantee arrangements, sales return reserves, the collectability of accounts receivable, inventory valuation, fair value of long-lived assets, goodwill, fair value of financial instruments, fair value and residual value of operating lease vehicles and solar energy systems subject to leases could be impacted. We have assessed the impact and are not aware of any specific events or circumstances that required an update to our estimates and assumptions or materially affected the carrying value of our assets or liabilities as of the date of issuance of this Annual Report on Form 10-K. These estimates may change as new events occur and additional information is obtained. Actual results could differ materially from these estimates under different assumptions or conditions.

### *Revenue Recognition*

#### *Automotive Segment*

##### Automotive Sales Revenue

##### Automotive Sales without Resale Value Guarantee

Automotive sales revenue includes revenues related to deliveries of new vehicles and pay-per-use charges, and specific other features and services that meet the definition of a performance obligation under ASC 606, including access to our Supercharger network, internet connectivity, FSD features and over-the-air software updates. We recognize revenue on automotive sales upon delivery to the customer, which is when the control of a vehicle transfers. Payments are typically received at the point control transfers or in accordance with payment terms customary to the business. Other features and services such as access to our Supercharger network, internet connectivity and over-the-air software updates are provisioned upon control transfer of a vehicle and recognized over time on a straight-line basis as we have a stand-ready obligation to deliver such services to the customer. We recognize revenue related to these other features and services over the performance period, which is generally the expected ownership life of the vehicle or the eight-year life of the vehicle. Revenue related to FSD features is recognized when functionality is delivered to the customer. For our obligations related to automotive sales, we estimate standalone selling price by considering costs used to develop and deliver the service, third-party pricing of similar options and other information that may be available.

At the time of revenue recognition, we reduce the transaction price and record a sales return reserve against revenue for estimated variable consideration related to future product returns based on historical experience. In addition, any fees that are paid or payable by us to a customer's lender when we arrange the financing are recognized as an offset against automotive sales revenue.

Costs to obtain a contract mainly relate to commissions paid to our sales personnel for the sale of vehicles. Commissions are not paid on other obligations such as access to our Supercharger network, internet connectivity, FSD features and over-the-air software updates. As our contract costs related to automotive sales are typically fulfilled within one year, the costs to obtain a contract are expensed as incurred. Amounts billed to customers related to shipping and handling are classified as automotive sales revenue, and we have elected to recognize the cost for freight and shipping when control over vehicles, parts or accessories have transferred to the customer as an expense in cost of automotive sales revenue. Our policy is to exclude taxes collected from a customer from the transaction price of automotive contracts.

##### Automotive Sales with Resale Value Guarantee or a Buyback Option

We offer resale value guarantees or similar buy-back terms to certain international customers who purchase vehicles and who finance their vehicles through one of our specified commercial banking partners. We also offer resale value guarantees in connection with automotive sales to certain leasing partners. Under these programs, we receive full payment for the vehicle sales price at the time of delivery and our counterparty has the option of selling their vehicle back to us during the guarantee period, which currently is generally at the end of the term of the applicable loan or financing program, for a pre-determined resale value.

With the exception of the *Vehicle Sales to Leasing Partners with a Resale Value Guarantee and a Buyback Option* program discussed within the *Automotive Leasing* section below, we recognize revenue when control transfers upon delivery to customers in accordance with ASC 606 as a sale with a right of return as we do not believe the customer has a significant economic incentive to exercise the resale value guarantee provided to them at contract inception. The process to determine whether there is a significant economic incentive includes a comparison of a vehicle's estimated market value at the time the option is exercisable with the guaranteed resale value to determine the customer's economic incentive to exercise. The performance obligations and the pattern of recognizing automotive sales with resale value guarantees are consistent with automotive sales without resale value guarantees with the exception of our estimate for sales return reserve. Sales return reserves for automotive sales with resale value guarantees are estimated based on historical experience plus consideration for expected future market values. On a quarterly basis, we assess the estimated market values of vehicles under our buyback options program to determine whether there have been changes to the likelihood of future product returns. As we accumulate more data related to the buyback values of our vehicles or as market conditions change, there may be material changes to their estimated values.

#### Automotive Regulatory Credits

We earn tradable credits in the operation of our automotive business under various regulations related to ZEVs, greenhouse gas, fuel economy and clean fuel. We sell these credits to other regulated entities who can use the credits to comply with emission standards and other regulatory requirements. Payments for automotive regulatory credits are typically received at the point control transfers to the customer, or in accordance with payment terms customary to the business. We recognize revenue on the sale of automotive regulatory credits at the time control of the regulatory credits is transferred to the purchasing party as automotive sales revenue in the consolidated statements of operations.

#### Automotive Leasing Revenue

##### Direct Vehicle Operating Leasing Program

We have outstanding leases under our direct vehicle operating leasing programs in the U.S., Canada and in certain countries in Europe. Qualifying customers are permitted to lease a vehicle directly from Tesla for up to 48 months. At the end of the lease term, customers are required to return the vehicles to us or for Model S and Model X leases in certain regions, may opt to purchase the vehicles for a pre-determined residual value. We account for these leasing transactions as operating leases. We record leasing revenues to automotive leasing revenue on a straight-line basis over the contractual term, and we record the depreciation of these vehicles to cost of automotive leasing revenue.

Our policy is to exclude taxes collected from a customer from the transaction price of automotive contracts.

##### Vehicle Sales to Leasing Partners with a Resale Value Guarantee and a Buyback Option

We offered buyback options in connection with automotive sales with resale value guarantees with certain leasing partner sales in the U.S. and where we expected the customer had a significant economic incentive to exercise the resale value guarantee provided to them at contract inception, we continued to recognize these transactions as operating leases. These transactions entailed a transfer of leases, which we had originated with an end-customer, to our leasing partner. As control of the vehicles had not been transferred in accordance with ASC 606, these transactions were accounted for as interest-bearing collateralized borrowings in accordance with ASC 840, *Leases*, prior to January 1, 2019. Under this program, cash was received for the full price of the vehicle and the collateralized borrowing value was generally recorded within resale value guarantees and the customer upfront down payment was recorded within deferred revenue. We amortize the deferred revenue amount to automotive leasing revenue on a straight-line basis over the option period and accrue interest expense based on our borrowing rate. We capitalized vehicles under this program to operating lease vehicles, net, on the consolidated balance sheets, and we record depreciation from these vehicles to cost of automotive leasing revenue during the period the vehicle is under a lease arrangement. Cash received for these vehicles, net of revenue recognized during the period, is classified as collateralized lease (repayments) borrowings within cash flows from financing activities in the consolidated statements of cash flows. With the adoption of ASC 842 on January 1, 2019, all new agreements under this program are accounted for as operating leases under ASC 842 and there was no material change in the timing and amount of revenue recognized over the term. Consequently, any cash flows for new agreements are classified as operating cash activities on the consolidated statements of cash flows.

At the end of the lease term, we settle our liability in cash by either purchasing the vehicle from the leasing partner for the buyback option amount or paying a shortfall to the option amount the leasing partner may realize on the sale of the vehicle. Any remaining balances within deferred revenue and resale value guarantee will be settled to automotive leasing revenue. The end customer can extend the lease for a period of up to 6 months. In cases where the leasing partner retains ownership of the vehicle after the end of our option period, we expense the net value of the leased vehicle to cost of automotive leasing revenue.

### Direct Sales-Type Leasing Program

We have outstanding direct leases and vehicles financed by us under loan arrangements accounted for as sales-type leases under ASC 842 in certain countries in Asia and Europe, which we introduced in volume during the third quarter of 2020. Depending on the specific program, customers may or may not have a right to return the vehicle to us during or at the end of the lease term. If the customer does not have a right to return, the customer will take title to the vehicle at the end of the lease term after making all contractual payments. Under the programs for which there is a right to return, the purchase option is reasonably certain to be exercised by the lessee and we therefore expect the customer to take title to the vehicle at the end of the lease term after making all contractual payments. Qualifying customers are permitted to lease a vehicle directly under these programs for up to 48 months. Our loan arrangements under these programs can have terms for up to 72 months. We recognize all revenue and costs associated with the sales-type lease as automotive leasing revenue and automotive leasing cost of revenue, respectively, upon delivery of the vehicle to the customer. Interest income based on the implicit rate in the lease is recorded to automotive leasing revenue over time as customers are invoiced on a monthly basis.

### *Energy Generation and Storage Segment*

#### Energy Generation and Storage Sales

Energy generation and storage sales revenue consists of the sale of solar energy systems and energy storage systems to residential, small commercial, and large commercial and utility grade customers, including solar subscription-based arrangements. Energy generation and storage sales revenue also includes revenue from agreements for solar energy systems and PPAs that commence after January 1, 2019, which is recognized as earned, based on the amount of capacity provided for solar energy systems or electricity delivered for PPAs at the contractual billing rates, assuming all other revenue recognition criteria have been met. Under the practical expedient available under ASC 606-10-55-18, we recognize revenue based on the value of the service which is consistent with the billing amount. Sales of solar energy systems to residential and small scale commercial customers consist of the engineering, design and installation of the system. Post-installation, residential and small scale commercial customers receive a proprietary monitoring system that captures and displays historical energy generation data. Residential and small scale commercial customers pay the full purchase price of the solar energy system upfront. Revenue for the design and installation obligation is recognized when control transfers, which is when we install a solar energy system and the system passes inspection by the utility or the authority having jurisdiction. Revenue for the monitoring service is recognized ratably as a stand-ready obligation over the warranty period of the solar energy system. Sales of energy storage systems to residential and small scale commercial customers consist of the installation of the energy storage system and revenue is recognized when control transfers, which is when the product has been delivered or, if we are performing installation, when installed and commissioned. Payment for such storage systems is made upon invoice or in accordance with payment terms customary to the business.

For large commercial and utility grade solar energy system and energy storage system sales which consist of the engineering, design and installation of the system, customers make milestone payments that are consistent with contract-specific phases of a project. Revenue from such contracts is recognized over time using the percentage of completion method based on cost incurred as a percentage of total estimated contract costs for energy storage system sales and as a percentage of total estimated labor hours for solar energy system sales. Certain large-scale commercial and utility grade solar energy system and energy storage system sales also include operations and maintenance service which are negotiated with the design and installation contracts and are thus considered to be a combined contract with the design and installation service. For certain large commercial and utility grade solar energy systems and energy storage systems where the percentage of completion method does not apply, revenue is recognized when control transfers, which is when the product has been delivered to the customer and commissioned for energy storage systems and when the project has received permission to operate from the utility for solar energy systems. Operations and maintenance service revenue is recognized ratably over the respective contract term for solar energy system sales and upon delivery of the service for energy storage system sales. Customer payments for such services are usually paid annually or quarterly in advance.

In instances where there are multiple performance obligations in a single contract, we allocate the consideration to the various obligations in the contract based on the relative standalone selling price method. Standalone selling prices are estimated based on estimated costs plus margin or by using market data for comparable products. Costs incurred on the sale of residential installations before the solar energy systems are completed are included as work in process within inventory in the consolidated balance sheets. Any fees that are paid or payable by us to a solar loan lender would be recognized as an offset against revenue. Costs to obtain a contract relate mainly to commissions paid to our sales personnel related to the sale of solar energy systems and energy storage systems. As our contract costs related to solar energy system and energy storage system sales are typically fulfilled within one year, the costs to obtain a contract are expensed as incurred.

As part of our solar energy system and energy storage system contracts, we may provide the customer with performance guarantees that warrant that the underlying system will meet or exceed the minimum energy generation or energy performance requirements specified in the contract. In certain instances, we may receive a bonus payment if the system performs above a specified level. Conversely, if a solar energy system or energy storage system does not meet the performance guarantee requirements, we may be required to pay liquidated damages. Other forms of variable consideration related to our large commercial and utility grade solar energy system and energy storage system contracts include variable customer payments that will be made based on our energy market participation activities. Such guarantees and variable customer payments represent a form of variable consideration and are estimated at contract inception at their most likely amount and updated at the end of each reporting period as additional performance data becomes available. Such estimates are included in the transaction price only to the extent that it is probable a significant reversal of revenue will not occur.

We record as deferred revenue any non-refundable amounts that are collected from customers related to fees charged for prepayments and remote monitoring service and operations and maintenance service, which is recognized as revenue ratably over the respective customer contract term.

#### Energy Generation and Storage Leasing

For revenue arrangements where we are the lessor under operating lease agreements for energy generation and storage products, we record lease revenue from minimum lease payments, including upfront rebates and incentives earned from such systems, on a straight-line basis over the life of the lease term, assuming all other revenue recognition criteria have been met. The difference between the payments received and the revenue recognized is recorded as deferred revenue or deferred asset on the consolidated balance sheet.

For solar energy systems where customers purchase electricity from us under PPAs prior to January 1, 2019, we have determined that these agreements should be accounted for as operating leases pursuant to ASC 840. Revenue is recognized based on the amount of electricity delivered at rates specified under the contracts, assuming all other revenue recognition criteria are met.

We record as deferred revenue any amounts that are collected from customers, including lease prepayments, in excess of revenue recognized and operations and maintenance service fees, which is recognized as revenue ratably over the respective customer contract term. Deferred revenue also includes the portion of rebates and incentives received from utility companies and various local and state government agencies, which is recognized as revenue over the lease term.

We capitalize initial direct costs from the execution of agreements for solar energy systems and PPAs, which include the referral fees and sales commissions, as an element of solar energy systems, net, and subsequently amortize these costs over the term of the related agreements.

#### *Inventory Valuation*

Inventories are stated at the lower of cost or net realizable value. Cost is computed using standard cost for vehicles and energy storage products, which approximates actual cost on a first-in, first-out basis. In addition, cost for solar energy systems is recorded using actual cost. We record inventory write-downs for excess or obsolete inventories based upon assumptions about current and future demand forecasts. If our inventory on-hand is in excess of our future demand forecast, the excess amounts are written-off.

We also review our inventory to determine whether its carrying value exceeds the net amount realizable upon the ultimate sale of the inventory. This requires us to determine the estimated selling price of our vehicles less the estimated cost to convert the inventory on-hand into a finished product. Once inventory is written-down, a new, lower cost basis for that inventory is established and subsequent changes in facts and circumstances do not result in the restoration or increase in that newly established cost basis.

Should our estimates of future selling prices or production costs change, additional and potentially material increases to this reserve may be required. A small change in our estimates may result in a material charge to our reported financial results.

### *Warranties*

We provide a manufacturer's warranty on all new and used vehicles and a warranty on the installation and components of the energy generation and storage systems we sell for periods typically between 10 to 25 years. We accrue a warranty reserve for the products sold by us, which includes our best estimate of the projected costs to repair or replace items under warranties and recalls when identified. These estimates are based on actual claims incurred to date and an estimate of the nature, frequency and costs of future claims. These estimates are inherently uncertain given our relatively short history of sales, and changes to our historical or projected warranty experience may cause material changes to the warranty reserve in the future. The warranty reserve does not include projected warranty costs associated with our vehicles subject to operating lease accounting and our solar energy systems under lease contracts or PPAs, as the costs to repair these warranty claims are expensed as incurred. The portion of the warranty reserve expected to be incurred within the next 12 months is included within accrued liabilities and other, while the remaining balance is included within other long-term liabilities on the consolidated balance sheets. Warranty expense is recorded as a component of cost of revenues in the consolidated statements of operations.

### *Stock-Based Compensation*

We use the fair value method of accounting for our stock options and restricted stock units ("RSUs") granted to employees and for our employee stock purchase plan (the "ESPP") to measure the cost of employee services received in exchange for the stock-based awards. The fair value of stock option awards with only service and/or performance conditions is estimated on the grant or offering date using the Black-Scholes option-pricing model. The Black-Scholes option-pricing model requires inputs such as the risk-free interest rate, expected term and expected volatility. These inputs are subjective and generally require significant judgment. The fair value of RSUs is measured on the grant date based on the closing fair market value of our common stock. The resulting cost is recognized over the period during which an employee is required to provide service in exchange for the awards, usually the vesting period, which is generally four years for stock options and RSUs and six months for the ESPP. Stock-based compensation expense is recognized on a straight-line basis, net of actual forfeitures in the period.

For performance-based awards, stock-based compensation expense is recognized over the expected performance achievement period of individual performance milestones when the achievement of each individual performance milestone becomes probable. For performance-based awards with a vesting schedule based entirely on the attainment of both performance and market conditions, stock-based compensation expense associated with each tranche is recognized over the longer of (i) the expected achievement period for the operational milestone for such tranche and (ii) the expected achievement period for the related market capitalization milestone determined on the grant date, beginning at the point in time when the relevant operational milestone is considered probable of being achieved. If such operational milestone becomes probable any time after the grant date, we will recognize a cumulative catch-up expense from the grant date to that point in time. If the related market capitalization milestone is achieved earlier than its expected achievement period and the achievement of the related operational milestone, then the stock-based compensation expense will be recognized over the expected achievement period for the operational milestone, which may accelerate the rate at which such expense is recognized. If additional operational milestones become probable, stock-based compensation expense will be recorded in the period it becomes probable including cumulative catch-up expense for the service provided since the grant date. The fair value of such awards is estimated on the grant date using Monte Carlo simulations.

As we accumulate additional employee stock-based awards data over time and as we incorporate market data related to our common stock, we may calculate significantly different volatilities and expected lives, which could materially impact the valuation of our stock-based awards and the stock-based compensation expense that we will recognize in future periods. Stock-based compensation expense is recorded in cost of revenues, research and development expense and selling, general and administrative expense in the consolidated statements of operations.

### *Income Taxes*

We are subject to taxes in the U.S. and in many foreign jurisdictions. Significant judgment is required in determining our provision for income taxes, our deferred tax assets and liabilities and any valuation allowance recorded against our net deferred tax assets. We make these estimates and judgments about our future taxable income that are based on assumptions that are consistent with our future plans. Tax laws, regulations and administrative practices may be subject to change due to economic or political conditions including fundamental changes to the tax laws applicable to corporate multinationals. The U.S., many countries in the European Union and a number of other countries are actively considering changes in this regard. As of December 31, 2020, we had recorded a full valuation allowance on our net U.S. deferred tax assets because we expect that it is more likely than not that our U.S. deferred tax assets will not be realized. Should the actual amounts differ from our estimates, the amount of our valuation allowance could be materially impacted.

Furthermore, significant judgment is required in evaluating our tax positions. In the ordinary course of business, there are many transactions and calculations for which the ultimate tax settlement is uncertain. As a result, we recognize the effect of this uncertainty on our tax attributes or taxes payable based on our estimates of the eventual outcome. These effects are recognized when, despite our belief that our tax return positions are supportable, we believe that it is likely that some of those positions may not be fully sustained upon review by tax authorities. We are required to file income tax returns in the U.S. and various foreign jurisdictions, which requires us to interpret the applicable tax laws and regulations in effect in such jurisdictions. Such returns are subject to audit by the various federal, state and foreign taxing authorities, who may disagree with respect to our tax positions. We believe that our consideration is adequate for all open audit years based on our assessment of many factors, including past experience and interpretations of tax law. We review and update our estimates in light of changing facts and circumstances, such as the closing of a tax audit, the lapse of a statute of limitations or a change in estimate. To the extent that the final tax outcome of these matters differs from our expectations, such differences may impact income tax expense in the period in which such determination is made. The eventual impact on our income tax expense depends in part if we still have a valuation allowance recorded against our deferred tax assets in the period that such determination is made.

#### *Principles of Consolidation*

The consolidated financial statements reflect our accounts and operations and those of our subsidiaries in which we have a controlling financial interest. In accordance with the provisions of ASC 810, *Consolidation*, we consolidate any variable interest entity (“VIE”) of which we are the primary beneficiary. We form VIEs with our financing fund investors in the ordinary course of business in order to facilitate the funding and monetization of certain attributes associated with our solar energy systems and leases under our direct vehicle leasing programs. The typical condition for a controlling financial interest ownership is holding a majority of the voting interests of an entity; however, a controlling financial interest may also exist in entities, such as VIEs, through arrangements that do not involve controlling voting interests. ASC 810 requires a variable interest holder to consolidate a VIE if that party has the power to direct the activities of the VIE that most significantly impact the VIE’s economic performance and the obligation to absorb losses of the VIE that could potentially be significant to the VIE or the right to receive benefits from the VIE that could potentially be significant to the VIE. We do not consolidate a VIE in which we have a majority ownership interest when we are not considered the primary beneficiary. We have determined that we are the primary beneficiary of all the VIEs. We evaluate our relationships with all the VIEs on an ongoing basis to ensure that we continue to be the primary beneficiary. All intercompany transactions and balances have been eliminated upon consolidation.

#### *Noncontrolling Interests and Redeemable Noncontrolling Interests*

Noncontrolling interests and redeemable noncontrolling interests represent third-party interests in the net assets under certain funding arrangements, or funds, that we enter into to finance the costs of solar energy systems and vehicles under operating leases. We have determined that the contractual provisions of the funds represent substantive profit sharing arrangements. We have further determined that the methodology for calculating the noncontrolling interest and redeemable noncontrolling interest balances that reflects the substantive profit sharing arrangements is a balance sheet approach using the hypothetical liquidation at book value (“HLBV”) method. We, therefore, determine the amount of the noncontrolling interests and redeemable noncontrolling interests in the net assets of the funds at each balance sheet date using the HLBV method, which is presented on the consolidated balance sheet as noncontrolling interests in subsidiaries and redeemable noncontrolling interests in subsidiaries. Under the HLBV method, the amounts reported as noncontrolling interests and redeemable noncontrolling interests in the consolidated balance sheet represent the amounts the third parties would hypothetically receive at each balance sheet date under the liquidation provisions of the funds, assuming the net assets of the funds were liquidated at their recorded amounts determined in accordance with GAAP and with tax laws effective at the balance sheet date and distributed to the third parties. The third parties’ interests in the results of operations of the funds are determined as the difference in the noncontrolling interest and redeemable noncontrolling interest balances in the consolidated balance sheets between the start and end of each reporting period, after taking into account any capital transactions between the funds and the third parties. However, the redeemable noncontrolling interest balance is at least equal to the redemption amount. The redeemable noncontrolling interest balance is presented as temporary equity in the mezzanine section of the consolidated balance sheet since these third parties have the right to redeem their interests in the funds for cash or other assets. For certain funds, there may be significant fluctuations in net income (loss) attributable to noncontrolling interests and redeemable noncontrolling interests in subsidiaries due to changes in the liquidation provisions as time-based milestones are reached.

## Results of Operations

### Effects of COVID-19

The COVID-19 pandemic impacted our business and financial results in 2020.

The temporary suspension of production at our factories during the first half of 2020 caused production limitations that, together with reduced or closed government and third party partner operations in the year, negatively impacted our deliveries and deployments in 2020. While we resumed operations at all of our factories worldwide, our temporary suspension at our factories resulted in idle capacity charges as we still incurred fixed costs such as depreciation, certain payroll related expenses and property taxes. As part of our response strategy to the business disruptions and uncertainty around macroeconomic conditions caused by the COVID-19 pandemic, we instituted cost reduction initiatives across our business globally to be commensurate to the scope of our operations while they were scaled back in the first half of 2020. This included temporary labor cost reduction measures such as employee furloughs and compensation reductions. Additionally, we suspended non-critical operating spend and opportunistically renegotiated supplier and vendor arrangements. As part of various governmental responses to the pandemic granted to companies globally, we received certain payroll related benefits which helped to reduce the impact of the COVID-19 pandemic on our financial results. Such payroll related benefits related to our direct headcount have been primarily netted against our disclosed idle capacity charges and they marginally reduced our operating expenses. The impact of the idle capacity charges incurred during the first half of 2020 were almost entirely offset by our cost savings initiatives and payroll related benefits.

### Revenues

(Dollars in millions)	Year Ended December 31,			2020 vs. 2019 Change		2019 vs. 2018 Change	
	2020	2019	2018	\$	%	\$	%
Automotive sales	\$ 26,184	\$ 19,952	\$ 17,632	\$ 6,232	31%	\$ 2,320	13%
Automotive leasing	1,052	869	883	183	21%	(14)	-2%
Total automotive revenues	27,236	20,821	18,515	6,415	31%	2,306	12%
Services and other	2,306	2,226	1,391	80	4%	835	60%
Total automotive & services and other segment revenue	29,542	23,047	19,906	6,495	28%	3,141	16%
Energy generation and storage segment revenue	1,994	1,531	1,555	463	30%	(24)	-2%
Total revenues	\$ 31,536	\$ 24,578	\$ 21,461	\$ 6,958	28%	\$ 3,117	15%

#### Automotive & Services and Other Segment

Automotive sales revenue includes revenues related to cash deliveries of new Model S, Model X, Model 3 and Model Y vehicles, including access to our Supercharger network, internet connectivity, FSD features and over-the-air software updates, as well as sales of regulatory credits to other automotive manufacturers. Cash deliveries are vehicles that are not subject to lease accounting. Our revenue from regulatory credits fluctuates depending on when a contract is executed with a buyer and when the credits are delivered.

Automotive leasing revenue includes the amortization of revenue for vehicles under direct operating lease agreements as well as those sold with resale value guarantees accounted for as operating leases under lease accounting. We began offering direct leasing for Model 3 vehicles in the second quarter of 2019 and we began offering direct leasing for Model Y vehicles in the third quarter of 2020. Additionally, automotive leasing revenue includes direct sales-type leasing programs where we recognize all revenue associated with the sales-type lease upon delivery to the customer, which we introduced in volume during the third quarter of 2020.

Services and other revenue consists of non-warranty after-sales vehicle services, sales of used vehicles, retail merchandise, sales by our acquired subsidiaries to third party customers and vehicle insurance revenue.



## 2020 compared to 2019

Automotive sales revenue increased \$6.23 billion, or 31%, in the year ended December 31, 2020 as compared to the year ended December 31, 2019, primarily due to an increase of 129,268 Model 3 and Model Y cash deliveries despite production limitations as a result of temporary suspension of production at the Fremont Factory and Gigafactory Nevada during the first half of 2020. We were able to increase deliveries year over year from production ramping at both Gigafactory Shanghai and the Fremont Factory. There was also an increase of \$986 million from additional sales of regulatory credits to \$1.58 billion in the year ended December 31, 2020. Additionally, due to pricing adjustments we made to our vehicle offerings during the year ended December 31, 2019, we estimated that there was a greater likelihood that customers would exercise their buyback options and adjusted our sales return reserve on vehicles previously sold under our buyback options program which resulted in a reduction of automotive sales revenue of \$555 million. We made further pricing adjustments that resulted in a similar but smaller reduction of automotive sales revenue of \$72 million during the year ended December 31, 2020. The smaller reduction in revenue from pricing adjustments resulted in a positive impact to automotive sales revenue of \$483 million year over year. These factors increasing automotive sales revenue were partially offset by a decrease in the combined average selling price of Model 3 and Model Y. Despite the inclusion of higher priced Model Y deliveries in 2020, the combined average selling price of Model 3 and Model Y decreased due to a higher proportion of Model 3 Standard Range variants in our sales mix compared to the prior year. Additionally, there was a decrease in automotive sales revenue from 8,669 fewer Model S and Model X cash deliveries at a relatively consistent combined average selling price in the year ended December 31, 2020 compared to the prior year.

Automotive leasing revenue increased \$183 million, or 21%, in the year ended December 31, 2020 as compared to the year ended December 31, 2019, primarily due to an increase in cumulative vehicles under our direct operating lease program and the introduction of direct sales-type leasing programs which we began offering in volume during the third quarter of 2020 where we recognize all revenue associated with the sales-type lease upon delivery to the customer. These increases were partially offset by the decreases in automotive leasing revenue associated with our resale value guarantee leasing programs accounted for as operating leases as those portfolios have declined.

Services and other revenue increased \$80 million, or 4%, in the year ended December 31, 2020 as compared to the year ended December 31, 2019, primarily due to an increase in non-warranty maintenance services revenue as our fleet continues to grow, an increase in retail merchandise revenue and an increase in sales by our acquired subsidiaries to third party customers as we had a partial year of sales in the prior year from our mid-year 2019 acquisitions. These increases were partially offset by a decrease in used vehicle revenue driven by a reduction in non-Tesla trade-ins.

## *Energy Generation and Storage Segment*

Energy generation and storage revenue includes sales and leasing of solar energy generation and energy storage products, services related to such products and sales of solar energy systems incentives.

## 2020 compared to 2019

Energy generation and storage revenue increased by \$463 million, or 30%, in the year ended December 31, 2020 as compared to the year ended December 31, 2019, primarily due to increases in deployments of Megapack, solar cash and loan jobs and Powerwall, partially offset by a decrease in deployments of Powerpack and reduced average selling prices on our solar cash and loan jobs as a result of our low cost solar strategy. Powerpack deployments have decreased following the introduction of our Megapack product, which we began deploying in late 2019.

## Cost of Revenues and Gross Margin

(Dollars in millions)	Year Ended December 31,			2020 vs. 2019 Change		2019 vs. 2018 Change	
	2020	2019	2018	\$	%	\$	%
<b>Cost of revenues</b>							
Automotive sales	\$ 19,696	\$ 15,939	\$ 13,686	\$ 3,757	24%	\$ 2,253	16%
Automotive leasing	563	459	488	104	23%	(29)	-6%
Total automotive cost of revenues	20,259	16,398	14,174	3,861	24%	2,224	16%
Services and other	2,671	2,770	1,880	(99)	-4%	890	47%
Total automotive & services and other segment cost of revenues	22,930	19,168	16,054	3,762	20%	3,114	19%
Energy generation and storage segment	1,976	1,341	1,365	635	47%	(24)	-2%
Total cost of revenues	\$ 24,906	\$ 20,509	\$ 17,419	\$ 4,397	21%	\$ 3,090	18%
Gross profit total automotive	\$ 6,977	\$ 4,423	\$ 4,341				
Gross margin total automotive	26%	21%	23%				
Gross profit total automotive & services and other segment	\$ 6,612	\$ 3,879	\$ 3,852				
Gross margin total automotive & services and other segment	22%	17%	19%				
Gross profit energy generation and storage segment	\$ 18	\$ 190	\$ 190				
Gross margin energy generation and storage segment	1%	12%	12%				
Total gross profit	\$ 6,630	\$ 4,069	\$ 4,042				
Total gross margin	21%	17%	19%				

### Automotive & Services and Other Segment

Cost of automotive sales revenue includes direct parts, material and labor costs, manufacturing overhead, including depreciation costs of tooling and machinery, shipping and logistic costs, vehicle connectivity costs, allocations of electricity and infrastructure costs related to our Supercharger network and reserves for estimated warranty expenses. Cost of automotive sales revenues also includes adjustments to warranty expense and charges to write down the carrying value of our inventory when it exceeds its estimated net realizable value and to provide for obsolete and on-hand inventory in excess of forecasted demand.

Cost of automotive leasing revenue includes the amortization of operating lease vehicles over the lease term, cost of goods sold associated with direct sales-type leases which were introduced in volume in the third quarter of 2020, as well as warranty expenses related to leased vehicles. Cost of automotive leasing revenue also includes vehicle connectivity costs and allocations of electricity and infrastructure costs related to our Supercharger network for vehicles under our leasing programs.

Cost of services and other revenue includes costs associated with providing non-warranty after-sales services, costs to acquire and certify used vehicles, costs for retail merchandise, and costs to provide vehicle insurance. Cost of services and other revenue also includes direct parts, material and labor costs and manufacturing overhead associated with the sales by our acquired subsidiaries to third party customers.

### 2020 compared to 2019

Cost of automotive sales revenue increased \$3.76 billion, or 24%, in the year ended December 31, 2020 as compared to the year ended December 31, 2019, primarily due to an increase of 129,268 Model 3 and Model Y cash deliveries. Due to pricing adjustments we made to our vehicle offerings during the year ended December 31, 2019, we estimated that there was a greater likelihood that customers would exercise their buyback options and if customers elect to exercise the buyback option, we expect to be able to subsequently resell the returned vehicles, which resulted in a reduction of cost of automotive sales revenue of \$451 million. We made further pricing adjustments that resulted in a similar but smaller reduction of cost of automotive sales revenue of \$42 million during the year ended December 31, 2020. Additionally, there was an increase to cost of automotive sales revenue from idle capacity charges of \$213 million as a result of temporary suspension of production at the Fremont Factory and Gigafactory Nevada during the first half of 2020. These factors increasing cost of automotive sales revenue were partially offset by a decrease in average Model 3 costs per unit due to lower material, manufacturing, freight and duty costs from localized procurement and manufacturing in China and a higher sales mix of lower end trims, as well as a decrease of 8,669 Model S and Model X cash deliveries in the year ended December 31, 2020 compared to the prior year.

Cost of automotive leasing revenue increased \$104 million, or 23%, in the year ended December 31, 2020 as compared to the year ended December 31, 2019, primarily due to an increase in cumulative vehicles under our direct operating lease program and the introduction of direct sales-type leasing programs which we began offering in volume during the third quarter of 2020 where we recognize all cost of revenue associated with the sales-type lease upon delivery to the customer. These increases were partially offset by the decreases in cost of automotive lease revenue associated with our resale value guarantee leasing programs which are accounted for as operating leases as those portfolios have declined.

Cost of services and other revenue decreased \$99 million, or 4%, in the year ended December 31, 2020 as compared to the year ended December 31, 2019, primarily due to a decrease in used vehicle cost of revenue driven by a reduction in non-Tesla trade-ins, partially offset by increases in non-warranty maintenance services as our fleet continues to grow and an increase in costs of retail merchandise as our sales have increased.

Gross margin for total automotive increased from 21% to 26% in the year ended December 31, 2020 as compared to the year ended December 31, 2019, primarily due to an improvement of Model 3 gross margin primarily from lower material, manufacturing, freight and duty costs from localized procurement and manufacturing in China, partially offset by a decrease in the average selling price of Model 3 due to a higher proportion of Model 3 Standard Range variants in our sales mix compared to the prior year. Additionally, there was an increase of \$986 million in sales of regulatory credits and a positive impact from Model Y deliveries in 2020 as Model Y gross margin was higher than our prior year total automotive gross margin. These increases were partially offset by idle capacity charges of \$213 million as a result of a temporary suspension of production at the Fremont Factory and Gigafactory Nevada during the first half of 2020.

Gross margin for total automotive & services and other segment increased from 17% to 22% in the year ended December 31, 2020 as compared to the year ended December 31, 2019, primarily due to the automotive gross margin impacts discussed above and a lower proportion of services and other, which operated at a lower gross margin than our automotive business, within the segment in the year ended December 31, 2020. Additionally, there was an improvement in our non-warranty maintenance services gross margin due to increased operational efficiencies despite additional costs from ramping service centers to accommodate a larger deployed fleet and an improvement in our used vehicle sales gross margin.

#### *Energy Generation and Storage Segment*

Cost of energy generation and storage revenue includes direct and indirect material and labor costs, warehouse rent, freight, warranty expense, other overhead costs and amortization of certain acquired intangible assets. Cost of energy generation and storage revenue also includes charges to write down the carrying value of our inventory when it exceeds its estimated net realizable value and to provide for obsolete and on-hand inventory in excess of forecasted demand. In agreements for solar energy system and PPAs where we are the lessor, the cost of revenue is primarily comprised of depreciation of the cost of leased solar energy systems, maintenance costs associated with those systems and amortization of any initial direct costs.

#### 2020 compared to 2019

Cost of energy generation and storage revenue increased by \$635 million, or 47%, in the year ended December 31, 2020 as compared to the year ended December 31, 2019, primarily due to increases in deployments of Megapack, higher costs from temporary manufacturing underutilization of our Solar Roof ramp, increases in deployments of Powerwall and idle capacity charges of \$20 million as a result of temporary suspension of production at Gigafactory New York during the first half of 2020. These increases were partially offset by a decrease in deployments of Powerpack.

Gross margin for energy generation and storage decreased from 12% to 1% in the year ended December 31, 2020 as compared to the year ended December 31, 2019 primarily due to a higher proportion of Solar Roof in our overall energy business which operated at lower gross margins as a result of temporary manufacturing underutilization during product ramp. Additionally, there were lower gross margins in our solar cash and loan business from reduced average selling prices as a result of our low cost solar strategy, partially offset by lower materials and manufacturing costs.

#### **Research and Development Expense**

(Dollars in millions)	Year Ended December 31,			2020 vs. 2019 Change		2019 vs. 2018 Change	
	2020	2019	2018	\$	%	\$	%
Research and development	\$ 1,491	\$ 1,343	\$ 1,460	\$ 148	11%	\$ (117)	-8%
As a percentage of revenues	5%	5%	7%				

Research and development ("R&D") expenses consist primarily of personnel costs for our teams in engineering and research, manufacturing engineering and manufacturing test organizations, prototyping expense, contract and professional services and amortized equipment expense.

R&D expenses increased \$148 million, or 11%, in the year ended December 31, 2020 as compared to the year ended December 31, 2019. The increase was primarily due to a \$62 million increase in expensed materials as we continue to expand our product roadmap, \$61 million increase in stock-based compensation expense primarily related to the issuance of equity awards in fiscal year 2020 at higher grant date fair values due to our increased share price, \$20 million increase in facilities, freight and depreciation expenses and a \$20 million increase in employee and labor related expenses.

R&D expenses as a percentage of revenue decreased from 5.5% to 4.7% in the year ended December 31, 2020 as compared to the year ended December 31, 2019. The decrease is primarily an increase in total revenues from expanding sales, partially offset by an increase in our R&D expenses as detailed above.

### ***Selling, General and Administrative Expense***

	Year Ended December 31,			2020 vs. 2019 Change		2019 vs. 2018 Change	
	2020	2019	2018	\$	%	\$	%
(Dollars in millions)							
Selling, general and administrative	\$ 3,145	\$ 2,646	\$ 2,835	\$ 499	19%	\$ (189)	-7%
As a percentage of revenues	10%	11%	13%				

Selling, general and administrative (“SG&A”) expenses generally consist of personnel and facilities costs related to our stores, marketing, sales, executive, finance, human resources, information technology and legal organizations, as well as fees for professional and contract services and litigation settlements.

SG&A expenses increased \$499 million, or 19%, in the year ended December 31, 2020 as compared to the year ended December 31, 2019. The increase is primarily due to an increase of \$625 million in stock-based compensation expense, of which \$542 million was attributable to the 2018 CEO Performance Award. We recorded stock-based compensation expense of \$838 million in the year ended December 31, 2020 for the 2018 CEO Performance Award compared to \$296 million in the prior year. Of the expense recorded in fiscal year 2020, \$232 million was due to cumulative catch-up expense for the service provided from the grant date when three operational milestones under such award were considered probable of being met and the remaining unamortized expense of \$357 million for the first four tranches were recognized upon vesting as the first four market capitalization milestones were achieved (see Note 14, *Equity Incentive Plans*, to the consolidated financial statements included elsewhere in this Annual Report on Form 10-K). The remaining stock-based compensation expense increase of \$83 million attributable to other directors and employees is primarily related to the issuance of equity awards in fiscal year 2020 at higher grant date fair values due to our increased share price. The increase in stock-based compensation was partially offset by a decrease of \$90 million in customer promotional costs, facilities-related expenses and sales and marketing activities. Additionally, there was a reduction to operating expenses for costs previously incurred in the amount of \$43 million for the settlement in part of the securities litigation relating to the SolarCity acquisition (see Note 16, *Commitments and Contingencies—Legal Proceedings—Securities Litigation Relating to the SolarCity Acquisition*, to the consolidated financial statements included elsewhere in this Annual Report on Form 10-K).

SG&A expenses as a percentage of revenue decreased from 11% to 10% in year ended December 31, 2020 as compared to the year ended December 31, 2019. The decrease is primarily from an increase in total revenues from expanding sales, partially offset by an increase in our SG&A expenses as detailed above.

### ***Restructuring and other***

	Year Ended December 31,			2020 vs. 2019 Change		2019 vs. 2018 Change	
	2020	2019	2018	\$	%	\$	%
(Dollars in millions)							
Restructuring and other	\$ —	\$ 149	\$ 135	\$ (149)	-100%	\$ 14	10%
As a percentage of revenues	0%	1%	1%				

During the year ended December 31, 2019, we carried out certain restructuring actions in order to reduce costs and improve efficiency. There were no restructuring actions in the year ended December 31, 2020.

### ***Interest Expense***

	Year Ended December 31,			2020 vs. 2019 Change		2019 vs. 2018 Change	
	2020	2019	2018	\$	%	\$	%
(Dollars in millions)							
Interest expense	\$ (748)	\$ (685)	\$ (663)	\$ (63)	9%	\$ (22)	3%
As a percentage of revenues	2%	3%	3%				

Interest expense increased by \$63 million, or 9%, in the year ended December 31, 2020 as compared to the year ended December 31, 2019, primarily due to \$105 million of losses on extinguishment of debt in fiscal year 2020 from early conversions on our convertible senior notes, partially offset by a decrease in interest expense due to a decrease in our weighted average interest rate as compared to the prior year and an increase of \$17 million in the amount of interest we capitalized from the consolidated statements of operations to property, plant and equipment on the consolidated balance sheets. Increased capitalization results in lower interest expense. The amount of interest we capitalize is driven by our construction in progress balance, which increased year-over-year due to our construction and expansion of multiple factories.

### **Other Income (Expense), Net**

(Dollars in millions)	<u>Year Ended December 31,</u>			<u>2020 vs. 2019 Change</u>		<u>2019 vs. 2018 Change</u>	
	<u>2020</u>	<u>2019</u>	<u>2018</u>	<u>\$</u>	<u>%</u>	<u>\$</u>	<u>%</u>
Other (expense) income, net	\$ (122)	\$ 45	\$ 22	\$ (167)	Not meaningful	\$ 23	105%
As a percentage of revenues	0%	0%	0%				

Other (expense) income, net, consists primarily of foreign exchange gains and losses related to our foreign currency-denominated monetary assets and liabilities and changes in the fair values of our fixed-for-floating interest rate swaps. We expect our foreign exchange gains and losses will vary depending upon movements in the underlying exchange rates.

Other (expense) income, net, changed unfavorably by \$167 million in the year ended December 31, 2020 as compared to the year ended December 31, 2019. The unfavorable change was primarily due to fluctuations in foreign currency exchange rates such as the U.S. dollar depreciating greater than 5% against the euro and the Chinese yuan in 2020 compared to an appreciation of 2% and 1% against the same currencies in the prior year, respectively.

### **Provision for Income Taxes**

(Dollars in millions)	<u>Year Ended December 31,</u>			<u>2020 vs. 2019 Change</u>		<u>2019 vs. 2018 Change</u>	
	<u>2020</u>	<u>2019</u>	<u>2018</u>	<u>\$</u>	<u>%</u>	<u>\$</u>	<u>%</u>
Provision for income taxes	\$ 292	\$ 110	\$ 58	\$ 182	165%	\$ 52	90%
Effective tax rate	25%	-17%	-6%				

Our provision for income taxes increased by \$182 million, or 165%, in the year ended December 31, 2020 as compared to the year ended December 31, 2019. The increase was primarily due to the substantial increases in taxable profits in our foreign jurisdictions year-over-year.

Our effective tax rate increased from -17% to 25% in the year ended December 31, 2020 as compared to the prior year, primarily due to substantial pre-tax income in the year ended December 31, 2020 as compared to a pre-tax loss for the year ended December 31, 2019.

### **Net Income (Loss) Attributable to Noncontrolling Interests and Redeemable Noncontrolling Interests**

(Dollars in millions)	<u>Year Ended December 31,</u>			<u>2020 vs. 2019 Change</u>		<u>2019 vs. 2018 Change</u>	
	<u>2020</u>	<u>2019</u>	<u>2018</u>	<u>\$</u>	<u>%</u>	<u>\$</u>	<u>%</u>
Net income (loss) attributable to noncontrolling interests and redeemable noncontrolling interests in subsidiaries	\$ 141	\$ 87	\$ (87)	\$ 54	62%	\$ 174	Not meaningful

Our net income (loss) attributable to noncontrolling interests and redeemable noncontrolling interests was related to financing fund arrangements.

Net income (loss) attributable to noncontrolling interests and redeemable noncontrolling interests increased by \$54 million, or 62%, in the year ended December 31, 2020 as compared to the year ended December 31, 2019. The increase was primarily due to lower activities from new financing fund arrangements.

### **Liquidity and Capital Resources**

As of December 31, 2020, we had \$19.38 billion of cash and cash equivalents. Balances held in foreign currencies had a U.S. dollar equivalent of \$6.76 billion and consisted primarily of euros, Chinese yuan and Canadian dollars. Our sources of cash are

predominantly from our deliveries of vehicles, sales and installations of our energy storage products and solar energy systems, proceeds from debt facilities, proceeds from financing funds and proceeds from equity offerings.

Our sources of liquidity and cash flows enable us to fund ongoing operations, research and development projects for new products and technologies including our announced proprietary battery cells, ongoing production and additional manufacturing ramps at existing manufacturing facilities such as the Fremont Factory, Gigafactory Nevada, Gigafactory Shanghai and Gigafactory New York, the construction of Gigafactory Berlin and Gigafactory Texas, and the continued expansion of our retail and service locations, body shops, Mobile Service fleet, Supercharger network and energy product installation capabilities.

As discussed in and subject to the considerations referenced in Part II, Item 7, *Management's Discussion and Analysis of Financial Condition and Results of Operations—Management Opportunities, Challenges and Risks and 2021 Outlook—Cash Flow and Capital Expenditure Trends* in this Annual Report on Form 10-K, we currently expect our capital expenditures to be \$4.50 to \$6.00 billion in 2021 and in each of the next two fiscal years.

We expect that the cash we generate from our core operations will generally be sufficient to cover our future capital expenditures and to pay down our near-term debt obligations, although we may choose to seek alternative financing sources. For example, our local subsidiary has entered into credit facilities to support construction and production at Gigafactory Shanghai. See Note 12, *Debt*, to the consolidated financial statements included elsewhere in this Annual Report on Form 10-K. As always, we continually evaluate our capital expenditure needs and may decide it is best to raise additional capital to fund the rapid growth of our business.

In January 2021, we updated our investment policy to provide us with more flexibility to further diversify and maximize returns on our cash that is not required to maintain adequate operating liquidity. As part of the policy, we may invest a portion of such cash in certain specified alternative reserve assets. Thereafter, we invested an aggregate \$1.50 billion in bitcoin under this policy. Moreover, we expect to begin accepting bitcoin as a form of payment for our products in the near future, subject to applicable laws and initially on a limited basis, which we may or may not liquidate upon receipt. We believe our bitcoin holdings are highly liquid. However, digital assets may be subject to volatile market prices, which may be unfavorable at the time when we want or need to liquidate them.

We have an agreement to spend or incur \$5.0 billion in combined capital, operational expenses, costs of goods sold and other costs in the State of New York during the 10-year period beginning April 30, 2018, which we expect to meet through our operations. As we temporarily suspended most of our manufacturing operations at Gigafactory New York pursuant to a New York State executive order issued in March 2020 as a result of the COVID-19 pandemic, we were granted a one-year deferral of our obligation to be compliant as of April 30, 2020 with our applicable targets under such agreement.

We expect that our current sources of liquidity together with our projection of cash flows from operating activities will provide us with adequate liquidity over at least the next 12 months, even considering the expected levels of capital expenditures in the current and next two fiscal years. A large portion of our future expenditures is to fund our growth, and we can adjust our capital and operating expenditures by operating segment, including future expansion of our product offerings, retail and service locations, body shops, Mobile Service fleet, and Supercharger network. For example, if our near-term manufacturing operations decrease in scale or ramp more slowly than expected, including due to global economic conditions and levels of consumer outlook and spend impacting demand in the worldwide transportation, automotive and energy product industries, we may choose to correspondingly slow the pace of our capital expenditures. We may need or want to raise additional funds in the future, and these funds may not be available to us when we need or want them, or at all. If we cannot raise additional funds when we need or want them, our operations and prospects could be negatively affected.

In addition, we had \$2.63 billion of unused committed amounts under our credit facilities and financing funds as of December 31, 2020, some of which are subject to satisfying specified conditions prior to draw-down (such as pledging to our lenders sufficient amounts of qualified receivables, inventories, leased vehicles and our interests in those leases, solar energy systems and the associated customer contracts, our interests in financing funds or various other assets; and contributing or selling qualified solar energy systems and the associated customer contracts or qualified leased vehicles and our interests in those leases into the financing funds). For details regarding our indebtedness and financing funds, refer to Note 12, *Debt*, and Note 17, *Variable Interest Entity Arrangements* to the consolidated financial statements included elsewhere in this Annual Report on Form 10-K.

### Summary of Cash Flows

	Year Ended December 31,		
	2020	2019	2018
(Dollars in millions)			
Net cash provided by operating activities	\$ 5,943	\$ 2,405	\$ 2,098
Net cash used in investing activities	\$ (3,132)	\$ (1,436)	\$ (2,337)
Net cash provided by financing activities	\$ 9,973	\$ 1,529	\$ 574

### *Cash Flows from Operating Activities*

Our cash flows from operating activities are significantly affected by our cash investments to support the growth of our business in areas such as research and development and selling, general and administrative and working capital, especially inventory, which includes vehicles in transit. Our operating cash inflows include cash from vehicle sales, customer lease payments, customer deposits, cash from sales of regulatory credits and energy generation and storage products. These cash inflows are offset by our payments to suppliers for production materials and parts used in our manufacturing process, operating expenses, operating lease payments and interest payments on our financings.

Net cash provided by operating activities increased by \$3.54 billion to \$5.94 billion during the year ended December 31, 2020 from \$2.40 billion during the year ended December 31, 2019. This increase was primarily due to the increase in net income excluding non-cash expenses and gains of \$2.82 billion, the decrease in net operating assets and liabilities of \$533 million and \$188 million of the repayment of our 0.25% Convertible Senior Notes due in 2019 during the three months ended March 31, 2019 (which represents the portion of the repayment that was classified as an operating activity, as this represented an interest payment on the deeply-discounted convertible senior notes). The decrease in our net operating assets and liabilities was mainly driven by a larger increase in accounts payable and accrued liabilities in the year ended December 31, 2020 as compared to the prior year from ramp up in production at the Fremont Factory and Gigafactory Shanghai. The decrease in our net operating assets and liabilities was partially offset by a smaller increase in deferred revenue primarily due to delivery of regulatory credits in 2020 under a previous arrangement where we had received payment in advance as of December 31, 2019, a larger increase in operating lease vehicles as Model 3 direct leasing was introduced in the second quarter of 2019 and Model Y direct leasing was introduced in the third quarter of 2020, and a larger increase in accounts receivables of government rebates already passed through to customers.

### *Cash Flows from Investing Activities*

Cash flows from investing activities and their variability across each period related primarily to capital expenditures, which were \$3.16 billion for the year ended December 31, 2020, mainly for Model Y production expansion at the Fremont Factory, expansion of Gigafactory Shanghai and construction of Gigafactory Berlin and Gigafactory Texas, and \$1.33 billion for the year ended December 31, 2019, mainly for Gigafactory Shanghai construction, Model 3 production ramp and Model Y preparations. The increase in capital expenditures was partially offset by decreases of \$32 million in business combinations, net of cash acquired, and \$30 million of design, acquisition and installation of solar energy systems when compared to the prior year. Additionally, we received \$123 million and \$46 million, respectively, of government grants in connection with us making certain manufacturing equipment investments at Gigafactory Shanghai for the years ended December 31, 2020 and 2019, respectively.

### *Cash Flows from Financing Activities*

Cash flows from financing activities during the year ended December 31, 2020 consisted primarily of \$12.27 billion from issuance of common stock in public offerings in 2020, net of issuance costs, and \$417 million of proceeds from exercise of stock options and other stock issuances. These cash inflows were partially offset by \$1.99 billion of cash repayments upon early conversions of our convertible senior notes, \$338 million principal repayments of our finance leases, collateralized lease repayments of \$240 million and \$219 million net payments to financing fund investors. See Note 12, *Debt*, and Note 2, *Summary of Significant Accounting Policies*, to the consolidated financial statements included elsewhere in this Annual Report on Form 10-K for further details regarding our debt obligations and collateralized borrowings, respectively.

Cash flows from financing activities during the year ended December 31, 2019 consisted primarily of \$1.82 billion from the issuance of the 2.00% Convertible Senior Notes due in 2024 (“2024 Notes”), net of transaction costs, and \$848 million from the issuance of common stock, net of underwriting discounts, in registered public offerings, \$736 million of net borrowings under loan agreements entered into by certain Chinese subsidiaries, \$394 million of net borrowings for automotive asset-backed notes and \$174 million from the issuance of warrants in connection with the offering of the 2024 Notes. These cash inflows were partially offset by a \$732 million portion of the repayment of our 0.25% Convertible Senior Notes due in 2019 that was classified as financing activity, a \$566 million repayment of our 1.625% Convertible Senior Notes due in 2019, a purchase of convertible note hedges of \$476 million in connection with the offering of the 2024 Notes and collateralized lease repayments of \$389 million.

### Contractual Obligations

We are party to contractual obligations involving commitments to make payments to third parties, including certain debt financing arrangements and leases, primarily for stores, service centers, certain manufacturing facilities and certain corporate offices. These also include, as part of our normal business practices, contracts with suppliers for purchases of certain raw materials, components and services to facilitate adequate supply of these materials and services and capacity reservation contracts. The following table sets forth, as of December 31, 2020, certain significant obligations that will affect our future liquidity (in millions):

	Total	Year Ended December 31,					Thereafter
		2021	2022	2023	2024	2025	
Operating lease obligations, including imputed interest	\$ 1,846	\$ 366	\$ 327	\$ 279	\$ 245	\$ 204	\$ 425
Finance lease obligations, including imputed interest	1,635	462	446	412	299	9	7
Purchase obligations (1)	18,318	10,483	2,743	2,280	1,877	865	70
Debt, including scheduled interest (2)	11,695	2,100	2,172	2,602	2,021	2,109	691
Total	<u>\$ 33,494</u>	<u>\$ 13,411</u>	<u>\$ 5,688</u>	<u>\$ 5,573</u>	<u>\$ 4,442</u>	<u>\$ 3,187</u>	<u>\$ 1,193</u>

- (1) These amounts represent (i) purchase orders of \$5.95 billion issued under binding and enforceable agreements with all vendors as of December 31, 2020 and (ii) \$12.37 billion in other estimable purchase obligations pursuant to such agreements, primarily relating to the purchase of lithium-ion cells produced by Panasonic at Gigafactory Nevada, including any additional amounts we may have to pay vendors if we do not meet certain minimum purchase obligations. In cases where no purchase orders were outstanding under binding and enforceable agreements as of December 31, 2020, we have included estimated amounts based on our best estimates and assumptions or discussions with the relevant vendors as of such date or, where applicable, on amounts or assumptions included in such agreements for purposes of discussion or reference. In certain cases, such estimated amounts were subject to contingent events. Furthermore, these amounts do not include future payments for purchase obligations that were recorded in accounts payable or accrued liabilities as of December 31, 2020.
- (2) This includes non-recourse debt repayments, including scheduled interest, of \$5.16 billion. Non-recourse debt refers to debt that is recourse to only assets of our subsidiaries. Short-term scheduled interest payments and amortization of convertible senior note conversion features, debt discounts and deferred financing costs for the year ended December 31, 2020 is \$342 million. Long-term scheduled interest payments and amortization of convertible senior note conversion features, debt discounts and deferred financing costs for the years thereafter is \$1.13 billion.

The table above excludes unrecognized tax benefits of \$353 million because if recognized, they would be an adjustment to our deferred tax assets.

We offer resale value guarantees or similar buyback terms to certain customers who purchase and finance their vehicles through one of our specified commercial banking partners and certain leasing partners (refer to *Automotive Sales with Resale Value Guarantee or a Buyback Option* in Note 2, *Significant Accounting Policies*, to the consolidated financial statements included elsewhere in this Annual Report on Form 10-K). The maximum amount we could be required to pay under these programs, should customers exercise their resale value guarantees or buyback options, would be \$1.84 billion over the next five years, of which \$394 million is within a 12-month period from December 31, 2020. We have not included this in the table above as it is unknown how many customers will exercise their options. Additionally, we plan to resell any vehicles which are returned to us and therefore, the actual exposure to us is deemed to be limited.

### Off-Balance Sheet Arrangements

During the periods presented, we did not have relationships with unconsolidated entities or financial partnerships, such as entities often referred to as structured finance or special purpose entities, which were established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow or limited purposes.

### Recent Accounting Pronouncements

See Note 2, *Summary of Significant Accounting Policies*, to the consolidated financial statements included elsewhere in this Annual Report on Form 10-K.



## ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

### Foreign Currency Risk

We transact business globally in multiple currencies and hence have foreign currency risks related to our revenue, costs of revenue, operating expenses and localized subsidiary debt denominated in currencies other than the U.S. dollar (primarily the Chinese yuan, euro, Canadian dollar and British pound in relation to our current year operations). In general, we are a net receiver of currencies other than the U.S. dollar for our foreign subsidiaries. Accordingly, changes in exchange rates affect our revenue and other operating results as expressed in U.S. dollars as we do not typically hedge foreign currency risk.

We have also experienced, and will continue to experience, fluctuations in our net income (loss) as a result of gains (losses) on the settlement and the re-measurement of monetary assets and liabilities denominated in currencies that are not the local currency (primarily consisting of our intercompany and cash and cash equivalents balances). For the year ended December 31, 2020, we recognized a net foreign currency loss of \$114 million in other (expense) income, net, with our largest re-measurement exposures from the U.S. dollar, euro and Canadian dollar as our subsidiaries' monetary assets and liabilities are denominated in various local currencies. For the year ended December 31, 2019, we recognized a net foreign currency gain of \$48 million in other (expense) income, net, with our largest re-measurement exposures from the U.S. dollar, British pound and Canadian dollar.

We considered the historical trends in foreign currency exchange rates and determined that it is reasonably possible that adverse changes in foreign currency exchange rates of 10% for all currencies could be experienced in the near-term. These changes were applied to our total monetary assets and liabilities denominated in currencies other than our local currencies at the balance sheet date to compute the impact these changes would have had on our net income (loss) before income taxes. These changes would have resulted in a benefit of \$8 million at December 31, 2020 and an adverse impact of \$362 million at December 31, 2019 assuming no foreign currency hedging.

### Interest Rate Risk

We are exposed to interest rate risk on our borrowings that bear interest at floating rates. Pursuant to our risk management policies, in certain cases, we utilize derivative instruments to manage some of this risk. We do not enter into derivative instruments for trading or speculative purposes. A hypothetical 10% change in interest rates on our floating rate debt would have increased or decreased our interest expense for the years ended December 31, 2020 and 2019 by \$4 million and \$8 million, respectively.

**ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA**

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## Report of Independent Registered Public Accounting Firm

To the Board of Directors and Stockholders of Tesla, Inc.

### ***Opinions on the Financial Statements and Internal Control over Financial Reporting***

We have audited the accompanying consolidated balance sheets of Tesla, Inc. and its subsidiaries (the "Company") as of December 31, 2020 and 2019, and the related consolidated statements of operations, of comprehensive income (loss), of redeemable noncontrolling interests and equity and of cash flows for each of the three years in the period ended December 31, 2020, including the related notes (collectively referred to as the "consolidated financial statements"). We also have audited the Company's internal control over financial reporting as of December 31, 2020, based on criteria established in *Internal Control - Integrated Framework* (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of the Company as of December 31, 2020 and 2019, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2020 in conformity with accounting principles generally accepted in the United States of America. Also in our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2020, based on criteria established in *Internal Control - Integrated Framework* (2013) issued by the COSO.

### ***Changes in Accounting Principles***

As discussed in Note 2 to the consolidated financial statements, the Company changed the manner in which it accounts for leases in 2019 and the manner in which it accounts for revenue from contracts with customers in 2018.

### ***Basis for Opinions***

The Company's management is responsible for these consolidated financial statements, for maintaining effective internal control over financial reporting, and for its assessment of the effectiveness of internal control over financial reporting, included in Management's Report on Internal Control over Financial Reporting appearing under Item 9A. Our responsibility is to express opinions on the Company's consolidated financial statements and on the Company's internal control over financial reporting based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (PCAOB) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud, and whether effective internal control over financial reporting was maintained in all material respects.

Our audits of the consolidated financial statements included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. Our audit of internal control over financial reporting included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audits also included performing such other procedures as we considered necessary in the circumstances. We believe that our audits provide a reasonable basis for our opinions.

### ***Definition and Limitations of Internal Control over Financial Reporting***

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

### ***Critical Audit Matters***

The critical audit matters communicated below are matters arising from the current period audit of the consolidated financial statements that were communicated or required to be communicated to the audit committee and that (i) relate to accounts or disclosures that are material to the consolidated financial statements and (ii) involved our especially challenging, subjective, or complex judgments. The communication of critical audit matters does not alter in any way our opinion on the consolidated financial statements, taken as a whole, and we are not, by communicating the critical audit matters below, providing separate opinions on the critical audit matters or on the accounts or disclosures to which they relate.

#### ***Automotive Sales To Customers With a Resale Value Guarantee or Buyback Option***

As described in Note 2 to the consolidated financial statements, the sales return reserve related to resale value guarantees or buyback options was \$703 million as of December 31, 2020, of which \$202 million was short-term. The Company offers some customers resale value guarantees or buyback options. Under these programs, the Company receives full payment for the vehicle sales price at the time of delivery and the customer has the option of selling their vehicle back to the Company during the guarantee period for a pre-determined resale value. In circumstances where management does not believe the customer has a significant economic incentive to exercise the resale value guarantee or buyback option provided to them at contract inception, the Company recognizes revenue when control transfers upon delivery to a customer as a sale with a right of return. In circumstances where management believes the customer has a significant economic incentive to exercise the resale value guarantee or buyback option at contract inception, the Company recognizes the transaction as an operating lease. Management's determination of whether there is a significant economic incentive includes comparing a vehicle's estimated market value at the time the option is exercisable with the guaranteed resale value. Sales return reserves are estimated based on historical experience plus consideration for expected future market values. On a quarterly basis, management assesses the estimated future market values of vehicles under these programs, taking into account price adjustments on vehicle offerings and changes in market conditions subsequent to the initial sale to determine the need for changes to the reserve.

The principal considerations for our determination that performing procedures relating to automotive sales to customers with a resale value guarantee or buyback option is a critical audit matter are the significant judgment by management in determining the sales return reserve when customers do not have a significant economic incentive to exercise their option; this in turn led to a high degree of auditor judgment, subjectivity, and effort in performing procedures and evaluating audit evidence related to the sales return reserve when customers do not have a significant economic incentive.

Addressing the matter involved performing procedures and evaluating audit evidence in connection with forming our overall opinion on the consolidated financial statements. These procedures included testing the effectiveness of controls relating to automotive revenue recognition for sales to customers with a resale value guarantee or buyback option as well as the related sales return reserve, including controls over management's estimate of expected future market values and historical experience. These procedures also included, among others, testing management's process for determining whether customers have a significant economic incentive to exercise their put rights under the resale value guarantee and buyback option programs and, if not, the related sales return reserve. This included evaluating the appropriateness of the model applied and the reasonableness of significant assumptions related to historical experience and the estimated expected future market values used in the comparison to guaranteed resale amounts. Evaluating assumptions related to historical experience and estimated expected future market values involved evaluating whether the assumptions used were reasonable considering current and past performance and consistency with evidence obtained in other areas of the audit. Procedures were performed to evaluate the reliability, completeness and relevance of management's data used in the development of the historical experience assumption.

#### ***Automotive Warranty Reserve***

As described in Note 2 to the consolidated financial statements, total accrued warranty, which primarily relates to the automotive segment, was \$1,468 million as of December 31, 2020. The Company provides a manufacturer's warranty on all new and used Tesla vehicles. As described in Note 2, a warranty reserve is accrued for these products sold, which includes management's best estimate of the projected costs to repair or replace items under warranty, including recalls when identified. These estimates are based on actual claims incurred to date and an estimate of the nature, frequency and costs of future claims.

The principal considerations for our determination that performing procedures relating to the automotive warranty reserve is a critical audit matter are the significant judgment by management in determining the warranty reserve; this in turn led to significant auditor judgment, subjectivity, and effort in performing procedures to evaluate the estimate of the nature, frequency and costs of future claims, and the audit effort involved the use of professionals with specialized skill and knowledge.

Addressing the matter involved performing procedures and evaluating audit evidence in connection with forming our overall opinion on the consolidated financial statements. These procedures included testing the effectiveness of controls relating to management's estimate of the automotive warranty reserve, including controls over management's estimate of the nature, frequency and costs of future claims as well as the completeness and accuracy of actual claims incurred to date. These procedures also included, among others, testing management's process for determining the automotive warranty reserve. This included evaluating the appropriateness of the model applied and the reasonableness of significant assumptions related to the nature and frequency of future claims and the related costs to repair or replace items under warranty. Evaluating the assumptions related to the nature and frequency of future claims and the related costs to repair or replace items under warranty involved evaluating whether the assumptions used were reasonable considering current and past performance, including a lookback analysis comparing prior period forecasted claims to actual claims incurred. These procedures also included developing an independent estimate of a portion of the warranty accrual, comparing the independent estimate to management's estimate to evaluate the reasonableness of the estimate, and testing the completeness and accuracy of historical vehicle claims. Procedures were performed to test the reliability, completeness, and relevance of management's data related to the historical claims processed and that such claims were appropriately used by management in the estimation of future claims. Professionals with specialized skill and knowledge were used to assist in evaluating the appropriateness of aspects of management's model for estimating the nature and frequency of future claims, and testing management's warranty reserve for a portion of future warranty claims.

/s/ PricewaterhouseCoopers LLP

San Jose, California  
February 8, 2021

We have served as the Company's auditor since 2005.

**Tesla, Inc.**  
**Consolidated Balance Sheets**  
(in millions, except per share data)

	December 31, 2020	December 31, 2019
<b>Assets</b>		
Current assets		
Cash and cash equivalents	\$ 19,384	\$ 6,268
Accounts receivable, net	1,886	1,324
Inventory	4,101	3,552
Prepaid expenses and other current assets	1,346	959
Total current assets	<u>26,717</u>	<u>12,103</u>
Operating lease vehicles, net	3,091	2,447
Solar energy systems, net	5,979	6,138
Property, plant and equipment, net	12,747	10,396
Operating lease right-of-use assets	1,558	1,218
Intangible assets, net	313	339
Goodwill	207	198
Other non-current assets	1,536	1,470
<b>Total assets</b>	<u>\$ 52,148</u>	<u>\$ 34,309</u>
<b>Liabilities</b>		
Current liabilities		
Accounts payable	\$ 6,051	\$ 3,771
Accrued liabilities and other	3,855	3,222
Deferred revenue	1,458	1,163
Customer deposits	752	726
Current portion of debt and finance leases	2,132	1,785
Total current liabilities	<u>14,248</u>	<u>10,667</u>
Debt and finance leases, net of current portion	9,556	11,634
Deferred revenue, net of current portion	1,284	1,207
Other long-term liabilities	3,330	2,691
<b>Total liabilities</b>	<u>28,418</u>	<u>26,199</u>
Commitments and contingencies (Note 16)		
Redeemable noncontrolling interests in subsidiaries	604	643
Convertible senior notes (Note 12)	51	—
<b>Equity</b>		
Stockholders' equity		
Preferred stock; \$0.001 par value; 100 shares authorized; no shares issued and outstanding	—	—
Common stock; \$0.001 par value; 2,000 shares authorized; 960 and 905 shares issued and outstanding as of December 31, 2020 and December 31, 2019, respectively (1)	1	1
Additional paid-in capital (1)	27,260	12,736
Accumulated other comprehensive income (loss)	363	(36)
Accumulated deficit	(5,399)	(6,083)
Total stockholders' equity	<u>22,225</u>	<u>6,618</u>
Noncontrolling interests in subsidiaries	850	849
<b>Total liabilities and equity</b>	<u>\$ 52,148</u>	<u>\$ 34,309</u>

(1) Prior period results have been adjusted to reflect the five-for-one stock split effected in the form of a stock dividend in August 2020. See Note 1, *Overview*, for details.

The accompanying notes are an integral part of these consolidated financial statements.

**Tesla, Inc.**  
**Consolidated Statements of Operations**  
(in millions, except per share data)

	Year Ended December 31,		
	2020	2019	2018
<b>Revenues</b>			
Automotive sales	\$ 26,184	\$ 19,952	\$ 17,632
Automotive leasing	1,052	869	883
Total automotive revenues	27,236	20,821	18,515
Energy generation and storage	1,994	1,531	1,555
Services and other	2,306	2,226	1,391
Total revenues	31,536	24,578	21,461
<b>Cost of revenues</b>			
Automotive sales	19,696	15,939	13,686
Automotive leasing	563	459	488
Total automotive cost of revenues	20,259	16,398	14,174
Energy generation and storage	1,976	1,341	1,365
Services and other	2,671	2,770	1,880
Total cost of revenues	24,906	20,509	17,419
<b>Gross profit</b>	6,630	4,069	4,042
<b>Operating expenses</b>			
Research and development	1,491	1,343	1,460
Selling, general and administrative	3,145	2,646	2,835
Restructuring and other	—	149	135
Total operating expenses	4,636	4,138	4,430
<b>Income (loss) from operations</b>	1,994	(69)	(388)
Interest income	30	44	24
Interest expense	(748)	(685)	(663)
Other (expense) income, net	(122)	45	22
<b>Income (loss) before income taxes</b>	1,154	(665)	(1,005)
Provision for income taxes	292	110	58
<b>Net income (loss)</b>	862	(775)	(1,063)
Net income (loss) attributable to noncontrolling interests and redeemable noncontrolling interests in subsidiaries	141	87	(87)
<b>Net income (loss) attributable to common stockholders</b>	\$ 721	\$ (862)	\$ (976)
Less: Buy-out of noncontrolling interest	31	8	—
Net income (loss) used in computing net income (loss) per share of common stock	\$ 690	\$ (870)	\$ (976)
Net income (loss) per share of common stock attributable to common stockholders (1)			
Basic	\$ 0.74	\$ (0.98)	\$ (1.14)
Diluted	\$ 0.64	\$ (0.98)	\$ (1.14)
Weighted average shares used in computing net income (loss) per share of common stock (1)			
Basic	933	887	853
Diluted	1,083	887	853

(1) Prior period results have been adjusted to reflect the five-for-one stock split effected in the form of a stock dividend in August 2020. See Note 1, *Overview*, for details.

The accompanying notes are an integral part of these consolidated financial statements.

**Tesla, Inc.**  
**Consolidated Statements of Comprehensive Income (Loss)**  
(in millions)

	Year Ended December 31,		
	2020	2019	2018
Net income (loss)	\$ 862	\$ (775)	\$ (1,063)
Other comprehensive income (loss):			
Foreign currency translation adjustment	399	(28)	(42)
Comprehensive income (loss)	1,261	(803)	(1,105)
Less: Comprehensive income (loss) attributable to noncontrolling interests and redeemable noncontrolling interests in subsidiaries	141	87	(87)
Comprehensive income (loss) attributable to common stockholders	\$ 1,120	\$ (890)	\$ (1,018)

The accompanying notes are an integral part of these consolidated financial statements.



**Tesla, Inc.**  
**Consolidated Statements of Redeemable Noncontrolling Interests and Equity**  
(in millions, except per share data)

	Redeemable Noncontrolling Interests	Common Stock		Additional Paid-In	Accumulated	Accumulated Other Comprehensive	Total	Noncontrolling	Total
		Shares (1)	Amount (1)	Capital (1)	Deficit	Income (Loss)	Stockholders' Equity	Interests in Subsidiaries	Equity
<b>Balance as of December 31, 2017</b>	\$ 398	844	\$ 1	\$ 9,177	\$ (4,974)	\$ 33	\$ 4,237	\$ 997	\$ 5,234
Adjustments for prior periods from adopting ASC 606	8	—	—	—	623	—	623	(89)	534
Adjustments for prior periods from adopting Accounting Standards Update No. 2017-05	—	—	—	—	9	—	9	—	9
Exercises of conversion feature of convertible senior notes	—	1	0	0	—	—	0	—	0
Issuance of common stock for equity incentive awards	—	18	0	296	—	—	296	—	296
Stock-based compensation	—	—	—	775	—	—	775	—	775
Contributions from noncontrolling interests	276	—	—	—	—	—	—	161	161
Distributions to noncontrolling interests	(61)	—	—	—	—	—	—	(210)	(210)
Other	(3)	—	—	—	—	—	—	—	—
Net loss	(62)	—	—	—	(976)	—	(976)	(25)	(1,001)
Other comprehensive loss	—	—	—	—	—	(41)	(41)	—	(41)
<b>Balance as of December 31, 2018</b>	\$ 556	863	\$ 1	\$ 10,248	\$ (5,318)	\$ (8)	\$ 4,923	\$ 834	\$ 5,757
Adjustments for prior periods from adopting ASC 842	—	—	—	—	97	—	97	—	97
Conversion feature of 2.00% Convertible Senior Notes due in 2024 ("2024 Notes")	—	—	—	491	—	—	491	—	491
Purchase of convertible note hedges	—	—	—	(476)	—	—	(476)	—	(476)
Sales of warrants	—	—	—	174	—	—	174	—	174
Issuance of common stock for equity incentive awards and acquisitions, net of transaction costs	—	24	0	482	—	—	482	—	482
Issuance of common stock in May 2019 public offering at \$48.60 per share (1), net of									
issuance costs of \$15	—	18	0	848	—	—	848	—	848
Stock-based compensation	—	—	—	973	—	—	973	—	973
Contributions from noncontrolling interests	105	—	—	—	—	—	—	174	174
Distributions to noncontrolling interests	(65)	—	—	—	—	—	—	(198)	(198)
Other	(1)	—	—	(4)	—	—	(4)	—	(4)
Net income (loss)	48	—	—	—	(862)	—	(862)	39	(823)
Other comprehensive loss	—	—	—	—	—	(28)	(28)	—	(28)
<b>Balance as of December 31, 2019</b>	\$ 643	905	\$ 1	\$ 12,736	\$ (6,083)	\$ (36)	\$ 6,618	\$ 849	\$ 7,467
Adjustments for prior periods from adopting ASU 2016-13	—	—	—	—	(37)	—	(37)	—	(37)
Reclassification between equity and mezzanine equity for convertible senior notes	—	—	—	(51)	—	—	(51)	—	(51)
Exercises of conversion feature of convertible senior notes	—	2	0	59	—	—	59	—	59
Issuance of common stock for equity incentive awards	—	19	0	417	—	—	417	—	417
Issuance of common stock in public offerings, net of									
issuance costs of \$68 (1)	—	34	0	12,269	—	—	12,269	—	12,269
Stock-based compensation	—	—	—	1,861	—	—	1,861	—	1,861
Contributions from noncontrolling interests	7	—	—	—	—	—	—	17	17
Distributions to noncontrolling interests	(67)	—	—	—	—	—	—	(132)	(132)
Buy-outs of noncontrolling interests	(4)	—	—	(31)	—	—	(31)	—	(31)
Net income	25	—	—	—	721	—	721	116	837
Other comprehensive income	—	—	—	—	—	399	399	—	399
<b>Balance as of December 31, 2020</b>	\$ 604	960	\$ 1	\$ 27,260	\$ (5,399)	\$ 363	\$ 22,225	\$ 850	\$ 23,075

(1) Prior period results have been adjusted to reflect the five-for-one stock split effected in the form of a stock dividend in August 2020. See Note 1, *Overview*, for details regarding stock split and public offerings.

The accompanying notes are an integral part of these consolidated financial statements.

**Tesla, Inc.**  
**Consolidated Statements of Cash Flows**  
(in millions)

	Year Ended December 31,		
	2020	2019	2018
<b>Cash Flows from Operating Activities</b>			
Net income (loss)	\$ 862	\$ (775)	\$ (1,063)
Adjustments to reconcile net income (loss) to net cash provided by operating activities:			
Depreciation, amortization and impairment	2,322	2,154	1,901
Stock-based compensation	1,734	898	749
Amortization of debt discounts and issuance costs	180	188	159
Inventory and purchase commitments write-downs	202	193	85
Loss on disposals of fixed assets	117	146	162
Foreign currency transaction net loss (gain)	114	(48)	(2)
Non-cash interest and other operating activities	228	186	49
Operating cash flow related to repayment of discounted convertible senior notes	—	(188)	—
Changes in operating assets and liabilities, net of effect of business combinations:			
Accounts receivable	(652)	(367)	(497)
Inventory	(422)	(429)	(1,023)
Operating lease vehicles	(1,072)	(764)	(215)
Prepaid expenses and other current assets	(251)	(288)	(82)
Other non-current assets	(344)	115	(207)
Accounts payable and accrued liabilities	2,102	646	1,797
Deferred revenue	321	801	406
Customer deposits	7	(58)	(96)
Other long-term liabilities	495	(5)	(25)
Net cash provided by operating activities	<u>5,943</u>	<u>2,405</u>	<u>2,098</u>
<b>Cash Flows from Investing Activities</b>			
Purchases of property and equipment excluding finance leases, net of sales	(3,157)	(1,327)	(2,101)
Purchases of solar energy systems, net of sales	(75)	(105)	(218)
Receipt of government grants	123	46	—
Purchase of intangible assets	(10)	(5)	—
Business combinations, net of cash acquired	(13)	(45)	(18)
Net cash used in investing activities	<u>(3,132)</u>	<u>(1,436)</u>	<u>(2,337)</u>
<b>Cash Flows from Financing Activities</b>			
Proceeds from issuances of common stock in public offerings, net of issuance costs	12,269	848	—
Proceeds from issuances of convertible and other debt	9,713	10,669	6,176
Repayments of convertible and other debt	(11,623)	(9,161)	(5,247)
Repayments of borrowings issued to related parties	—	—	(100)
Collateralized lease repayments	(240)	(389)	(559)
Proceeds from exercises of stock options and other stock issuances	417	263	296
Principal payments on finance leases	(338)	(321)	(181)
Debt issuance costs	(6)	(37)	(15)
Purchase of convertible note hedges	—	(476)	—
Proceeds from issuance of warrants	—	174	—
Proceeds from investments by noncontrolling interests in subsidiaries	24	279	437
Distributions paid to noncontrolling interests in subsidiaries	(208)	(311)	(227)
Payments for buy-outs of noncontrolling interests in subsidiaries	(35)	(9)	(6)
Net cash provided by financing activities	<u>9,973</u>	<u>1,529</u>	<u>574</u>
Effect of exchange rate changes on cash and cash equivalents and restricted cash	334	8	(23)
Net increase in cash and cash equivalents and restricted cash	13,118	2,506	312
Cash and cash equivalents and restricted cash, beginning of period	6,783	4,277	3,965
Cash and cash equivalents and restricted cash, end of period	<u>\$ 19,901</u>	<u>\$ 6,783</u>	<u>\$ 4,277</u>
<b>Supplemental Non-Cash Investing and Financing Activities</b>			
Equity issued in connection with business combination	\$ —	\$ 207	\$ —
Acquisitions of property and equipment included in liabilities	\$ 1,088	\$ 562	\$ 249
Estimated fair value of facilities under build-to-suit leases	\$ —	\$ —	\$ 94
<b>Supplemental Disclosures</b>			
Cash paid during the period for interest, net of amounts capitalized	\$ 444	\$ 455	\$ 381
Cash paid during the period for taxes, net of refunds	\$ 115	\$ 54	\$ 35

The accompanying notes are an integral part of these consolidated financial statements.

**Tesla, Inc.**  
**Notes to Consolidated Financial Statements**

**Note 1 - Overview**

Tesla, Inc. (“Tesla”, the “Company”, “we”, “us” or “our”) was incorporated in the State of Delaware on July 1, 2003. We design, develop, manufacture and sell high-performance fully electric vehicles and design, manufacture, install and sell solar energy generation and energy storage products. Our Chief Executive Officer, as the chief operating decision maker (“CODM”), organizes our company, manages resource allocations and measures performance among two operating and reportable segments: (i) automotive and (ii) energy generation and storage.

As of and following December 31, 2020, there has continued to be widespread impact from the coronavirus disease (“COVID-19”) pandemic. In 2020, we temporarily suspended operations at each of our manufacturing facilities worldwide for a part of the first half of the year. Some of our suppliers and partners also experienced temporary suspensions before resuming, including Panasonic, which manufactures battery cells for our products at our Gigafactory Nevada. We also instituted temporary employee furloughs and compensation reductions while our U.S. operations were scaled back. Finally, reduced operations or closures at motor vehicle departments, vehicle auction houses and municipal and utility company inspectors resulted in challenges in or postponements for our new vehicle deliveries, used vehicle sales, and energy product deployments. By the second half of 2020, however, we resumed operations at all of our manufacturing facilities and have continued to increase our output and add additional capacity and work with each of our suppliers and government agencies on meeting, ramping and sustaining our production. On the other hand, certain government regulations and shifting social behaviors have continued to limit or close non-essential transportation, government functions, business activities and person-to-person interactions. In some cases, the relaxation of such trends has recently been followed by actual or contemplated returns to stringent restrictions on gatherings or commerce. We cannot predict the duration or direction of such trends, which have also adversely affected and may in the future affect our operations.

On February 19, 2020, we completed a public offering of our common stock and issued a total of 15.2 million shares (as adjusted to give effect to the Stock Split, as described in the paragraph below), for total cash proceeds of \$2.31 billion, net of underwriting discounts and offering costs of \$28 million.

On August 10, 2020, our Board of Directors declared a five-for-one split of the Company’s common stock effected in the form of a stock dividend (the “Stock Split”). Each stockholder of record on August 21, 2020 received a dividend of four additional shares of common stock for each then-held share, distributed after close of trading on August 28, 2020. All share and per share amounts presented herein have been retroactively adjusted to reflect the impact of the Stock Split.

On September 1, 2020, we entered into an Equity Distribution Agreement with certain sales agents to sell \$5.00 billion in shares of our common stock from time to time through an “at-the-market” offering program. Such sales were completed by September 4, 2020 and settled by September 9, 2020, with the sale of 11,141,562 shares of common stock resulting in gross proceeds of \$5.00 billion and net proceeds of \$4.97 billion, net of sales agents’ commissions of \$25 million and other offering costs of \$1 million.

On December 8, 2020, we entered into a separate Equity Distribution Agreement with certain sales agents to sell \$5.00 billion in shares of our common stock from time to time through an “at-the-market” offering program. Such sales were completed by December 9, 2020 and settled by December 11, 2020, with the sale of 7,915,589 shares of common stock resulting in gross proceeds of \$5.00 billion and net proceeds of \$4.99 billion, net of sales agents’ commissions of \$13 million and other offering costs of \$1 million.

## **Note 2 - Summary of Significant Accounting Policies**

### *Principles of Consolidation*

The accompanying consolidated financial statements have been prepared in conformity with U.S. generally accepted accounting principles ("GAAP") and reflect our accounts and operations and those of our subsidiaries in which we have a controlling financial interest. In accordance with the provisions of Accounting Standards Codification ("ASC") 810, Consolidation, we consolidate any variable interest entity ("VIE") of which we are the primary beneficiary. We form VIEs with financing fund investors in the ordinary course of business in order to facilitate the funding and monetization of certain attributes associated with solar energy systems and leases under our direct vehicle leasing programs. The typical condition for a controlling financial interest ownership is holding a majority of the voting interests of an entity; however, a controlling financial interest may also exist in entities, such as VIEs, through arrangements that do not involve controlling voting interests. ASC 810 requires a variable interest holder to consolidate a VIE if that party has the power to direct the activities of the VIE that most significantly impact the VIE's economic performance and the obligation to absorb losses of the VIE that could potentially be significant to the VIE or the right to receive benefits from the VIE that could potentially be significant to the VIE. We do not consolidate a VIE in which we have a majority ownership interest when we are not considered the primary beneficiary. We have determined that we are the primary beneficiary of all the VIEs (see Note 17, *Variable Interest Entity Arrangements*). We evaluate our relationships with all the VIEs on an ongoing basis to ensure that we continue to be the primary beneficiary. All intercompany transactions and balances have been eliminated upon consolidation.

### *Use of Estimates*

The preparation of financial statements in conformity with U.S. generally accepted accounting principles ("GAAP") requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenues, costs and expenses and related disclosures in the accompanying notes.

Due to the COVID-19 pandemic, there has been uncertainty and disruption in the global economy and financial markets. The estimates used for, but not limited to, determining significant economic incentive for resale value guarantee arrangements, sales return reserves, the collectability of accounts receivable, inventory valuation, fair value of long-lived assets, goodwill, fair value of financial instruments, fair value and residual value of operating lease vehicles and solar energy systems subject to leases could be impacted. We have assessed the impact and are not aware of any specific events or circumstances that required an update to our estimates and assumptions or materially affected the carrying value of our assets or liabilities as of the date of issuance of this Annual Report on Form 10-K. These estimates may change as new events occur and additional information is obtained. Actual results could differ materially from these estimates under different assumptions or conditions.

### *Reclassifications*

Certain prior period balances have been reclassified to conform to the current period presentation in the consolidated financial statements and the accompanying notes. Restricted cash and MyPower customer notes receivable have been reclassified to other assets and resale value guarantees has been reclassified to other liabilities.

### *Revenue Recognition*

#### *Adoption of ASC 606 revenue standard*

On January 1, 2018, we adopted ASC 606, *Revenue from Contracts with Customers*, using the modified retrospective method.

## Revenue by source

The following table disaggregates our revenue by major source (in millions):

	Year Ended December 31,		
	2020	2019	2018
Automotive sales without resale value guarantee	\$ 24,053	\$ 19,212	\$ 15,810
Automotive sales with resale value guarantee (1)	551	146	1,403
Automotive regulatory credits	1,580	594	419
Energy generation and storage sales	1,477	1,000	1,056
Services and other	2,306	2,226	1,391
Total revenues from sales and services	29,967	23,178	20,079
Automotive leasing	1,052	869	883
Energy generation and storage leasing	517	531	499
Total revenues	\$ 31,536	\$ 24,578	\$ 21,461

- (1) Due to pricing adjustments we made to our vehicle offerings during 2020 and 2019, we estimated that there was a greater likelihood that customers would exercise their buyback options and adjusted our sales return reserve on vehicles previously sold under our buyback options program, which resulted in a reduction of automotive sales with resale value guarantee. For the years ended December 31, 2020 and 2019, price adjustments resulted in a reduction of automotive sales with resale value guarantee by \$72 million and \$555 million, respectively. The amounts presented represent automotive sales with resale value guarantee net of such pricing adjustments' impact.

### Automotive Segment

#### Automotive Sales Revenue

##### Automotive Sales without Resale Value Guarantee

Automotive sales revenue includes revenues related to deliveries of new vehicles and pay-per-use charges, and specific other features and services that meet the definition of a performance obligation under ASC 606, including access to our Supercharger network, internet connectivity, Full Self-Driving ("FSD") features and over-the-air software updates. We recognize revenue on automotive sales upon delivery to the customer, which is when the control of a vehicle transfers. Payments are typically received at the point control transfers or in accordance with payment terms customary to the business. Other features and services such as access to our Supercharger network, internet connectivity and over-the-air software updates are provisioned upon control transfer of a vehicle and recognized over time on a straight-line basis as we have a stand-ready obligation to deliver such services to the customer. We recognize revenue related to these other features and services over the performance period, which is generally the expected ownership life of the vehicle or the eight-year life of the vehicle. Revenue related to FSD features is recognized when functionality is delivered to the customer. For our obligations related to automotive sales, we estimate standalone selling price by considering costs used to develop and deliver the service, third-party pricing of similar options and other information that may be available.

At the time of revenue recognition, we reduce the transaction price and record a sales return reserve against revenue for estimated variable consideration related to future product returns. Such return rate estimates are based on historical experience and are immaterial in all periods presented. In addition, any fees that are paid or payable by us to a customer's lender when we arrange the financing are recognized as an offset against automotive sales revenue.

Costs to obtain a contract mainly relate to commissions paid to our sales personnel for the sale of vehicles. Commissions are not paid on other obligations such as access to our Supercharger network, internet connectivity, FSD features and over-the-air software updates. As our contract costs related to automotive sales are typically fulfilled within one year, the costs to obtain a contract are expensed as incurred. Amounts billed to customers related to shipping and handling are classified as automotive sales revenue, and we have elected to recognize the cost for freight and shipping when control over vehicles, parts, or accessories have transferred to the customer as an expense in cost of automotive sales revenue. Our policy is to exclude taxes collected from a customer from the transaction price of automotive contracts.

#### Automotive Sales with Resale Value Guarantee or a Buyback Option

We offer resale value guarantees or similar buy-back terms to certain international customers who purchase vehicles and who finance their vehicles through one of our specified commercial banking partners. We also offer resale value guarantees in connection with automotive sales to certain leasing partners. Under these programs, we receive full payment for the vehicle sales price at the time of delivery and our counterparty has the option of selling their vehicle back to us during the guarantee period, which currently is generally at the end of the term of the applicable loan or financing program, for a pre-determined resale value.

With the exception of the *Vehicle Sales to Leasing Partners with a Resale Value Guarantee and a Buyback Option* program discussed within the Automotive Leasing section below, we recognize revenue when control transfers upon delivery to customers in accordance with ASC 606 as a sale with a right of return as we do not believe the customer has a significant economic incentive to exercise the resale value guarantee provided to them at contract inception. The process to determine whether there is a significant economic incentive includes a comparison of a vehicle's estimated market value at the time the option is exercisable with the guaranteed resale value to determine the customer's economic incentive to exercise. The performance obligations and the pattern of recognizing automotive sales with resale value guarantees are consistent with automotive sales without resale value guarantees with the exception of our estimate for sales return reserve. Sales return reserves for automotive sales with resale value guarantees are estimated based on historical experience plus consideration for expected future market values. On a quarterly basis, we assess the estimated market values of vehicles under our buyback options program to determine whether there have been changes to the likelihood of future product returns. As we accumulate more data related to the buyback values of our vehicles or as market conditions change, there may be material changes to their estimated values. Due to price adjustments we made to our vehicle offerings during 2020, we estimated that there is a greater likelihood that customers will exercise their buyback options that were provided prior to such adjustments. As a result, along with the estimated variable consideration related to normal future product returns for vehicles sold under the buyback options program, we adjusted our sales return reserve on vehicles previously sold under our buyback options program resulting in a reduction of automotive sales revenues of \$72 million for the year ended December 31, 2020. If customers elect to exercise the buyback option, we expect to be able to subsequently resell the returned vehicles, which resulted in a corresponding reduction in cost of automotive sales of \$42 million for the year ended December 31, 2020. The net impact was \$30 million reduction in gross profit for the year ended December 31, 2020. The total sales return reserve on vehicles previously sold under our buyback options program was \$703 million and \$639 million as of December 31, 2020 and December 31, 2019, respectively, of which \$202 million and \$93 million was short term, respectively.

Deferred revenue activity related to the access to our Supercharger network, internet connectivity, FSD features and over-the-air software updates on automotive sales with and without resale value guarantee consisted of the following (in millions):

	Year ended December 31,	
	2020	2019
Deferred revenue on automotive sales with and without resale value guarantee— beginning of period	\$ 1,472	\$ 883
Additions	724	880
Net changes in liability for pre-existing contracts	56	9
Revenue recognized	(326)	(300)
Deferred revenue on automotive sales with and without resale value guarantee— end of period	\$ 1,926	\$ 1,472

Deferred revenue is equivalent to the total transaction price allocated to the performance obligations that are unsatisfied, or partially unsatisfied, as of December 31, 2020. From the deferred revenue balance as of December 31, 2019, revenue recognized during the year ended December 31, 2020 was \$283 million. From the deferred revenue balance as of December 31, 2018, revenue recognized during the year ended December 31, 2019 was \$220 million. Of the total deferred revenue on automotive sales with and without resale value guarantees as of December 31, 2020, we expect to recognize \$1.13 billion of revenue in the next 12 months. The remaining balance will be recognized over the performance period as discussed above in Automotive Sales without Resale Value Guarantee.

#### Automotive Regulatory Credits

We earn tradable credits in the operation of our automotive business under various regulations related to zero-emission vehicles, greenhouse gas, fuel economy and clean fuel. We sell these credits to other regulated entities who can use the credits to comply with emission standards and other regulatory requirements.

Payments for automotive regulatory credits are typically received at the point control transfers to the customer, or in accordance with payment terms customary to the business. We recognize revenue on the sale of automotive regulatory credits at the time control of the regulatory credits is transferred to the purchasing party as automotive sales revenue in the consolidated statements of operations. Revenue from the sale of automotive regulatory credits totaled \$1.58 billion, \$594 million and \$419 million for the years ended December 31, 2020, 2019 and 2018, respectively. Deferred revenue related to sales of automotive regulatory credits was \$21 million and \$140 million as of December 31, 2020 and 2019, respectively. We expect to recognize the majority of the deferred revenue as of December 31, 2020 in the next 12 months.

#### Automotive Leasing Revenue

##### Direct Vehicle Operating Leasing Program

We have outstanding leases under our direct vehicle operating leasing programs in the U.S., Canada and in certain countries in Europe. Qualifying customers are permitted to lease a vehicle directly from Tesla for up to 48 months. At the end of the lease term, customers are required to return the vehicles to us or for Model S and Model X leases in certain regions, may opt to purchase the vehicles for a pre-determined residual value. We account for these leasing transactions as operating leases. We record leasing revenues to automotive leasing revenue on a straight-line basis over the contractual term, and we record the depreciation of these vehicles to cost of automotive leasing revenue. For the years ended December 31, 2020, 2019 and 2018, we recognized \$752 million, \$532 million and \$393 million of direct vehicle leasing revenue, respectively. As of December 31, 2020 and 2019, we had deferred \$293 million and \$218 million, respectively, of lease-related upfront payments, which will be recognized on a straight-line basis over the contractual terms of the individual leases.

Our policy is to exclude taxes collected from a customer from the transaction price of automotive contracts.

##### Vehicle Sales to Leasing Partners with a Resale Value Guarantee and a Buyback Option

We offered buyback options in connection with automotive sales with resale value guarantees with certain leasing partner sales in the U.S. and where we expected the customer had a significant economic incentive to exercise the resale value guarantee provided to them at contract inception, we continued to recognize these transactions as operating leases. These transactions entailed a transfer of leases, which we had originated with an end-customer, to our leasing partner. As control of the vehicles had not been transferred in accordance with ASC 606, these transactions were accounted for as interest-bearing collateralized borrowings in accordance with ASC 840, *Leases*, prior to January 1, 2019. Under this program, cash was received for the full price of the vehicle and the collateralized borrowing value was generally recorded within resale value guarantees and the customer upfront down payment was recorded within deferred revenue. We amortize the deferred revenue amount to automotive leasing revenue on a straight-line basis over the option period and accrue interest expense based on our borrowing rate. The option period expires at the earlier of the end of the contractual option period or the pay-off of the initial loan. We capitalized vehicles under this program to operating lease vehicles, net, on the consolidated balance sheets, and we record depreciation from these vehicles to cost of automotive leasing revenue during the period the vehicle is under a lease arrangement. Cash received for these vehicles, net of revenue recognized during the period, is classified as collateralized lease (repayments) borrowings within cash flows from financing activities in the consolidated statements of cash flows. Following the adoption of ASC 842 on January 1, 2019, all new agreements under this program are accounted for as operating leases and there was no material change in the timing and amount of revenue recognized over the term. Consequently, any cash flows for new agreements are classified as operating cash activities on the consolidated statements of cash flows.

At the end of the lease term, we settle our liability in cash by either purchasing the vehicle from the leasing partner for the buyback option amount or paying a shortfall to the option amount the leasing partner may realize on the sale of the vehicle. Any remaining balances within deferred revenue and resale value guarantee will be settled to automotive leasing revenue. The end customer can extend the lease for a period of up to 6 months. In cases where the leasing partner retains ownership of the vehicle after the end of our option period, we expense the net value of the leased vehicle to cost of automotive leasing revenue. The maximum amount we could be required to pay under this program, should we decide to repurchase all vehicles, was \$42 million and \$214 million as of December 31, 2020 and 2019, respectively, including \$23 million within a 12-month period from December 31, 2020. As of December 31, 2020 and 2019, we had \$42 million and \$238 million, respectively, of such borrowings recorded in accrued liabilities and other and other long-term liabilities and \$11 million and \$29 million, respectively, recorded in deferred revenue liability. For the years ended December 31, 2020, 2019 and 2018, we recognized \$77 million, \$186 million and \$332 million, respectively, of leasing revenue related to this program. The net carrying amount of operating lease vehicles under this program was \$43 million and \$190 million, respectively, as of December 31, 2020 and 2019.

### Direct Sales-Type Leasing Program

We have outstanding direct leases and vehicles financed by us under loan arrangements accounted for as sales-type leases under ASC 842 in certain countries in Asia and Europe, which we introduced in volume during the third quarter of 2020. Depending on the specific program, customers may or may not have a right to return the vehicle to us during or at the end of the lease term. If the customer does not have a right to return, the customer will take title to the vehicle at the end of the lease term after making all contractual payments. Under the programs for which there is a right to return, the purchase option is reasonably certain to be exercised by the lessee and we therefore expect the customer to take title to the vehicle at the end of the lease term after making all contractual payments. Qualifying customers are permitted to lease a vehicle directly under these programs for up to 48 months. Our loan arrangements under these programs can have terms for up to 72 months. We recognize all revenue and costs associated with the sales-type lease as automotive leasing revenue and automotive leasing cost of revenue, respectively, upon delivery of the vehicle to the customer. Interest income based on the implicit rate in the lease is recorded to automotive leasing revenue over time as customers are invoiced on a monthly basis. For the year ended December 31, 2020, we recognized \$120 million of sales-type leasing revenue and \$87 million of sales-type leasing cost of revenue.

### Services and Other Revenue

Services and other revenue consists of non-warranty after-sales vehicle services, sales of used vehicles, retail merchandise, sales by our acquired subsidiaries to third party customers, and vehicle insurance revenue.

Revenues related to repair and maintenance services are recognized over time as services are provided and extended service plans are recognized over the performance period of the service contract as the obligation represents a stand-ready obligation to the customer. We sell used vehicles, services, service plans, vehicle components and merchandise separately and thus use standalone selling prices as the basis for revenue allocation to the extent that these items are sold in transactions with other performance obligations. Payment for used vehicles, services, and merchandise are typically received at the point when control transfers to the customer or in accordance with payment terms customary to the business. Payments received for prepaid plans are refundable upon customer cancellation of the related contracts and are included within customer deposits on the consolidated balance sheets. Deferred revenue related to services and other revenue was immaterial as of December 31, 2020 and 2019.

### Energy Generation and Storage Segment

#### Energy Generation and Storage Sales

Energy generation and storage sales revenue consists of the sale of solar energy systems and energy storage systems to residential, small commercial, and large commercial and utility grade customers. Energy generation and storage sales revenue also includes revenue from agreements for solar energy systems and power purchase agreements ("PPAs") that commence after January 1, 2019, which is recognized as earned, based on the amount of capacity provided for solar energy systems or electricity delivered for PPAs at the contractual billing rates, assuming all other revenue recognition criteria have been met. Under the practical expedient available under ASC 606-10-55-18, we recognize revenue based on the value of the service which is consistent with the billing amount. Sales of solar energy systems to residential and small scale commercial customers consist of the engineering, design, and installation of the system. Post installation, residential and small scale commercial customers receive a proprietary monitoring system that captures and displays historical energy generation data. Residential and small scale commercial customers pay the full purchase price of the solar energy system upfront. Revenue for the design and installation obligation is recognized when control transfers, which is when we install a solar energy system and the system passes inspection by the utility or the authority having jurisdiction. Revenue for the monitoring service is recognized ratably as a stand-ready obligation over the warranty period of the solar energy system. Sales of energy storage systems to residential and small scale commercial customers consist of the installation of the energy storage system and revenue is recognized when control transfers, which is when the product has been delivered or, if we are performing installation, when installed and commissioned. Payment for such storage systems is made upon invoice or in accordance with payment terms customary to the business.

For large commercial and utility grade solar energy system and energy storage system sales which consist of the engineering, design, and installation of the system, customers make milestone payments that are consistent with contract-specific phases of a project. Revenue from such contracts is recognized over time using the percentage of completion method based on cost incurred as a percentage of total estimated contract costs for energy storage system sales and as a percentage of total estimated labor hours for solar energy system sales. Certain large-scale commercial and utility grade solar energy system and energy storage system sales also include operations and maintenance service which are negotiated with the design and installation contracts and are thus considered to be a combined contract with the design and installation service. For certain large commercial and utility grade solar energy systems and energy storage systems where the percentage of completion method does not apply, revenue is recognized when control transfers, which is when the product has been delivered to the customer and commissioned for energy storage systems and when the project has received permission to operate from the utility for solar energy systems. Operations and maintenance service revenue is recognized ratably over the respective contract term for solar energy system sales and upon delivery of the service for energy storage system sales. Customer payments for such services are usually paid annually or quarterly in advance.



In instances where there are multiple performance obligations in a single contract, we allocate the consideration to the various obligations in the contract based on the relative standalone selling price method. Standalone selling prices are estimated based on estimated costs plus margin or using market data for comparable products. Costs incurred on the sale of residential installations before the solar energy systems are completed are included as work in process within inventory in the consolidated balance sheets. Any fees that are paid or payable by us to a solar loan lender would be recognized as an offset against revenue. Costs to obtain a contract relate mainly to commissions paid to our sales personnel related to the sale of solar energy systems and energy storage systems. As our contract costs related to solar energy system and energy storage system sales are typically fulfilled within one year, the costs to obtain a contract are expensed as incurred.

As part of our solar energy system and energy storage system contracts, we may provide the customer with performance guarantees that warrant that the underlying system will meet or exceed the minimum energy generation or energy performance requirements specified in the contract. In certain instances, we may receive a bonus payment if the system performs above a specified level. Conversely, if a solar energy system or energy storage system does not meet the performance guarantee requirements, we may be required to pay liquidated damages. Other forms of variable consideration related to our large commercial and utility grade solar energy system and energy storage system contracts include variable customer payments that will be made based on our energy market participation activities. Such guarantees and variable customer payments represent a form of variable consideration and are estimated at contract inception at their most likely amount and updated at the end of each reporting period as additional performance data becomes available. Such estimates are included in the transaction price only to the extent that it is probable a significant reversal of revenue will not occur.

We record as deferred revenue any non-refundable amounts that are collected from customers related to fees charged for prepayments and remote monitoring service and operations and maintenance service, which is recognized as revenue ratably over the respective customer contract term. As of December 31, 2020 and 2019, deferred revenue related to such customer payments amounted to \$187 million and \$156 million, respectively. Revenue recognized from the deferred revenue balance as of December 31, 2019 was \$34 million for the year ended December 31, 2020. Revenue recognized from the deferred revenue balance as of December 31, 2018 was \$41 million for the year ended December 31, 2019. We have elected the practical expedient to omit disclosure of the amount of the transaction price allocated to remaining performance obligations for energy generation and storage sales with an original expected contract length of one year or less and the amount that we have the right to invoice when that amount corresponds directly with the value of the performance to date. As of December 31, 2020, total transaction price allocated to performance obligations that were unsatisfied or partially unsatisfied for contracts with an original expected length of more than one year was \$100 million. Of this amount, we expect to recognize \$6 million in the next 12 months and the remaining over a period up to 27 years.

#### Energy Generation and Storage Leasing

For revenue arrangements where we are the lessor under operating lease agreements for energy generation and storage products, we record lease revenue from minimum lease payments, including upfront rebates and incentives earned from such systems, on a straight-line basis over the life of the lease term, assuming all other revenue recognition criteria have been met. The difference between the payments received and the revenue recognized is recorded as deferred revenue or deferred asset on the consolidated balance sheet.

For solar energy systems where customers purchase electricity from us under PPAs prior to January 1, 2019, we have determined that these agreements should be accounted for as operating leases pursuant to ASC 840. Revenue is recognized based on the amount of electricity delivered at rates specified under the contracts, assuming all other revenue recognition criteria are met.

We record as deferred revenue any amounts that are collected from customers, including lease prepayments, in excess of revenue recognized and operations and maintenance service fees, which is recognized as revenue ratably over the respective customer contract term. As of December 31, 2020 and 2019, deferred revenue related to such customer payments amounted to \$206 million and \$226 million, respectively. Deferred revenue also includes the portion of rebates and incentives received from utility companies and various local and state government agencies, which is recognized as revenue over the lease term. As of December 31, 2020 and 2019, deferred revenue from rebates and incentives amounted to \$29 million and \$36 million, respectively.

We capitalize initial direct costs from the execution of agreements for solar energy systems and PPAs, which include the referral fees and sales commissions, as an element of solar energy systems, net, and subsequently amortize these costs over the term of the related agreements.

## Cost of Revenues

### *Automotive Segment*

#### Automotive Sales

Cost of automotive sales revenue includes direct parts, material and labor costs, manufacturing overhead, including depreciation costs of tooling and machinery, shipping and logistic costs, vehicle connectivity costs, allocations of electricity and infrastructure costs related to our Supercharger network, and reserves for estimated warranty expenses. Cost of automotive sales revenues also includes adjustments to warranty expense and charges to write down the carrying value of our inventory when it exceeds its estimated net realizable value and to provide for obsolete and on-hand inventory in excess of forecasted demand.

#### Automotive Leasing

Cost of automotive leasing revenue includes the amortization of operating lease vehicles over the lease term, cost of goods sold associated with direct sales-type leases, as well as warranty expenses related to leased vehicles. Cost of automotive leasing revenue also includes vehicle connectivity costs and allocations of electricity and infrastructure costs related to our Supercharger network for vehicles under our leasing programs.

#### Services and Other

Costs of services and other revenue includes costs associated with providing non-warranty after-sales services, costs to acquire and certify used vehicles, costs for retail merchandise, and costs to provide vehicle insurance. Cost of services and other revenue also includes direct parts, material and labor costs, manufacturing overhead associated with the sales by our acquired subsidiaries to third party customers.

### *Energy Generation and Storage Segment*

#### Energy Generation and Storage

Cost of energy generation and storage revenue includes direct and indirect material and labor costs, warehouse rent, freight, warranty expense, other overhead costs and amortization of certain acquired intangible assets. Cost of energy generation and storage revenue also includes charges to write down the carrying value of our inventory when it exceeds its estimated net realizable value and to provide for obsolete and on-hand inventory in excess of forecasted demand. In agreements for solar energy system and PPAs where we are the lessor, the cost of revenue is primarily comprised of depreciation of the cost of leased solar energy systems, maintenance costs associated with those systems and amortization of any initial direct costs.

## *Leases*

We adopted ASC 842, *Leases*, as of January 1, 2019 using the cumulative effect adjustment approach (“adoption of the new lease standard”). In addition, we elected the package of practical expedients permitted under the transition guidance within the new standard, which allowed us to carry forward the historical determination of contracts as leases, lease classification and not reassess initial direct costs for historical lease arrangements. Accordingly, previously reported financial statements, including footnote disclosures, have not been recast to reflect the application of the new standard to all comparative periods presented. The finance lease classification under ASC 842 includes leases previously classified as capital leases under ASC 840.

## *Research and Development Costs*

Research and development costs are expensed as incurred.

## *Marketing, Promotional and Advertising Costs*

Marketing, promotional and advertising costs are expensed as incurred and are included as an element of selling, general and administrative expense in the consolidated statement of operations. Marketing, promotional and advertising costs were immaterial for the years ended December 31, 2020, 2019 and 2018.

## *Income Taxes*

Income taxes are computed using the asset and liability method, under which deferred tax assets and liabilities are determined based on the difference between the financial statement and tax bases of assets and liabilities using enacted tax rates in effect for the year in which the differences are expected to affect taxable income. Valuation allowances are established when necessary to reduce deferred tax assets to the amount expected to be realized.

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

The Tax Cuts and Jobs Act ("TCJA") subjects a U.S. shareholder to tax on global intangible low-taxed income ("GILTI") earned by certain foreign subsidiaries. Under GAAP, we can make an accounting policy election to either treat taxes due on the GILTI inclusion as a current period expense or factor such amounts into our measurement of deferred taxes. We elected the deferred method, under which we recorded the corresponding deferred tax assets and liabilities on our consolidated balance sheets, currently subject to valuation allowance.

#### *Comprehensive Income (Loss)*

Comprehensive income (loss) is comprised of net income (loss) and other comprehensive income (loss). Other comprehensive income (loss) consists of foreign currency translation adjustments that have been excluded from the determination of net income (loss).

#### *Stock-Based Compensation*

We recognize compensation expense for costs related to all share-based payments, including stock options, restricted stock units ("RSUs") and our employee stock purchase plan (the "ESPP"). The fair value of stock option awards with only service and/or performance conditions is estimated on the grant or offering date using the Black-Scholes option-pricing model. The fair value of RSUs is measured on the grant date based on the closing fair market value of our common stock. Stock-based compensation expense is recognized on a straight-line basis over the requisite service period, net of actual forfeitures in the period.

For performance-based awards, stock-based compensation expense is recognized over the expected performance achievement period of individual performance milestones when the achievement of each individual performance milestone becomes probable. For performance-based awards with a vesting schedule based entirely on the attainment of both performance and market conditions, stock-based compensation expense associated with each tranche is recognized over the longer of (i) the expected achievement period for the operational milestone for such tranche and (ii) the expected achievement period for the related market capitalization milestone determined on the grant date, beginning at the point in time when the relevant operational milestone is considered probable of being achieved. If such operational milestone becomes probable any time after the grant date, we will recognize a cumulative catch-up expense from the grant date to that point in time. If the related market capitalization milestone is achieved earlier than its expected achievement period and the achievement of the related operational milestone, then the stock-based compensation expense will be recognized over the expected achievement period for the operational milestone, which may accelerate the rate at which such expense is recognized. The fair value of such awards is estimated on the grant date using Monte Carlo simulations (see Note 14, *Equity Incentive Plans*).

As we accumulate additional employee stock-based awards data over time and as we incorporate market data related to our common stock, we may calculate significantly different volatilities and expected lives, which could materially impact the valuation of our stock-based awards and the stock-based compensation expense that we will recognize in future periods. Stock-based compensation expense is recorded in cost of revenues, research and development expense and selling, general and administrative expense in the consolidated statements of operations.

### Noncontrolling Interests and Redeemable Noncontrolling Interests

Noncontrolling interests and redeemable noncontrolling interests represent third-party interests in the net assets under certain funding arrangements, or funds, that we enter into to finance the costs of solar energy systems and vehicles under operating leases. We have determined that the contractual provisions of the funds represent substantive profit sharing arrangements. We have further determined that the methodology for calculating the noncontrolling interest and redeemable noncontrolling interest balances that reflects the substantive profit sharing arrangements is a balance sheet approach using the hypothetical liquidation at book value (“HLBV”) method. We, therefore, determine the amount of the noncontrolling interests and redeemable noncontrolling interests in the net assets of the funds at each balance sheet date using the HLBV method, which is presented on the consolidated balance sheet as noncontrolling interests in subsidiaries and redeemable noncontrolling interests in subsidiaries. Under the HLBV method, the amounts reported as noncontrolling interests and redeemable noncontrolling interests in the consolidated balance sheet represent the amounts the third parties would hypothetically receive at each balance sheet date under the liquidation provisions of the funds, assuming the net assets of the funds were liquidated at their recorded amounts determined in accordance with GAAP and with tax laws effective at the balance sheet date and distributed to the third parties. The third parties’ interests in the results of operations of the funds are determined as the difference in the noncontrolling interest and redeemable noncontrolling interest balances in the consolidated balance sheets between the start and end of each reporting period, after taking into account any capital transactions between the funds and the third parties. However, the redeemable noncontrolling interest balance is at least equal to the redemption amount. The redeemable noncontrolling interest balance is presented as temporary equity in the mezzanine section of the consolidated balance sheet since these third parties have the right to redeem their interests in the funds for cash or other assets. For certain funds, there may be significant fluctuations in the ending balance of redeemable noncontrolling interest in subsidiaries and net income (loss) attributable to noncontrolling interests and redeemable noncontrolling interests in subsidiaries due to changes in the liquidation provisions as time-based milestones are reached.

### Net Income (Loss) per Share of Common Stock Attributable to Common Stockholders

Basic net income (loss) per share of common stock attributable to common stockholders is calculated by dividing net income (loss) attributable to common stockholders by the weighted-average shares of common stock outstanding for the period. During the year ended December 31, 2020, we decreased net income attributable to common stockholders by \$31 million to arrive at the numerator used to calculate net income per share. During the year ended December 31, 2019, we increased net loss attributable to common stockholders by \$8 million to arrive at the numerator used to calculate net loss per share. These adjustments represent the difference between the cash we paid to the financing fund investors for their noncontrolling interest in our subsidiaries and the carrying amount of the noncontrolling interest on our consolidated balance sheets, in accordance with ASC 260, *Earnings per Share*. Potentially dilutive shares, which are based on the weighted-average shares of common stock underlying outstanding stock-based awards, warrants and convertible senior notes using the treasury stock method or the if-converted method, as applicable, are included when calculating diluted net income (loss) per share of common stock attributable to common stockholders when their effect is dilutive. Since we intend to settle or have settled in cash the principal outstanding under our 0.25% Convertible Senior Notes due in 2019 (“2019 Notes”), 1.25% Convertible Senior Notes due in 2021 (“2021 Notes”), 2.375% Convertible Senior Notes due in 2022 (“2022 Notes”), 2024 Notes and our subsidiary’s 5.50% Convertible Senior Notes due in 2022, we use the treasury stock method applied using our average share price during the period when calculating their potential dilutive effect, if any. Furthermore, in connection with the offerings of our convertible senior notes, we entered into convertible note hedges and warrants (see Note 12, *Debt*). However, our convertible note hedges are not included when calculating potentially dilutive shares since their effect is always anti-dilutive. Warrants which have a strike price above our average share price during the period were out of the money and were not included in the tables below. Warrants will be included in the weighted-average shares used in computing basic net income (loss) per share of common stock in the period(s) they are settled.

The following table presents the reconciliation of basic to diluted weighted average shares used in computing net income (loss) per share of common stock attributable to common stockholders, as adjusted to give effect to the Stock Split (in millions):

	Year Ended December 31,		
	2020	2019	2018
Weighted average shares used in computing net income (loss) per share of common stock, basic	933	887	853
Add:			
Stock-based awards	66	—	—
Convertible senior notes	47	—	—
Warrants	37	—	—
Weighted average shares used in computing net income (loss) per share of common stock, diluted	<u>1,083</u>	<u>887</u>	<u>853</u>

The following table presents the potentially dilutive shares that were excluded from the computation of diluted net income (loss) per share of common stock attributable to common stockholders, because their effect was anti-dilutive (in millions):

	Year Ended December 31,		
	2020	2019	2018
Stock-based awards	2	50	50
Convertible senior notes	1	5	7
Warrants	—	—	1

#### *Business Combinations*

We account for business acquisitions under ASC 805, *Business Combinations*. The total purchase consideration for an acquisition is measured as the fair value of the assets given, equity instruments issued and liabilities assumed at the acquisition date. Costs that are directly attributable to the acquisition are expensed as incurred. Identifiable assets (including intangible assets), liabilities assumed (including contingent liabilities) and noncontrolling interests in an acquisition are measured initially at their fair values at the acquisition date. We recognize goodwill if the fair value of the total purchase consideration and any noncontrolling interests is in excess of the net fair value of the identifiable assets acquired and the liabilities assumed. We recognize a bargain purchase gain within other income (expense), net, on the consolidated statement of operations if the net fair value of the identifiable assets acquired and the liabilities assumed is in excess of the fair value of the total purchase consideration and any noncontrolling interests. We include the results of operations of the acquired business in the consolidated financial statements beginning on the acquisition date.

#### *Cash and Cash Equivalents*

All highly liquid investments with an original maturity of three months or less at the date of purchase are considered cash equivalents. Our cash equivalents are primarily comprised of money market funds.

#### *Restricted Cash*

We maintain certain cash balances restricted as to withdrawal or use. Our restricted cash is comprised primarily of cash as collateral for our sales to lease partners with a resale value guarantee, letters of credit, real estate leases, insurance policies, credit card borrowing facilities and certain operating leases. In addition, restricted cash includes cash received from certain fund investors that have not been released for use by us and cash held to service certain payments under various secured debt facilities. We record restricted cash as other assets in the consolidated balance sheets and determine current or non-current classification based on the expected duration of the restriction.

Our total cash and cash equivalents and restricted cash, as presented in the consolidated statements of cash flows, was as follows (in millions):

	December 31, 2020	December 31, 2019	December 31, 2018
Cash and cash equivalents	\$ 19,384	\$ 6,268	\$ 3,686
Restricted cash included in prepaid expenses and other current assets	238	246	193
Restricted cash included in other non-current assets	279	269	398
Total as presented in the consolidated statements of cash flows	<u>\$ 19,901</u>	<u>\$ 6,783</u>	<u>\$ 4,277</u>

#### *Accounts Receivable and Allowance for Doubtful Accounts*

Accounts receivable primarily include amounts related to receivables from financial institutions and leasing companies offering various financing products to our customers, sales of energy generation and storage products, sales of regulatory credits to other automotive manufacturers, government rebates already passed through to customers and maintenance services on vehicles owned by leasing companies. We provide an allowance against accounts receivable for the amount we expect to be uncollectible. We write-off accounts receivable against the allowance when they are deemed uncollectible.

Depending on the day of the week on which the end of a fiscal quarter falls, our accounts receivable balance may fluctuate as we are waiting for certain customer payments to clear through our banking institutions and receipts of payments from our financing partners, which can take up to approximately two weeks based on the contractual payment terms with such partners. Our accounts receivable balances associated with our sales of regulatory credits, which are typically transferred to other manufacturers during the last few days of the quarter, is dependent on contractual payment terms. Additionally, government rebates can take up to a year or more to be collected depending on the customary processing timelines of the specific jurisdictions issuing them. These various factors may have a significant impact on our accounts receivable balance from period to period.

#### *MyPower Customer Notes Receivable*

We have customer notes receivable under the legacy MyPower loan program. MyPower was offered by one of our subsidiaries to provide residential customers with the option to finance the purchase of a solar energy system through a 30-year loan. The outstanding balances, net of any allowance for credit losses, are presented on the consolidated balance sheet as a component of prepaid expenses and other current assets for the current portion and as other non-current assets for the long-term portion. We adopted ASC 326, *Financial Instruments - Credit Losses*, on January 1, 2020 on a modified retrospective basis. Under ASC 326, expected credit loss for customer notes receivable are measured on a collective basis and are determined as the difference between the amortized cost basis and the present value of cash flows expected to be collected. In determining expected credit losses, we consider our historical level of credit losses, current economic trends, and reasonable and supportable forecasts that affect the collectability of the future cash flows. We write-off customer notes receivable when they are deemed uncollectible and the amount of potentially uncollectible amounts has been insignificant. Using a modified retrospective approach for the impact upon adoption, we recorded an increase to the allowance for credit losses of \$37 million on January 1, 2020, with an offset to accumulated deficit. As of December 31, 2020 and 2019, the total outstanding balance of MyPower customer notes receivable, net of allowance for credit losses, was \$334 million and \$402 million, respectively, of which \$9 million was due in the next 12 months as of December 31, 2020 and 2019, respectively. As of December 31, 2020, the allowance for credit losses was \$45 million. In addition, there were no material non-accrual or past due customer notes receivable as of December 31, 2020.

#### *Concentration of Risk*

##### *Credit Risk*

Financial instruments that potentially subject us to a concentration of credit risk consist of cash, cash equivalents, restricted cash, accounts receivable, convertible note hedges, and interest rate swaps. Our cash balances are primarily invested in money market funds or on deposit at high credit quality financial institutions in the U.S. These deposits are typically in excess of insured limits. As of December 31, 2020 and 2019, no entity represented 10% or more of our total accounts receivable balance. The risk of concentration for our convertible note hedges and interest rate swaps is mitigated by transacting with several highly-rated multinational banks.

##### *Supply Risk*

We are dependent on our suppliers, the majority of which are single source suppliers, and the inability of these suppliers to deliver necessary components of our products in a timely manner at prices, quality levels and volumes acceptable to us, or our inability to efficiently manage these components from these suppliers, could have a material adverse effect on our business, prospects, financial condition and operating results.

Although all of our manufacturing facilities are operational, and we continue to increase our output and add additional capacity and are working with each of our suppliers and government agencies on meeting, ramping and sustaining our production, our ability to sustain this trajectory depends, among other things, on the readiness and solvency of our suppliers and vendors through any macroeconomic factors resulting from the COVID-19 pandemic.

##### *Inventory Valuation*

Inventories are stated at the lower of cost or net realizable value. Cost is computed using standard cost for vehicles and energy storage products, which approximates actual cost on a first-in, first-out basis. In addition, cost for solar energy systems is recorded using actual cost. We record inventory write-downs for excess or obsolete inventories based upon assumptions about current and future demand forecasts. If our inventory on-hand is in excess of our future demand forecast, the excess amounts are written-off.

We also review our inventory to determine whether its carrying value exceeds the net amount realizable upon the ultimate sale of the inventory. This requires us to determine the estimated selling price of our vehicles less the estimated cost to convert the inventory on-hand into a finished product. Once inventory is written-down, a new, lower cost basis for that inventory is established and subsequent changes in facts and circumstances do not result in the restoration or increase in that newly established cost basis.

Should our estimates of future selling prices or production costs change, additional and potentially material increases to this reserve may be required. A small change in our estimates may result in a material charge to our reported financial results.

### *Operating Lease Vehicles*

Vehicles that are leased as part of our direct vehicle leasing program and vehicles delivered to leasing partners with a resale value guarantee and a buyback option where there is significant economic incentive to exercise at contract inception are classified as operating lease vehicles as the related revenue transactions are treated as operating leases under ASC 842 (refer to the Automotive Leasing Revenue section above for details). Operating lease vehicles are recorded at cost less accumulated depreciation. We generally depreciate their value, less salvage value, using the straight-line-method to cost of automotive leasing revenue over the contractual period. The gross cost of operating lease vehicles as of December 31, 2020 and 2019 was \$3.54 billion and \$2.85 billion, respectively. Operating lease vehicles on the consolidated balance sheets are presented net of accumulated depreciation of \$446 million and \$406 million as of December 31, 2020 and 2019, respectively.

### *Solar Energy Systems, Net*

We are the lessor of solar energy systems. Prior to January 1, 2019, these leases were accounted for as operating leases in accordance with ASC 840. Under ASC 840, to determine lease classification, we evaluated the lease terms to determine whether there was a transfer of ownership or bargain purchase option at the end of the lease, whether the lease term was greater than 75% of the useful life or whether the present value of the minimum lease payments exceeded 90% of the fair value at lease inception. Agreements for solar energy system leases and PPAs that commence after January 1, 2019 no longer meet the definition of a lease upon the adoption of ASC 842 and are instead accounted for in accordance with ASC 606. We utilize periodic appraisals to estimate useful lives and fair values at lease inception and residual values at lease termination. Solar energy systems are stated at cost less accumulated depreciation.

Depreciation and amortization is calculated using the straight-line method over the estimated useful lives of the respective assets, as follows:

Solar energy systems in service	30 to 35 years
Initial direct costs related to customer solar energy system lease acquisition costs	Lease term (up to 25 years)

Solar energy systems pending interconnection will be depreciated as solar energy systems in service when they have been interconnected and placed in-service. Solar energy systems under construction represents systems that are under installation, which will be depreciated as solar energy systems in service when they are completed, interconnected and placed in service. Initial direct costs related to customer solar energy system agreement acquisition costs are capitalized and amortized over the term of the related customer agreements.

### *Property, Plant and Equipment, net*

Property, plant and equipment, net, including leasehold improvements, are recognized at cost less accumulated depreciation. Depreciation is generally computed using the straight-line method over the estimated useful lives of the respective assets, as follows:

Machinery, equipment, vehicles and office furniture	2 to 12 years
Building and building improvements	15 to 30 years
Computer equipment and software	3 to 10 years

Leasehold improvements are depreciated on a straight-line basis over the shorter of their estimated useful lives or the terms of the related leases.

Upon the retirement or sale of our property, plant and equipment, the cost and associated accumulated depreciation are removed from the consolidated balance sheet, and the resulting gain or loss is reflected on the consolidated statement of operations. Maintenance and repair expenditures are expensed as incurred while major improvements that increase the functionality, output or expected life of an asset are capitalized and depreciated ratably over the identified useful life.

Interest expense on outstanding debt is capitalized during the period of significant capital asset construction. Capitalized interest on construction-in-progress is included within property, plant and equipment, net and is amortized over the life of the related assets.

#### *Long-Lived Assets Including Acquired Intangible Assets*

We review our property, plant and equipment, solar energy systems, long-term prepayments and intangible assets for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset (or asset group) may not be recoverable. We measure recoverability by comparing the carrying amount to the future undiscounted cash flows that the asset is expected to generate. If the asset is not recoverable, its carrying amount would be adjusted down to its fair value. For the year ended December 31, 2020, we have recognized no material impairments of our long-lived assets. For the years ended December 31, 2019 and 2018, we have recognized certain impairments of our long-lived assets (refer to Note 22, *Restructuring and Other*, for further details).

Intangible assets with definite lives are amortized on a straight-line basis over their estimated useful lives, which range from one to thirty years.

#### *Goodwill*

We assess goodwill for impairment annually in the fourth quarter, or more frequently if events or changes in circumstances indicate that it might be impaired, by comparing its carrying value to the reporting unit's fair value. For the years ended December 31, 2020, 2019, and 2018, we had not recognized any impairment of goodwill.

#### *Capitalization of Software Costs*

For costs incurred in development of internal use software, we capitalize costs incurred during the application development stage to property, plant and equipment, net on the consolidated balance sheets. Costs related to preliminary project activities and post-implementation activities are expensed as incurred. Internal use software is amortized on a straight-line basis over its estimated useful life of three years. We evaluate the useful lives of these assets on an annual basis, and we test for impairment whenever events or changes in circumstances occur that could impact the recoverability of these assets.

#### *Foreign Currency*

We determine the functional and reporting currency of each of our international subsidiaries and their operating divisions based on the primary currency in which they operate. In cases where the functional currency is not the U.S. dollar, we recognize a cumulative translation adjustment created by the different rates we apply to current period income or loss and the balance sheet. For each subsidiary, we apply the monthly average functional exchange rate to its monthly income or loss and the month-end functional currency rate to translate the balance sheet.

Foreign currency transaction gains and losses are a result of the effect of exchange rate changes on transactions denominated in currencies other than the functional currency. Transaction gains and losses are recognized in other (expense) income, net, in the consolidated statements of operations. For the years ended December 31, 2020, 2019 and 2018, we recorded net foreign currency transaction losses of \$114 million, gains of \$48 million and gains of \$2 million, respectively.



### Warranties

We provide a manufacturer's warranty on all new and used vehicles and a warranty on the installation and components of the energy generation and storage systems we sell for periods typically between 10 to 25 years. We accrue a warranty reserve for the products sold by us, which includes our best estimate of the projected costs to repair or replace items under warranties and recalls when identified. These estimates are based on actual claims incurred to date and an estimate of the nature, frequency and costs of future claims. These estimates are inherently uncertain given our relatively short history of sales, and changes to our historical or projected warranty experience may cause material changes to the warranty reserve in the future. The warranty reserve does not include projected warranty costs associated with our vehicles subject to operating lease accounting and our solar energy systems under lease contracts or PPAs, as the costs to repair these warranty claims are expensed as incurred. The portion of the warranty reserve expected to be incurred within the next 12 months is included within accrued liabilities and other, while the remaining balance is included within other long-term liabilities on the consolidated balance sheets. Warranty expense is recorded as a component of cost of revenues in the consolidated statements of operations. Due to the magnitude of our automotive business, accrued warranty balance was primarily related to our automotive segment. Accrued warranty activity consisted of the following (in millions):

	Year Ended December 31,		
	2020	2019	2018
Accrued warranty—beginning of period	\$ 1,089	\$ 748	\$ 402
Warranty costs incurred	(312)	(250)	(209)
Net changes in liability for pre-existing warranties, including expirations and foreign exchange impact	66	36	(26)
Additional warranty accrued from adoption of ASC 606	—	—	37
Provision for warranty	625	555	544
Accrued warranty—end of period	<u>\$ 1,468</u>	<u>\$ 1,089</u>	<u>\$ 748</u>

### Solar Renewable Energy Credits

We account for Solar Renewable Energy Certificates ("SRECs") when they are purchased by us or sold to third parties. For SRECs generated by solar energy systems owned by us and minted by government agencies, we do not recognize any specifically identifiable costs as there are no specific incremental costs incurred to generate the SRECs. We recognize revenue within the energy generation and storage segment from the sale of an SREC when the SREC is transferred to the buyer, and the cost of the SREC, if any, is then recorded to energy generation and storage cost of revenue.

### Nevada Tax Incentives

In connection with the construction of Gigafactory Nevada, we entered into agreements with the State of Nevada and Storey County in Nevada that provide abatements for specified taxes, discounts to the base tariff energy rates and transferable tax credits of up to \$195.0 million in consideration of capital investment and hiring targets that were met at Gigafactory Nevada. These incentives are available until June 2024 or June 2034, depending on the incentive. As of December 31, 2020 and 2019, we had earned the maximum of \$195 million of transferable tax credits under these agreements.

### Gigafactory Texas Tax Incentives

In connection with the construction of Gigafactory Texas, we entered into a 20-year agreement with Travis County in Texas pursuant to which we would receive grant funding equal to 70-80% of property taxes paid by us to Travis County and a separate 10-year agreement with the Del Valle Independent School District in Texas pursuant to which a portion of the taxable value of our property would be capped at a specified amount, in each case subject to our meeting certain minimum economic development metrics through our construction and operations at Gigafactory Texas. As of December 31, 2020, we had not yet received any grant funding related to property taxes paid to Travis County.

## *Recent Accounting Pronouncements*

### *Recently issued accounting pronouncements not yet adopted*

In December 2019, the FASB issued ASU No. 2019-12, Simplifying the Accounting for Income Taxes, as part of its initiative to reduce complexity in accounting standards. The amendments in the ASU include removing exceptions to incremental intraperiod tax allocation of losses and gains from different financial statement components, exceptions to the method of recognizing income taxes on interim period losses, and exceptions to deferred tax liability recognition related to foreign subsidiary investments. In addition, the ASU requires that entities recognize franchise tax based on an incremental method and requires an entity to evaluate the accounting for step-ups in the tax basis of goodwill as inside or outside of a business combination. The amendments in the ASU are effective for fiscal years beginning after December 15, 2020, including interim periods therein. Early adoption of the standard is permitted, including adoption in interim or annual periods for which financial statements have not yet been issued. We have not early adopted this ASU as of December 31, 2020. The ASU is currently not expected to have a material impact on our consolidated financial statements.

In March 2020, the FASB issued ASU No. 2020-04, Facilitation of the Effects of Reference Rate Reform on Financial Reporting (Topic 848). The ASU provides optional expedients and exceptions for applying GAAP to transactions affected by reference rate (e.g., LIBOR) reform if certain criteria are met, for a limited period of time to ease the potential burden in accounting for (or recognizing the effects of) reference rate reform on financial reporting. The ASU is effective as of March 12, 2020 through December 31, 2022. We will evaluate transactions or contract modifications occurring as a result of reference rate reform and determine whether to apply the optional guidance on an ongoing basis. The ASU is currently not expected to have a material impact on our consolidated financial statements.

In August 2020, the FASB issued ASU 2020-06, Accounting for Convertible Instruments and Contracts in an Entity's Own Equity. The ASU simplifies the accounting for convertible instruments by removing certain separation models in ASC 470-20, Debt—Debt with Conversion and Other Options, for convertible instruments. The ASU updates the guidance on certain embedded conversion features that are not required to be accounted for as derivatives under Topic 815, Derivatives and Hedging, or that do not result in substantial premiums accounted for as paid-in capital, such that those features are no longer required to be separated from the host contract. The convertible debt instruments will be accounted for as a single liability measured at amortized cost. This will also result in the interest expense recognized for convertible debt instruments to be typically closer to the coupon interest rate when applying the guidance in Topic 835, Interest. Further, the ASU made amendments to the EPS guidance in Topic 260 for convertible instruments, the most significant impact of which is requiring the use of the if-converted method for diluted EPS calculation, and no longer allowing the net share settlement method. The ASU also made revisions to Topic 815-40, which provides guidance on how an entity must determine whether a contract qualifies for a scope exception from derivative accounting. The amendments to Topic 815-40 change the scope of contracts that are recognized as assets or liabilities. The ASU is effective for interim and annual periods beginning after December 15, 2021, with early adoption permitted for periods beginning after December 15, 2020. Adoption of the ASU can either be on a modified retrospective or full retrospective basis.

We will adopt the ASU on January 1, 2021 on a modified retrospective basis. The adoption is expected to reduce additional paid in capital and convertible senior notes (mezzanine equity) by approximately \$475 million and \$50 million, respectively for the recombination of the equity conversion component of our convertible debt remaining outstanding, which was initially separated and recorded in equity, remove the remaining debt discounts recorded for this previous separation for approximately \$269 million and reduce property, plant and equipment for previously capitalized interest by approximately \$45 million, as a result. The net effect of these adjustments will be recorded as a reduction in the balance of our opening accumulated deficit as of January 1, 2021.

We currently expect the adoption of the ASU will result in the reduction of non-cash interest expense for the year ending December 31, 2021 and until the affected notes have been settled, before the impact of reduction of our interest capitalization, which is not expected to be material. The reduction of depreciation expense through cost of goods sold is not expected to be material for the year ending December 31, 2021. These reduced expenses will increase the income attributable to common stockholders for both basic and diluted earnings per share. The required use of the if converted method is not expected to have a significant impact on the calculation of common share equivalents included in the measure of our diluted earnings per share for our 2021 Notes, 2022 Notes, 2024 Notes and our subsidiary's 5.50% Convertible Senior Notes due in 2022. The amendments to the derivative accounting guidance are not expected to have a material impact on our consolidated financial statements. The adoption will have no impact on the consolidated statement of cash flows.

#### *Recently adopted accounting pronouncements*

In June 2016, the FASB issued ASU No. 2016-13, Measurement of Credit Losses on Financial Instruments, to require financial assets carried at amortized cost to be presented at the net amount expected to be collected based on historical experience, current conditions and forecasts. Subsequently, the FASB issued ASU No. 2018-19, Codification Improvements to Topic 326, to clarify that receivables arising from operating leases are within the scope of lease accounting standards. Further, the FASB issued ASU No. 2019-04, ASU No. 2019-05, ASU 2019-10, ASU 2019-11, ASU 2020-02 and ASU 2020-03 to provide additional guidance on the credit losses standard. Adoption of the ASUs is on a modified retrospective basis. We adopted the ASUs on January 1, 2020. The ASUs did not have a material impact on our consolidated financial statements. ASU No. 2016-13 applies to all financial assets including loans, trade receivables and any other financial assets not excluded from the scope that have the contractual right to receive cash. The adoption of this ASU did not have any impact except on MyPower customer notes receivable. Refer to MyPower Customer Notes Receivable above for further details.

In January 2017, the FASB issued ASU No. 2017-04, Simplifying the Test for Goodwill Impairment, to simplify the test for goodwill impairment by removing Step 2. An entity will, therefore, perform the goodwill impairment test by comparing the fair value of a reporting unit with its carrying amount and recognizing an impairment charge for the amount by which the carrying amount exceeds the fair value, not to exceed the total amount of goodwill allocated to the reporting unit. An entity still has the option to perform a qualitative assessment to determine if the quantitative impairment test is necessary. We adopted the ASU prospectively on January 1, 2020. The ASU did not have a material impact on our consolidated financial statements.

In August 2018, the FASB issued ASU No. 2018-15, Customer's Accounting for Implementation Costs Incurred in a Cloud Computing Arrangement that Is a Service Contract. The ASU aligns the requirements for capitalizing implementation costs incurred in a hosting arrangement that is a service contract with the requirements for capitalizing implementation costs incurred to develop or obtain internal-use software (and hosting arrangements that include an internal-use software license). We adopted the ASU prospectively on January 1, 2020. The ASU did not have a material impact on our consolidated financial statements.

#### **Note 3 - Business Combinations**

For the year ended December 31, 2020, we completed various acquisitions for which consideration was immaterial on an individual basis and in aggregate.

##### ***Maxwell Acquisition***

On May 16, 2019 (the "Acquisition Date"), we completed our strategic acquisition of Maxwell Technologies, Inc. ("Maxwell"), an energy storage and power delivery products company, for its complementary technology and workforce. Pursuant to the related Agreement and Plan of Merger, each issued and outstanding share of Maxwell common stock was converted into 0.0965 (the "Exchange Ratio") shares of our common stock, as adjusted to give effect to the Stock Split. In addition, Maxwell's stock option awards and restricted stock unit awards were assumed by us and converted into corresponding equity awards in respect of our common stock based on the Exchange Ratio, with the awards retaining the same vesting and other terms and conditions as in effect immediately prior to the acquisition.

##### ***Fair Value of Purchase Consideration***

The Acquisition Date fair value of the purchase consideration was \$207 million (as adjusted to give effect to the Stock Split, 4,514,840 shares issued at \$45.90 per share, the opening price of our common stock on the Acquisition Date).

##### ***Fair Value of Assets Acquired and Liabilities Assumed***

We accounted for the acquisition using the purchase method of accounting for business combinations under ASC 805, Business Combinations. The total purchase price was allocated to the tangible and identifiable intangible assets acquired and liabilities based on their estimated fair values as of the Acquisition Date.

Fair value estimates are based on a complex series of judgments about future events and uncertainties and rely heavily on estimates and assumptions. The judgments used to determine the estimated fair value assigned to each class of assets acquired and liabilities assumed, as well as asset lives and the expected future cash flows and related discount rates, can materially impact our consolidated financial statements. Significant inputs used for the model included the amount of cash flows, the expected period of the cash flows and the discount rates.

The allocation of the purchase price was based on management's estimate of the Acquisition Date fair values of the assets acquired and liabilities assumed, as follows (in millions):

<b>Assets acquired:</b>		
Cash and cash equivalents	\$	32
Accounts receivable		24
Inventory		32
Property, plant and equipment, net		27
Operating lease right-of-use assets		10
Intangible assets		105
Prepaid expenses and other assets, current and non-current		3
Total assets acquired		<u>233</u>
<b>Liabilities and equity assumed:</b>		
Accounts payable		(10)
Accrued liabilities and other		(28)
Debt and finance leases, current and non-current		(44)
Deferred revenue, current		(1)
Other long-term liabilities		(14)
Additional paid-in capital		(8)
Total liabilities and equity assumed		<u>(105)</u>
Net assets acquired		128
Goodwill		79
Total purchase price	\$	<u><u>207</u></u>

Goodwill represented the excess of the purchase price over the fair value of the net assets acquired and was primarily attributable to the expected synergies from integrating Maxwell's technology into our automotive segment as well as the acquired talent. Goodwill is not deductible for U.S. income tax purposes and is not amortized.

#### *Identifiable Intangible Assets Acquired*

The determination of the fair value of identified intangible assets and their respective useful lives were as follows (in millions, except for estimated useful life):

	<u>Fair Value</u>	<u>Useful Life (in years)</u>
Developed technology	\$ 102	9
Customer relations	2	9
Trade name	1	10
Total intangible assets	<u>\$ 105</u>	

Maxwell's results of operations since the Acquisition Date have been included within the automotive segment. Standalone and pro forma results of operations have not been presented because they were not material to the consolidated financial statements.

#### **Other 2019 Acquisitions**

During the year ended December 31, 2019, we completed various other acquisitions generally for the related technology and workforce. Total consideration for these acquisitions was \$96 million, of which \$80 million was paid in cash. In aggregate, \$36 million was attributed to intangible assets, \$51 million was attributed to goodwill within the automotive segment, and \$9 million was attributed to net assets assumed. Goodwill is not deductible for U.S. income tax purposes. The identifiable intangible assets were related to purchased technology, with estimated useful lives of one to nine years.

Standalone and pro forma results of operations have not been presented because they were not material to the consolidated financial statements, either individually or in aggregate.

#### **Note 4 - Goodwill and Intangible Assets**

Goodwill increased \$9 million within the automotive segment from \$198 million as of December 31, 2019 to \$207 million as of December 31, 2020 due to completed business combinations and foreign currency translation adjustments during the year ended December 31, 2020. There were no accumulated impairment losses as of December 31, 2020 and 2019.

Information regarding our intangible assets including assets recognized from our acquisitions was as follows (in millions):

	December 31, 2020				December 31, 2019			
	Gross Carrying Amount	Accumulated Amortization	Other	Net Carrying Amount	Gross Carrying Amount	Accumulated Amortization	Other	Net Carrying Amount
<b>Finite-lived intangible assets:</b>								
Developed technology	\$ 302	\$ (111)	\$ 3	\$ 194	\$ 291	\$ (72)	\$ 1	\$ 220
Trade names	3	(1)	—	2	3	(1)	1	3
Favorable contracts and leases, net	113	(32)	—	81	113	(24)	—	89
Other	38	(18)	1	21	38	(16)	—	22
Total finite-lived intangible assets	456	(162)	4	298	445	(113)	2	334
<b>Indefinite-lived intangible assets:</b>								
Gigafactory Nevada water rights	15	—	—	15	5	—	—	5
In-process research and development ("IPR&D")	—	—	—	—	60	—	(60)	—
Total indefinite-lived intangible assets	15	—	—	15	65	—	(60)	5
Total intangible assets	\$ 471	\$ (162)	\$ 4	\$ 313	\$ 510	\$ (113)	\$ (58)	\$ 339

Amortization expense during the years ended December 31, 2020, 2019 and 2018 was \$51 million, \$44 million and \$66 million, respectively.

Total future amortization expense for finite-lived intangible assets was estimated as follows (in millions):

2021	\$ 51
2022	50
2023	44
2024	29
2025	29
Thereafter	95
Total	\$ 298

#### Note 5 - Fair Value of Financial Instruments

ASC 820, *Fair Value Measurements*, states that fair value is an exit price, representing the amount that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants. As such, fair value is a market-based measurement that should be determined based on assumptions that market participants would use in pricing an asset or a liability. The three-tiered fair value hierarchy, which prioritizes which inputs should be used in measuring fair value, is comprised of: (Level I) observable inputs such as quoted prices in active markets; (Level II) inputs other than quoted prices in active markets that are observable either directly or indirectly and (Level III) unobservable inputs for which there is little or no market data. The fair value hierarchy requires the use of observable market data when available in determining fair value. Our assets and liabilities that were measured at fair value on a recurring basis were as follows (in millions):

	December 31, 2020				December 31, 2019			
	Fair Value	Level I	Level II	Level III	Fair Value	Level I	Level II	Level III
Money market funds (cash and cash equivalents)	\$ 13,847	\$ 13,847	\$ —	\$ —	\$ 1,632	\$ 1,632	\$ —	\$ —
Interest rate swap assets	—	—	—	—	1	—	1	—
Interest rate swap liabilities	58	—	58	—	(27)	—	(27)	—
Total	\$ 13,905	\$ 13,847	\$ 58	\$ —	\$ 1,606	\$ 1,632	\$ (26)	\$ —

All of our money market funds were classified within Level I of the fair value hierarchy because they were valued using quoted prices in active markets. Our interest rate swaps were classified within Level II of the fair value hierarchy because they were valued using alternative pricing sources or models that utilized market observable inputs, including current and forward interest rates.

#### Interest Rate Swaps

We enter into fixed-for-floating interest rate swap agreements to swap variable interest payments on certain debt for fixed interest payments, as required by certain of our lenders. We do not designate our interest rate swaps as hedging instruments. Accordingly, our interest rate swaps are recorded at fair value on the consolidated balance sheets within other non-current assets or other long-term liabilities, with any changes in their fair values recognized as other (expense) income, net, in the consolidated statements of operations and with any cash flows recognized as operating activities in the consolidated statements of cash flows. Our interest rate swaps outstanding were as follows (in millions):

	December 31, 2020			December 31, 2019		
	Aggregate Notional Amount	Gross Asset at Fair Value	Gross Liability at Fair Value	Aggregate Notional Amount	Gross Asset at Fair Value	Gross Liability at Fair Value
Interest rate swaps	\$ 554	\$ —	\$ 58	\$ 821	\$ 1	\$ 27

Our interest rate swaps activity was as follows (in millions):

	Year Ended December 31,					
	2020		2019		2018	
Gross losses	\$	42	\$	51	\$	12
Gross gains	\$	6	\$	11	\$	22

#### Disclosure of Fair Values

Our financial instruments that are not re-measured at fair value include accounts receivable, MyPower customer notes receivable, accounts payable, accrued liabilities, customer deposits and debt. The carrying values of these financial instruments other than our 2021 Notes, 2022 Notes, 2024 Notes, our subsidiary's Zero-Coupon Convertible Senior Notes due in 2020 and our subsidiary's 5.50% Convertible Senior Notes due in 2022 (collectively referred to as "Convertible Senior Notes" below), 5.30% Senior Notes due in 2025 ("2025 Notes"), solar asset-backed notes and solar loan-backed notes approximate their fair values.

We estimate the fair value of the Convertible Senior Notes and the 2025 Notes using commonly accepted valuation methodologies and market-based risk measurements that are indirectly observable, such as credit risk (Level II). In addition, we estimate the fair values of our solar asset-backed notes and solar loan-backed notes based on rates currently offered for instruments with similar maturities and terms (Level III). The following table presents the estimated fair values and the carrying values (in millions):

	December 31, 2020		December 31, 2019	
	Carrying Value	Fair Value	Carrying Value	Fair Value
Convertible Senior Notes	\$ 1,971	\$ 24,596	\$ 3,729	\$ 6,110
2025 Notes	\$ 1,785	\$ 1,877	\$ 1,782	\$ 1,748
Solar asset-backed notes	\$ 1,115	\$ 1,137	\$ 1,155	\$ 1,211
Solar loan-backed notes	\$ 146	\$ 152	\$ 175	\$ 189

#### Note 6 - Inventory

Our inventory consisted of the following (in millions):

	December 31, 2020	December 31, 2019
Raw materials	\$ 1,508	\$ 1,428
Work in process	493	362
Finished goods (1)	1,666	1,356
Service parts	434	406
Total	\$ 4,101	\$ 3,552

- (1) Finished goods inventory includes vehicles in transit to fulfill customer orders, new vehicles available for sale, used vehicles, energy storage products and Solar Roof products available for sale.

For solar energy systems, we commence transferring component parts from inventory to construction in progress, a component of solar energy systems, once a lease or PPA contract with a customer has been executed and installation has been initiated. Additional costs incurred on the leased solar energy systems, including labor and overhead, are recorded within solar energy systems under construction.

We write-down inventory for any excess or obsolete inventories or when we believe that the net realizable value of inventories is less than the carrying value. During the years ended December 31, 2020, 2019 and 2018, we recorded write-downs of \$145 million, \$138 million and \$78 million, respectively, in cost of revenues.

#### Note 7 - Solar Energy Systems, Net

Solar energy systems, net, consisted of the following (in millions):

	December 31, 2020	December 31, 2019
Solar energy systems in service	\$ 6,758	\$ 6,682
Initial direct costs related to customer solar energy system lease acquisition costs	103	102
	<u>6,861</u>	<u>6,784</u>
Less: accumulated depreciation and amortization (1)	(955)	(723)
	<u>5,906</u>	<u>6,061</u>
Solar energy systems under construction	28	18
Solar energy systems pending interconnection	45	59
Solar energy systems, net (2)	<u>\$ 5,979</u>	<u>\$ 6,138</u>

- (1) Depreciation and amortization expense during the years ended December 31, 2020, 2019 and 2018 was \$232 million, \$227 million and \$276 million, respectively.
- (2) As of December 31, 2020 and 2019, solar energy systems, net, included \$36 million of gross finance leased assets with accumulated depreciation and amortization of \$7 million and \$6 million, respectively.

#### Note 8 - Property, Plant and Equipment, Net

Our property, plant and equipment, net, consisted of the following (in millions):

	December 31, 2020	December 31, 2019
Machinery, equipment, vehicles and office furniture	\$ 8,493	\$ 7,167
Tooling	1,811	1,493
Leasehold improvements	1,421	1,087
Land and buildings	3,662	3,024
Computer equipment, hardware and software	856	595
Construction in progress	1,621	764
	<u>17,864</u>	<u>14,130</u>
Less: Accumulated depreciation	(5,117)	(3,734)
Total	<u>\$ 12,747</u>	<u>\$ 10,396</u>

Construction in progress is primarily comprised of construction of Gigafactory Berlin and Gigafactory Texas, expansion of Gigafactory Shanghai and equipment and tooling related to the manufacturing of our products. We are currently constructing Gigafactory Berlin under conditional permits. Completed assets are transferred to their respective asset classes, and depreciation begins when an asset is ready for its intended use. Interest on outstanding debt is capitalized during periods of significant capital asset construction and amortized over the useful lives of the related assets. During the years ended December 31, 2020 and 2019, we capitalized \$48 million and \$31 million, respectively, of interest.

Depreciation expense during the years ended December 31, 2020, 2019 and 2018 was \$1.57 billion, \$1.37 billion and \$1.11 billion, respectively. Gross property, plant and equipment under finance leases as of December 31, 2020 and 2019 was \$2.28 billion and \$2.08 billion, respectively, with accumulated depreciation of \$816 million and \$483 million, respectively.

Panasonic has partnered with us on Gigafactory Nevada with investments in the production equipment that it uses to manufacture and supply us with battery cells. Under our arrangement with Panasonic, we plan to purchase the full output from their production equipment at negotiated prices. As the terms of the arrangement convey a finance lease under ASC 842, Leases, we account for their production equipment as leased assets when production commences. We account for each lease and any non-lease components associated with that lease as a single lease component for all asset classes, except production equipment classes embedded in supply agreements. This results in us recording the cost of their production equipment within property, plant and equipment, net, on the consolidated balance sheets with a corresponding liability recorded to debt and finance leases. Depreciation on Panasonic production equipment is computed using the units-of-production method whereby capitalized costs are amortized over the total estimated productive life of the respective assets. As of December 31, 2020 and 2019, we had cumulatively capitalized costs of \$1.77 billion and \$1.73 billion, respectively, on the consolidated balance sheets in relation to the production equipment under our Panasonic arrangement.

In 2019, the Shanghai government agreed to provide \$85 million of certain incentives in connection with us making certain manufacturing equipment investments at Gigafactory Shanghai, of which \$46 million was received in cash and the remaining \$39 million was in the form of assets and services contributed by the government. In 2020, the Shanghai government agreed to provide an additional \$122 million of such incentives. Of the total incentives provided between both years, \$123 million was received in cash in 2020. Proceeds from the grant must be spent on qualified capital investments at Gigafactory Shanghai as stipulated in the agreement. These incentives were taken as a reduction to property, plant and equipment, net, on the consolidated balance sheets and cash receipts are reflected as investing cash inflows on the consolidated statements of cash flows.

#### Note 9 - Accrued Liabilities and Other

As of December 31, 2020 and 2019, accrued liabilities and other current liabilities consisted of the following (in millions):

	December 31, 2020	December 31, 2019
Accrued purchases (1)	\$ 901	\$ 638
Taxes payable (2)	777	611
Payroll and related costs	654	466
Accrued warranty reserve, current portion	479	344
Sales return reserve, current portion	417	272
Operating lease liabilities, current portion	286	228
Accrued interest	77	86
Resale value guarantees, current portion	23	317
Other current liabilities	241	260
Total	<u>\$ 3,855</u>	<u>\$ 3,222</u>

- (1) Accrued purchases primarily reflects receipts of goods and services that we had not been invoiced yet. As we are invoiced for these goods and services, this balance will reduce and accounts payable will increase.
- (2) Taxes payable includes value added tax, sales tax, property tax, use tax and income tax payables.

#### Note 10 - Other Long-Term Liabilities

As of December 31, 2020 and 2019, other long-term liabilities consisted of the following (in millions):

	December 31, 2020	December 31, 2019
Operating lease liabilities	\$ 1,254	\$ 956
Accrued warranty reserve	989	745
Sales return reserve	500	545
Deferred tax liability	151	66
Resale value guarantees	19	36
Other non-current liabilities	417	343
Total other long-term liabilities	<u>\$ 3,330</u>	<u>\$ 2,691</u>



## Note 11 - Customer Deposits

Customer deposits primarily consisted of cash payments from customers at the time they place an order or reservation for a vehicle or an energy product and any additional payments up to the point of delivery or the completion of installation, including the fair values of any customer trade-in vehicles that are applicable toward a new vehicle purchase. Customer deposits also include prepayments on contracts that can be cancelled without significant penalties, such as vehicle maintenance plans. Customer deposit amounts and timing vary depending on the vehicle model, the energy product and the country of delivery. In the case of a vehicle, customer deposits are fully refundable. In the case of an energy generation or storage product, customer deposits are fully refundable prior to the entry into a purchase agreement or in certain cases for a limited time thereafter (in accordance with applicable laws). Customer deposits are included in current liabilities until refunded or until they are applied towards the customer's purchase balance.

## Note 12 - Debt

The following is a summary of our debt and finance leases as of December 31, 2020 (in millions):

	Net Carrying Value		Unpaid Principal Balance	Unused Committed Amount (1)	Contractual Interest Rates	Contractual Maturity Date
	Current	Long-Term				
<b>Recourse debt:</b>						
2021 Notes	\$ 419	—	422	—	1.25%	March 2021
2022 Notes	115	366	503	—	2.375%	March 2022
2024 Notes	171	856	1,282	—	2.00%	May 2024
2025 Notes	—	1,785	1,800	—	5.30%	August 2025
Credit Agreement	—	1,895	1,895	278	3.3%	July 2023
Solar Bonds and other Loans	4	49	55	—	3.6%-5.8%	January 2021 - January 2031
Total recourse debt	709	4,951	5,957	278		
<b>Non-recourse debt:</b>						
Automotive Asset-backed Notes	777	921	1,705	—	0.6%-7.9%	August 2021-August 2024
Solar Asset-backed Notes	39	1,076	1,141	—	3.0%-7.7%	September 2024-February 2048
China Loan Agreements	—	616	616	1,372	4.0%	June 2021-December 2024
Cash Equity Debt	18	408	439	—	5.3%-5.8%	July 2033-January 2035
Solar Loan-backed Notes	13	133	152	—	4.8%-7.5%	September 2048-September 2049
Warehouse Agreements	37	257	294	806	1.7%-1.8%	September 2022
Solar Term Loan	151	—	151	—	3.7%	January 2021
Automotive Lease-backed Credit Facilities	14	19	33	153	1.9%-5.9%	September 2022-November 2022
Solar Revolving Credit Facility and other Loans	—	81	81	23	2.7%-5.1%	June 2022-February 2033
Total non-recourse debt	1,049	3,511	4,612	2,354		
Total debt	1,758	8,462	\$ 10,569	\$ 2,632		
Finance leases	374	1,094				
Total debt and finance leases	\$ 2,132	\$ 9,556				

The following is a summary of our debt and finance leases as of December 31, 2019 (in millions):

	Net Carrying Value		Unpaid	Unused	Contractual Interest Rates	Contractual Maturity Date
	Current	Long-Term	Principal Balance	Committed Amount (1)		
<b>Recourse debt:</b>						
2021 Notes	\$ —	\$ 1,304	\$ 1,380	\$ —	1.25%	March 2021
2022 Notes	—	902	978	—	2.375%	March 2022
2024 Notes	—	1,383	1,840	—	2.00%	May 2024
2025 Notes	—	1,782	1,800	—	5.3%	August 2025
Credit Agreement	141	1,586	1,727	499	2.7%-4.8%	June 2020-July 2023
Zero-Coupon Convertible Senior Notes due in 2020	97	—	103	—	0.0%	December 2020
Solar Bonds and other Loans	15	53	70	—	3.6%-5.8%	March 2020-January 2031
Total recourse debt	253	7,010	7,898	499		
<b>Non-recourse debt:</b>						
Automotive Asset-backed Notes	573	997	1,577	—	2.0%-7.9%	February 2020- May 2023
Solar Asset-backed Notes	32	1,123	1,183	—	4.0%-7.7%	September 2024-February 2048
China Loan Agreements	444	297	741	1,542	3.7%-4.0%	September 2020-December 2024
Cash Equity Debt	10	430	454	—	5.3%-5.8%	July 2033-January 2035
Solar Loan-backed Notes	11	164	182	—	4.8%-7.5%	September 2048-September 2049
Warehouse Agreements	21	146	167	933	3.1%-3.6%	September 2021
Solar Term Loans	8	152	161	—	5.4%	January 2021
Automotive Lease-backed Credit Facility	24	16	40	—	4.2%-5.9%	November 2022
Solar Revolving Credit Facility and other Loans	23	67	89	6	4.5%-7.4%	March 2020-June 2022
Total non-recourse debt	1,146	3,392	4,594	2,481		
Total debt	1,399	10,402	\$ 12,492	\$ 2,980		
Finance leases	386	1,232				
Total debt and finance leases	\$ 1,785	\$ 11,634				

- (1) There are no restrictions on draw-down or use for general corporate purposes with respect to any available committed funds under our credit facilities and financing funds, except certain specified conditions prior to draw-down, including pledging to our lenders sufficient amounts of qualified receivables, inventories, leased vehicles and our interests in those leases, solar energy systems and the associated customer contracts, our interests in financing funds or various other assets and as may be further described below.

Recourse debt refers to debt that is recourse to our general assets. Non-recourse debt refers to debt that is recourse to only assets of our subsidiaries. The differences between the unpaid principal balances and the net carrying values are due to convertible senior note conversion features, debt discounts or deferred financing costs. As of December 31, 2020, we were in material compliance with all financial debt covenants, which include minimum liquidity and expense-coverage balances and ratios.

### 2021 Notes, Bond Hedges and Warrant Transactions

In March 2014, we issued \$1.20 billion in aggregate principal amount of our 2021 Notes in a public offering. In April 2014, we issued an additional \$180 million in aggregate principal amount of the notes, pursuant to the exercise in full of the overallotment options by the underwriters. The total net proceeds from the issuances, after deducting transaction costs, were \$1.36 billion.

As adjusted to give effect to the Stock Split, each \$1,000 of principal of these notes is now convertible into 13.8940 shares of our common stock, which is equivalent to a conversion price of \$71.97 per share, subject to adjustment upon the occurrence of specified events. Holders of these notes have been able to elect to convert on or after December 1, 2020. The settlement of such an election to convert the outstanding notes would be in cash for the principal amount and, if applicable, cash and/or shares of our common stock for any conversion premium at our election. As of December 1, 2020, holders of these notes have the option to convert. Such holders also had the option to convert prior to December 1, 2020 under the circumstances further described below. Upon the early conversion of the 2021 Notes, we will pay cash for the principal amount and deliver shares of our common stock based on a daily conversion value. If a fundamental change occurs prior to the applicable maturity date, holders of these notes may require us to repurchase all or a portion of their notes for cash at a repurchase price equal to 100% of the principal amount plus any accrued and unpaid interest. In addition, if specific corporate events occur prior to the applicable maturity date, we would increase the conversion rate for a holder who elects to convert their notes in connection with such an event in certain circumstances.

In accordance with GAAP relating to embedded conversion features, we initially valued and bifurcated the conversion features associated with these notes. We recorded to stockholders' equity \$369 million for the conversion feature. The resulting debt discount is being amortized to interest expense at an effective interest rate of 5.96%.

In connection with the offering of these notes in March and April 2014, we entered into convertible note hedge transactions whereby we had the option to purchase 19.2 million shares of our common stock at a price of \$71.97 per share, as adjusted to give effect to the Stock Split. The total cost of the convertible note hedge transactions was \$398 million. In addition, we sold warrants whereby the holders of the warrants have the option to purchase 19.2 million shares of our common stock at a price of \$112.13 per share, as adjusted to give effect to the Stock Split. We received \$257 million in total cash proceeds from the sales of these warrants. Taken together, the purchases of the convertible note hedges and the sales of the warrants are intended to reduce potential dilution and/or cash payments from the conversion of these notes and to effectively increase the overall conversion from \$71.97 to \$112.13 per share, as adjusted to give effect to the Stock Split. As these transactions meet certain accounting criteria, the convertible note hedges and warrants are recorded in stockholders' equity and are not accounted for as derivatives. The net cost incurred in connection with the convertible note hedge and warrant transactions was recorded as a reduction to additional paid-in capital on the consolidated balance sheet.

During each of the quarters of 2020, the closing price of our common stock exceeded 130% of the applicable conversion price of the 2021 Notes on at least 20 of the last 30 consecutive trading days of the quarter, causing the 2021 Notes to be convertible by their holders during the second, third and fourth quarters of 2020. As the settlement of conversion of the 2021 Notes is in cash for the principal amount and, if applicable, cash and/or shares of our common stock for any conversion premium at our election, we reclassified \$3 million, representing the difference between the aggregate principal of our 2021 Notes and the carrying value as of December 31, 2020, as mezzanine equity from permanent equity on our consolidated balance sheet as of December 31, 2020. The debt discounts recorded on the 2021 Notes are recognized as interest expense through March 2021 and early conversions have resulted in the acceleration of such recognition through December 31, 2020, including the losses on extinguishment of debt appearing in the Interest Expense table below.

During the year ended December 31, 2020, \$958 million in aggregate principal amount of the 2021 Notes were converted for \$958 million in cash and 11.1 million shares of our common stock, as adjusted to give effect to the Stock Split. As a result, we recorded a decrease to additional paid-in capital of \$6 million. The note hedges we entered into in connection with the issuance of the 2021 Notes were automatically settled with the respective conversions of the notes, resulting in the receipt of 11.1 million shares of our common stock, as adjusted to give effect to the Stock Split. The related warrants will settle under their terms after the maturity or settlement of the related convertible debt. The remaining notes outstanding are expected to convert in the first quarter of fiscal year 2021. As of December 31, 2020, the if-converted value of the 2021 Notes exceeds the outstanding principal amount by \$3.71 billion.

### ***2022 Notes, Bond Hedges and Warrant Transactions***

In March 2017, we issued \$978 million in aggregate principal amount of our 2022 Notes in a public offering. The net proceeds from the issuance, after deducting transaction costs, were \$966 million.

As adjusted to give effect to the Stock Split, each \$1,000 of principal of the 2022 Notes is convertible into 15.2670 shares of our common stock, which is equivalent to a conversion price of \$65.50 per share, subject to adjustment upon the occurrence of specified events. Holders of the 2022 Notes may convert, at their option, on or after December 15, 2021. Further, holders of the 2022 Notes may convert, at their option, prior to December 15, 2021 only under the following circumstances: (1) during any quarter beginning after June 30, 2017, if the closing price of our common stock for at least 20 trading days (whether or not consecutive) during the last 30 consecutive trading days immediately preceding the quarter is greater than or equal to 130% of the conversion price; (2) during the five-business day period following any five-consecutive trading day period in which the trading price of the 2022 Notes is less than 98% of the product of the closing price of our common stock and the applicable conversion rate for each day during such five-consecutive trading day period or (3) if we make specified distributions to holders of our common stock or if specified corporate transactions occur. Upon a conversion, the 2022 Notes will be settled in cash, shares of our common stock or a combination thereof, at our election. If a fundamental change occurs prior to the maturity date, holders of the 2022 Notes may require us to repurchase all or a portion of their 2022 Notes for cash at a repurchase price equal to 100% of the principal amount plus any accrued and unpaid interest. In addition, if specific corporate events occur prior to the maturity date, we would increase the conversion rate for a holder who elects to convert its 2022 Notes in connection with such an event in certain circumstances.

In accordance with GAAP relating to embedded conversion features, we initially valued and bifurcated the conversion feature associated with the 2022 Notes. We recorded to stockholders' equity \$146 million for the conversion feature. The resulting debt discount is being amortized to interest expense at an effective interest rate of 6.00%.

In connection with the offering of the 2022 Notes, we entered into convertible note hedge transactions whereby we had the option to purchase 14.9 million shares of our common stock at a price of \$65.50 per share as adjusted to give effect to the Stock Split. The cost of the convertible note hedge transactions was \$204 million. In addition, we sold warrants whereby the holders of the warrants have the option to purchase 14.9 million shares of our common stock at a price of \$131.00 per share. We received \$53 million in cash proceeds from the sale of these warrants. Taken together, the purchase of the convertible note hedges and the sale of the warrants are intended to reduce potential dilution from the conversion of the 2022 Notes and to effectively increase the overall conversion price from \$65.50 to \$131.00 per share, as adjusted to give effect to the Stock Split. As these transactions meet certain accounting criteria, the convertible note hedges and warrants are recorded in stockholders' equity and are not accounted for as derivatives. The net cost incurred in connection with the convertible note hedge and warrant transactions was recorded as a reduction to additional paid-in capital on the consolidated balance sheet.

During each of the quarters of 2020, the closing price of our common stock exceeded 130% of the applicable conversion price of the 2022 Notes on at least 20 of the last 30 consecutive trading days of the quarter, causing the 2022 Notes to be convertible by their holders during the second, third and fourth quarters of 2020 and the first quarter of 2021. As we now expect to settle a portion of the 2022 Notes in the first quarter of 2021, we reclassified \$115 million of the carrying value of the 2022 Notes from debt and finance leases, net of current portion to current portion of debt and finance leases on our consolidated balance sheet as of December 31, 2020. Additionally, we reclassified \$5 million, representing the difference between the current portion of aggregate principal of our 2022 Notes and the current portion of the carrying value as of December 31, 2020, as mezzanine equity from permanent equity on our consolidated balance sheet as of December 31, 2020. As the settlement of conversion of the remainder of the 2022 Notes would be in cash, shares of our common stock or a combination thereof is at our election, the remaining liability is classified as non-current. The debt discounts recorded on the 2022 Notes are recognized as interest expense through March 2022 and early conversions have resulted in the acceleration of such recognition through December 31, 2020, including the losses on extinguishment of debt appearing in the Interest Expense table below.

During the year ended December 31, 2020, \$474 million in aggregate principal amount of the 2022 Notes were converted for \$474 million in cash and 6.2 million shares of our common stock, as adjusted to give effect to the Stock Split. As a result, we recorded a decrease to additional paid-in capital of \$5 million. The note hedges we entered into in connection with the issuance of the 2022 Notes were automatically settled with the respective conversions of the 2022 Notes, resulting in the receipt of 6.2 million shares of our common stock, as adjusted to give effect to the Stock Split. The related warrants will settle under their terms after the maturity or settlement of the 2022 Notes. As of December 31, 2020, the if-converted value of the notes exceeds the outstanding principal amount by \$4.92 billion.

#### ***2024 Notes, Bond Hedges and Warrant Transactions***

In May 2019, we issued \$1.84 billion in aggregate principal amount of our 2024 Notes in a public offering. The net proceeds from the issuance, after deducting transaction costs, were \$1.82 billion.

As adjusted to give effect to the Stock Split, each \$1,000 of principal of the 2024 Notes is convertible into 16.1380 shares of our common stock, which is equivalent to a conversion price of \$61.97 per share, subject to adjustment upon the occurrence of specified events. Holders of the 2024 Notes may convert, at their option, on or after February 15, 2024. Further, holders of the 2024 Notes may convert, at their option, prior to February 15, 2024 only under the following circumstances: (1) during any calendar quarter commencing after September 30, 2019 (and only during such calendar quarter), if the last reported sale price of our common stock for at least 20 trading days (whether or not consecutive) during a period of 30 consecutive trading days ending on the last trading day of immediately preceding calendar quarter is greater than or equal to 130% of the conversion price on each trading day; (2) during the five-business day period after any five-consecutive trading day period in which the trading price per \$1,000 principal amount of the 2024 Notes for each trading day of such period is less than 98% of the product of the last reported sale price of our common stock and the conversion rate on each such trading day, or (3) if specified corporate events occur. Upon conversion, the 2024 Notes will be settled in cash, shares of our common stock or a combination thereof, at our election. If a fundamental change occurs prior to the maturity date, holders of the 2024 Notes may require us to repurchase all or a portion of their 2024 Notes for cash at a repurchase price equal to 100% of the principal amount plus any accrued and unpaid interest. In addition, if specific corporate events occur prior to the maturity date, we would increase the conversion rate for a holder who elects to convert its 2024 Notes in connection with such an event in certain circumstances.

In accordance with GAAP relating to embedded conversion features, we initially valued and bifurcated the conversion feature associated with the 2024 Notes. We recorded to stockholders' equity \$491 million for the conversion feature. The resulting debt discount is being amortized to interest expense at an effective interest rate of 8.68%.

In connection with the offering of the 2024 Notes, we entered into convertible note hedge transactions whereby we had the option to purchase 29.7 million shares of our common stock at a price of \$61.97 per share as adjusted to give effect to the Stock Split. The cost of the convertible note hedge transactions was \$476 million. In addition, we sold warrants whereby the holders of the warrants have the option to purchase 29.7 million shares of our common stock at a price of \$121.50 per share, as adjusted to give effect to the Stock Split. We received \$174 million in cash proceeds from the sale of these warrants. Taken together, the purchase of the convertible note hedges and the sale of the warrants are intended to reduce potential dilution from the conversion of the 2024 Notes and to effectively increase the overall conversion price from \$61.97 to \$121.50 per share. As these transactions meet certain accounting criteria, the convertible note hedges and warrants are recorded in stockholders' equity and are not accounted for as derivatives. The net cost incurred in connection with the convertible note hedge and warrant transactions was recorded as a reduction to additional paid-in capital on the consolidated balance sheet.

During each of the quarters of 2020, the closing price of our common stock exceeded 130% of the applicable conversion price of the 2024 Notes on at least 20 of the last 30 consecutive trading days of the quarter, causing the 2024 Notes to be convertible by their holders during the second, third and fourth quarters of 2020 and the first quarter of 2021. As we now expect to settle a portion of the 2024 Notes in the first quarter of 2021, we reclassified \$171 million, of the carrying value of the 2024 Notes from debt and finance leases, net of current portion to current portion of debt and finance leases on our consolidated balance sheet as of December 31, 2020. Additionally, we reclassified \$43 million, representing the difference between the current portion of aggregate principal of our 2024 Notes and the current portion of the carrying value as of December 31, 2020, as mezzanine equity from permanent equity on our consolidated balance sheet as of December 31, 2020. As the settlement of conversion of the remainder of the 2024 Notes would be in cash, shares of our common stock or a combination thereof is at our election, the remaining liability is classified as non-current. The debt discounts recorded on the 2024 Notes are recognized as interest expense through May 2024 and early conversions have resulted in the acceleration of such recognition through December 31, 2020, including the losses on extinguishment of debt appearing in the Interest Expense table below.

During the year ended December 31, 2020, \$558 million in aggregate principal amount of the 2024 Notes were converted for \$558 million in cash and 8.0 million shares of our common stock, as adjusted to give effect to the Stock Split. As a result, we recorded a decrease to additional paid-in capital of \$31 million. The note hedges we entered into in connection with the issuance of the 2024 Notes were automatically settled with the respective conversions of the 2024 Notes, resulting in the receipt of 8.0 million shares of our common stock, as adjusted to give effect to the Stock Split. The related warrants will settle under their terms after the maturity or settlement of the 2024 Notes. As of December 31, 2020, the if-converted value of the notes exceeds the outstanding principal amount by \$13.32 billion.

### ***2025 Notes***

In August 2017, we issued \$1.80 billion in aggregate principal amount of the 2025 Notes pursuant to Rule 144A and Regulation S under the Securities Act. The net proceeds from the issuance, after deducting transaction costs, were \$1.77 billion.

### ***Credit Agreement***

In June 2015, we entered into a senior asset-based revolving credit agreement (as amended from time to time, the "Credit Agreement") with a syndicate of banks. Borrowed funds bear interest, at our option, at an annual rate of (a) 1% plus LIBOR or (b) the highest of (i) the federal funds rate plus 0.50%, (ii) the lenders' "prime rate" or (iii) 1% plus LIBOR. The fee for undrawn amounts is 0.25% per annum. The Credit Agreement is secured by certain of our accounts receivable, inventory and equipment. Availability under the Credit Agreement is based on the value of such assets, as reduced by certain reserves.

In March 2020, we upsized the Credit Agreement by \$100 million, which matures July 2023, to \$2.525 billion. In June 2020, \$197 million of commitment under the Credit Agreement expired in accordance with its terms and the total commitment decreased to \$2.328 billion .

### ***Zero-Coupon Convertible Senior Notes due in 2020***

In December 2015, SolarCity Corporation ("SolarCity") issued \$113 million in aggregate principal amount of Zero-Coupon Convertible Senior Notes due on December 1, 2020 in a private placement. \$13 million of these notes were issued to related parties.

As adjusted to give effect to the Stock Split, each \$1,000 of principal of these notes was convertible into 16.6665 shares of our common stock, which is equivalent to a conversion price of \$60.00 per share (subject to adjustment upon the occurrence of specified events related to dividends, tender offers or exchange offers). The maximum conversion rate is capped at 21.1538 shares for each \$1,000 of principal of these notes, which is equivalent to a minimum conversion price of \$47.27 per share. The convertible senior notes do not have a cash conversion option. The holders of these notes were able to require us to repurchase their notes for cash only under certain defined fundamental changes. On or after June 30, 2017, these notes are redeemable by us in the event that the closing price of our common stock exceeds 200% of the conversion price for 45 consecutive trading days ending within three trading days of such redemption notice at a redemption price equal to 100% of the principal amount plus any accrued and unpaid interest.

During the year ended December 31, 2020, \$103 million in aggregate principal amount of these notes were converted for 1.7 million shares of our common stock, as adjusted to give effect to the Stock Split. As a result, we recorded an increase to additional paid-in capital of \$101 million.

#### ***Solar Bonds and other Loans***

Solar Bonds are senior unsecured obligations that are structurally subordinate to the indebtedness and other liabilities of our subsidiaries. Solar Bonds were issued under multiple series with various terms and interest rates. Additionally, we have assumed the 5.50% Convertible Senior Notes due in 2022 issued by Maxwell (the "Maxwell Notes"), which are convertible into shares of our common stock as a result of our acquisition of Maxwell. As of December 31, 2020, the if-converted value of the Maxwell Notes exceeds the outstanding principal amount by \$447 million.

#### ***Automotive Asset-backed Notes***

From time to time, we transfer receivables or beneficial interests related to certain leased vehicles into special purpose entities ("SPEs") and issue Automotive Asset-backed Notes, backed by these automotive assets to investors. The SPEs are consolidated in the financial statements. The cash flows generated by these automotive assets are used to service the principal and interest payments on the Automotive Asset-backed Notes and satisfy the SPEs' expenses, and any remaining cash is distributed to the owners of the SPEs. We recognize revenue earned from the associated customer lease contracts in accordance with our revenue recognition policy. The SPEs' assets and cash flows are not available to our other creditors, and the creditors of the SPEs, including the Automotive Asset-backed Note holders, have no recourse to our other assets. A third party contracted with us to provide administrative and collection services for these automotive assets.

In August 2020, we transferred beneficial interests related to certain leased vehicles into an SPE and issued \$709 million in aggregate principal amount of Automotive Asset-backed Notes, with terms similar to our other Automotive Asset-backed Notes. The proceeds from the issuance, net of discounts and fees, were \$706 million.

#### ***Solar Asset-backed Notes***

From time to time, our subsidiaries pool and transfer either qualifying solar energy systems and the associated customer contracts or our interests in certain financing funds into SPEs and issue Solar Asset-backed Notes backed by these solar assets or interests to investors. The SPEs are wholly owned by us and are consolidated in the financial statements. The cash flows generated by these solar assets or distributed by the underlying financing funds to certain SPEs are used to service the principal and interest payments on the Solar Asset-backed Notes and satisfy the SPEs' expenses, and any remaining cash is distributed to us. We recognize revenue earned from the associated customer contracts in accordance with our revenue recognition policy. The SPEs' assets and cash flows are not available to our other creditors, and the creditors of the SPEs, including the Solar Asset-backed Note holders, have no recourse to our other assets. We contracted with the SPEs to provide operations & maintenance and administrative services for the solar energy systems. As of December 31, 2020, solar assets pledged as collateral for Solar Asset-backed Notes had a carrying value of \$660 million and are included within solar energy systems, net, on the consolidated balance sheet.

#### ***China Loan Agreements***

In September 2019, one of our subsidiaries entered into a loan agreement with a lender in China for an unsecured 12-month revolving facility of up to RMB 5.0 billion (or the equivalent drawn in U.S. dollars), to finance vehicles in-transit to China (the "In-transit Finance Facility"). Borrowed funds incurred interest at an annual rate no greater than 90% of the one-year rate published by the People's Bank of China. The loan facility is non-recourse to our assets. In September 2020, the In-transit Finance Facility matured.

In December 2019, one of our subsidiaries entered into loan agreements with a syndicate of lenders in China for: (i) a secured term loan facility of up to RMB 9.0 billion or the equivalent amount drawn in U.S. dollars (the “Fixed Asset Facility”) and (ii) an unsecured revolving loan facility of up to RMB 2.25 billion or the equivalent amount drawn in U.S. dollars (the “Working Capital Facility”), in each case to be used in connection with our construction of and production at our Gigafactory Shanghai. Outstanding borrowings pursuant to the Fixed Asset Facility accrue interest at a rate equal to: (i) for RMB-denominated loans, the market quoted interest rate published by the People’s Bank of China minus 0.7625%, and (ii) for U.S. dollar-denominated loans, the sum of one-year LIBOR plus 1.3%. Outstanding borrowings pursuant to the Working Capital Facility incurred interest at a rate equal to the market quoted interest rate published by the People’s Bank of China minus 0.4525 %. The Fixed Asset Facility is secured by certain real property relating to Gigafactory Shanghai and both facilities are non-recourse to our other assets. In December 2020, the Working Capital Facility matured.

In May 2020, one of our subsidiaries entered into an additional Working Capital Loan Contract (the “2020 China Working Capital Facility”) with a lender in China for an unsecured revolving facility of up to RMB 4.00 billion (or the equivalent amount drawn in U.S. dollars), to be used for expenditures related to production at our Gigafactory Shanghai. Borrowed funds bear interest at an annual rate of: (i) for RMB-denominated loans, the market quoted interest rate published by an authority designated by the People’s Bank of China minus 0.35%, (ii) for U.S. dollar-denominated loans, the sum of one-year LIBOR plus 0.8%. The 2020 China Working Capital Facility is non-recourse to our assets and is scheduled to mature in June 2021, the first anniversary of the first borrowing under the loan.

#### ***Cash Equity Debt***

In connection with the cash equity financing deals closed in 2016, our subsidiaries issued \$502 million in aggregate principal amount of debt that bears interest at fixed rates. This debt is secured by, among other things, our interests in certain financing funds and is non-recourse to our other assets.

#### ***Solar Loan-backed Notes***

In January 2016 and January 2017, our subsidiaries pooled and transferred certain MyPower customer notes receivable into two SPEs and issued \$330 million in aggregate principal amount of Solar Loan-backed Notes, backed by these notes receivable to investors. Accordingly, we did not recognize a gain or loss on the transfer of these notes receivable. The SPEs are wholly owned by us and are consolidated in the financial statements. The payments received by the SPEs from these notes receivable are used to service the semi-annual principal and interest payments on the Solar Loan-backed Notes and satisfy the SPEs’ expenses, and any remaining cash is distributed to us. The SPEs’ assets and cash flows are not available to our other creditors, and the creditors of the SPEs, including the Solar Loan-backed Note holders, have no recourse to our other assets.

#### ***Warehouse Agreements***

In August 2016, our subsidiaries entered into a loan and security agreement (as amended from time to time, the “2016 Warehouse Agreement”) for borrowings secured by the future cash flows arising from certain leases and the associated leased vehicles. On August 17, 2017, the 2016 Warehouse Agreement was amended to modify the interest rates and extend the availability period and the maturity date, and our subsidiaries entered into another loan and security agreement (the “2017 Warehouse Agreement”) with substantially the same terms as and that shared the same committed amount with the 2016 Warehouse Agreement. On August 16, 2018, the 2016 Warehouse Agreement and 2017 Warehouse Agreement were amended to extend the availability periods thereunder from August 17, 2018 to August 16, 2019 and extend the maturity dates from September 2019 to September 2020. On December 28, 2018, our subsidiaries terminated the 2017 Warehouse Agreement after having fully repaid all obligations thereunder, and entered into a third loan and security agreement with substantially the same terms as and that shared the same committed amount with the 2016 Warehouse Agreement (the “2018 Warehouse Agreement”). We refer to these agreements together as the “Warehouse Agreements”. Amounts drawn under the Warehouse Agreements generally bear or bore interest at a fixed margin above (i) LIBOR or (ii) the commercial paper rate. The Warehouse Agreements are or were non-recourse to our other assets.

In August 2020, one of our subsidiaries terminated the 2018 Warehouse Agreement after having fully repaid all obligations thereunder, leaving the 2016 Warehouse Agreement as the only remaining Warehouse Agreement. In August 2020, we further amended and restated the 2016 Warehouse Agreement to extend the maturity date to September 2022. The 2016 Warehouse Agreement currently has an aggregate lender commitment of \$1.10 billion, the same amount as the aggregate lender commitment previously shared with the 2018 Warehouse Agreement prior to the termination of the latter.

Pursuant to the Warehouse Agreements, an undivided beneficial interest in the future cash flows arising from certain leases and the related leased vehicles has been sold for legal purposes but continues to be reported in the consolidated financial statements. The interest in the future cash flows arising from these leases and the related vehicles is not available to pay the claims of our creditors other than pursuant to obligations to the lenders under the Warehouse Agreements. Any excess cash flows not required to pay obligations under the Warehouse Agreements are or were available for distributions.

### **Solar Term Loans**

Our subsidiaries have entered into agreements for term loans with various financial institutions. The term loans are secured by substantially all of the assets of the subsidiaries, including its interests in certain financing funds, and are non-recourse to our other assets.

### **Automotive Lease-backed Credit Facilities**

In December 2016, one of our subsidiaries entered into a credit agreement (the "Canada Credit Facility") with a bank for borrowings secured by our interests in certain vehicle leases. In December 2017 and December 2018, the Canada Credit Facility was amended to add our interests in additional vehicle leases as collateral, allowing us to draw additional funds. Amounts drawn under the Canada Credit Facility bear interest at fixed rates. The Canada Credit Facility is non-recourse to our other assets.

In September 2020, an SPE entered into a revolving credit facility with a bank for borrowings secured by the beneficial interests related to certain leased vehicles that we transferred to the SPE. Amounts drawn under this facility bear interest at 1.85% plus LIBOR and are non-recourse to our other assets.

### **Solar Revolving Credit Facility and other Loans**

We have entered into various solar revolving credit facility and other loan agreements with various financial institutions. The solar revolving credit facility is secured by certain assets of the subsidiary and is non-recourse to our other assets.

### **Interest Expense**

The following table presents the interest expense related to the contractual interest coupon, the amortization of debt issuance costs, the amortization of debt discounts and losses on extinguishment of debt on our convertible senior notes with cash conversion features, which include the 1.50% Convertible Senior Notes due in 2018 (matured in June 2018), the 2019 Notes (matured in March 2019), the 2021 Notes, the 2022 Notes and the 2024 Notes (in millions):

	Year Ended December 31,		
	2020	2019	2018
Contractual interest coupon	\$ 73	\$ 65	\$ 43
Amortization of debt issuance costs	7	7	7
Amortization of debt discounts	173	148	123
Losses on extinguishment of debt	105	—	—
Total	<u>\$ 358</u>	<u>\$ 220</u>	<u>\$ 173</u>

### **Pledged Assets**

As of December 31, 2020 and 2019, we had pledged or restricted \$6.04 billion and \$5.72 billion of our assets (consisting principally of restricted cash, receivables, inventory, SRECs, solar energy systems, operating lease vehicles, land use rights, property and equipment, and equity interests in certain SPEs) as collateral for our outstanding debt.

### **Schedule of Principal Maturities of Debt**

The future scheduled principal maturities of debt as of December 31, 2020 were as follows (in millions):

	Recourse debt	Non-recourse debt	Total
2021	\$ 760	\$ 1,058	\$ 1,818
2022	427	1,508	1,935
2023	1,895	511	2,406
2024	1,068	783	1,851
2025	1,804	175	1,979
Thereafter	3	577	580
Total	<u>\$ 5,957</u>	<u>\$ 4,612</u>	<u>\$ 10,569</u>



**Note 13 - Leases**

We have entered into various operating and finance lease agreements for certain of our offices, manufacturing and warehouse facilities, retail and service locations, equipment, vehicles, and solar energy systems, worldwide. We determine if an arrangement is a lease, or contains a lease, at inception and record the leases in our financial statements upon lease commencement, which is the date when the underlying asset is made available for use by the lessor.

We have lease agreements with lease and non-lease components, and have elected to utilize the practical expedient to account for lease and non-lease components together as a single combined lease component, from both a lessee and lessor perspective with the exception of direct sales-type leases and production equipment classes embedded in supply agreements. From a lessor perspective, the timing and pattern of transfer are the same for the non-lease components and associated lease component and, the lease component, if accounted for separately, would be classified as an operating lease.

We have elected not to present short-term leases on the consolidated balance sheet as these leases have a lease term of 12 months or less at lease inception and do not contain purchase options or renewal terms that we are reasonably certain to exercise. All other lease assets and lease liabilities are recognized based on the present value of lease payments over the lease term at commencement date. Because most of our leases do not provide an implicit rate of return, we used our incremental borrowing rate based on the information available at lease commencement date in determining the present value of lease payments.

Our leases, where we are the lessee, often include options to extend the lease term for up to 10 years. Some of our leases also include options to terminate the lease prior to the end of the agreed upon lease term. For purposes of calculating lease liabilities, lease terms include options to extend or terminate the lease when it is reasonably certain that we will exercise such options.

Lease expense for operating leases is recognized on a straight-line basis over the lease term as cost of revenues or operating expenses depending on the nature of the leased asset. Certain operating leases provide for annual increases to lease payments based on an index or rate. We calculate the present value of future lease payments based on the index or rate at the lease commencement date for new leases commencing after January 1, 2019. For historical leases, we used the index or rate as of January 1, 2019. Differences between the calculated lease payment and actual payment are expensed as incurred. Amortization of finance lease assets is recognized over the lease term as cost of revenues or operating expenses depending on the nature of the leased asset. Interest expense on finance lease liabilities is recognized over the lease term in interest expense.

The balances for the operating and finance leases where we are the lessee are presented as follows (in millions) within our consolidated balance sheet:

	<u>December 31, 2020</u>	<u>December 31, 2019</u>
<b>Operating leases:</b>		
Operating lease right-of-use assets	\$ 1,558	\$ 1,218
Accrued liabilities and other	\$ 286	\$ 228
Other long-term liabilities	1,254	956
Total operating lease liabilities	<u>\$ 1,540</u>	<u>\$ 1,184</u>
<b>Finance leases:</b>		
Solar energy systems, net	\$ 29	\$ 30
Property, plant and equipment, net	1,465	1,600
Total finance lease assets	<u>\$ 1,494</u>	<u>\$ 1,630</u>
Current portion of long-term debt and finance leases	\$ 374	\$ 386
Long-term debt and finance leases, net of current portion	1,094	1,232
Total finance lease liabilities	<u>\$ 1,468</u>	<u>\$ 1,618</u>

The components of lease expense are as follows (in millions) within our consolidated statements of operations:

	Year Ended	
	December 31, 2020	December 31, 2019
<b>Operating lease expense:</b>		
Operating lease expense (1)	\$ 451	\$ 426
<b>Finance lease expense:</b>		
Amortization of leased assets	\$ 348	\$ 299
Interest on lease liabilities	100	104
Total finance lease expense	\$ 448	\$ 403
<b>Total lease expense</b>	<b>\$ 899</b>	<b>\$ 829</b>

(1) Includes short-term leases and variable lease costs, which are immaterial.

Other information related to leases where we are the lessee is as follows:

	December 31, 2020	December 31, 2019
<b>Weighted-average remaining lease term:</b>		
Operating leases	6.2 years	6.2 years
Finance leases	4.9 years	3.9 years
<b>Weighted-average discount rate:</b>		
Operating leases	5.8%	6.5%
Finance leases	6.5%	6.5%

Supplemental cash flow information related to leases where we are the lessee is as follows (in millions):

	Year Ended	
	December 31, 2020	December 31, 2019
<b>Cash paid for amounts included in the measurement of lease liabilities:</b>		
Operating cash outflows from operating leases	\$ 456	\$ 396
Operating cash outflows from finance leases (interest payments)	\$ 100	\$ 104
Financing cash outflows from finance leases	\$ 338	\$ 321
Leased assets obtained in exchange for finance lease liabilities	\$ 188	\$ 616
Leased assets obtained in exchange for operating lease liabilities	\$ 553	\$ 202

As of December 31, 2020, the maturities of our operating and finance lease liabilities (excluding short-term leases) are as follows (in millions):

	Operating Leases	Finance Leases
2021	\$ 366	\$ 462
2022	327	446
2023	279	412
2024	245	299
2025	204	9
Thereafter	425	7
Total minimum lease payments	1,846	1,635
Less: Interest	306	167
Present value of lease obligations	1,540	1,468
Less: Current portion	286	374
Long-term portion of lease obligations	\$ 1,254	\$ 1,094

### Operating Lease and Sales-type Lease Receivables

We are the lessor of certain vehicle and solar energy system arrangements as described in Note 2, *Summary of Significant Accounting Policies*. As of December 31, 2020, maturities of our operating lease and sales-type lease receivables from customers for each of the next five years and thereafter were as follows (in millions):

	<b>Operating Leases</b>	<b>Sales-type Leases</b>
2021	\$ 774	\$ 21
2022	594	21
2023	351	21
2024	206	30
2025	191	5
Thereafter	2,102	4
Gross lease receivables	<u>\$ 4,218</u>	<u>\$ 102</u>

The above table does not include vehicle sales to customers or leasing partners with a resale value guarantee as the cash payments were received upfront. For our solar PPA arrangements, customers are charged solely based on actual power produced by the installed solar energy system at a predefined rate per kilowatt-hour of power produced. The future payments from such arrangements are not included in the above table as they are a function of the power generated by the related solar energy systems in the future.

### Net Investment in Sales-type Leases

Net investment in sales-type leases, which is the sum of the present value of the future contractual lease payments, is presented on the consolidated balance sheet as a component of prepaid expenses and other current assets for the current portion and as other assets for the long-term portion. We introduced sales-type leasing programs in volume during the third quarter of 2020 and therefore have no associated balances as of December 31, 2019. Lease receivables relating to sales-type leases are presented on the consolidated balance sheet as follows (in millions):

	<b>December 31, 2020</b>	
Gross lease receivables	\$	102
Unearned interest income		(11)
Net investment in sales-type leases	<u>\$</u>	<u>91</u>
<b>Reported as:</b>		
Prepaid expenses and other current assets	\$	17
Other assets		74
Net investment in sales-type leases	<u>\$</u>	<u>91</u>

### Note 14 - Equity Incentive Plans

In June 2019, we adopted the 2019 Equity Incentive Plan (the "2019 Plan"). The 2019 Plan provides for the grant of stock options, restricted stock, RSUs, stock appreciation rights, performance units and performance shares to our employees, directors and consultants. Stock options granted under the 2019 Plan may be either incentive stock options or nonstatutory stock options. Incentive stock options may only be granted to our employees. Nonstatutory stock options may be granted to our employees, directors and consultants. Generally, our stock options and RSUs vest over four years and our stock options are exercisable over a maximum period of 10 years from their grant dates. Vesting typically terminates when the employment or consulting relationship ends.

As of December 31, 2020, 49.0 million shares were reserved and available for issuance under the 2019 Plan, as adjusted to give effect to the Stock Split.

The following table summarizes our stock option and RSU activity:

	Stock Options				RSUs	
	Number of Options (in thousands)	Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Life (years)	Aggregate Intrinsic Value (in billions)	Number of RSUs (in thousands)	Weighted-Average Grant Date Fair Value
Balance, December 31, 2019 (1)	149,974	\$ 55.90			24,031	\$ 58.21
Granted	4,780	\$ 421.73			6,876	\$ 300.51
Exercised or released	(6,815)	\$ 44.11			(9,620)	\$ 72.26
Cancelled	(1,006)	\$ 68.67			(2,498)	\$ 82.31
Balance, December 31, 2020	<u>146,933</u>	\$ 68.26	6.08	\$ 93.66	<u>18,789</u>	\$ 136.49
Vested and expected to vest, December 31, 2020	101,617	\$ 69.04	5.80	\$ 64.69	18,778	\$ 136.53
Exercisable and vested, December 31, 2020	66,205	\$ 46.88	4.89	\$ 43.61		

(1) Prior period results have been adjusted to give effect to the Stock Split. See Note 1, *Overview*, for details.

The weighted-average grant date fair value of RSUs in the years ended December 31, 2020, 2019 and 2018 was \$300.51, \$56.55 and \$63.29, respectively, as adjusted to give effect to the Stock Split. The aggregate release date fair value of RSUs in the years ended December 31, 2020, 2019 and 2018 was \$3.25 billion, \$502 million and \$546 million, respectively.

The aggregate intrinsic value of options exercised in the years ended December 31, 2020, 2019, and 2018 was \$1.55 billion, \$237 million and \$293 million, respectively.

## ESPP

Our employees are eligible to purchase our common stock through payroll deductions of up to 15% of their eligible compensation, subject to any plan limitations. The purchase price would be 85% of the lower of the fair market value on the first and last trading days of each six-month offering period. During the years ended December 31, 2020, 2019 and 2018, we issued 1.8 million, 2.5 million and 2.0 million shares under the ESPP, as adjusted to give effect to the Stock Split. There were 34.3 million shares available for issuance under the ESPP as of December 31, 2020.

## Fair Value Assumptions

We use the fair value method in recognizing stock-based compensation expense. Under the fair value method, we estimate the fair value of each stock option award with service or service and performance conditions and the ESPP on the grant date generally using the Black-Scholes option pricing model. The weighted-average assumptions used in the Black-Scholes model for stock options are as follows:

	Year Ended December 31,		
	2020	2019	2018
Risk-free interest rate	0.26%	2.4%	2.5%
Expected term (in years)	3.9	4.5	4.7
Expected volatility	69%	48%	42%
Dividend yield	0.0%	0.0%	0.0%
Grant date fair value per share (1)	\$ 216.14	\$ 22.32	\$ 24.38

(1) Prior period results have been adjusted to give effect to the Stock Split. See Note 1, *Overview*, for details.

The fair value of RSUs with service or service and performance conditions is measured on the grant date based on the closing fair market value of our common stock. The risk-free interest rate is based on the U.S. Treasury yield for zero-coupon U.S. Treasury notes with maturities approximating each grant's expected life. We use our historical data in estimating the expected term of our employee grants. The expected volatility is based on the average of the implied volatility of publicly traded options for our common stock and the historical volatility of our common stock.

## 2018 CEO Performance Award

In March 2018, our stockholders approved the Board of Directors' grant of 101.3 million stock option awards to our CEO (the "2018 CEO Performance Award"), as adjusted to give effect to the Stock Split. The 2018 CEO Performance Award consists of 12 vesting tranches with a vesting schedule based entirely on the attainment of both operational milestones (performance conditions) and market conditions, assuming continued employment either as the CEO or as both Executive Chairman and Chief Product Officer and service through each vesting date. Each of the 12 vesting tranches of the 2018 CEO Performance Award will vest upon certification by the Board of Directors that both (i) the market capitalization milestone for such tranche, which begins at \$100.0 billion for the first tranche and increases by increments of \$50.0 billion thereafter (based on both a six calendar month trailing average and a 30 calendar day trailing average, counting only trading days), has been achieved, and (ii) any one of the following eight operational milestones focused on total revenue or any one of the eight operational milestones focused on Adjusted EBITDA have been achieved for the previous four consecutive fiscal quarters on an annualized basis. Adjusted EBITDA is defined as net income (loss) attributable to common stockholders before interest expense, provision (benefit) for income taxes, depreciation and amortization and stock-based compensation. Upon vesting and exercise, including the payment of the exercise price of \$70.01 per share as adjusted to give effect to the Stock Split, our CEO must hold shares that he acquires for five years post-exercise, other than a cashless exercise where shares are simultaneously sold to pay for the exercise price and any required tax withholding.

The achievement status of the operational milestones as of December 31, 2020 was as follows:

Total Annualized Revenue			Annualized Adjusted EBITDA		
Milestone (in billions)		Achievement Status	Milestone (in billions)		Achievement Status
\$	20.0	Achieved and certified	\$	1.5	Achieved and certified
\$	35.0	Probable	\$	3.0	Achieved and certified
\$	55.0	-	\$	4.5	Achieved and certified
\$	75.0	-	\$	6.0	Probable
\$	100.0	-	\$	8.0	Probable
\$	125.0	-	\$	10.0	-
\$	150.0	-	\$	12.0	-
\$	175.0	-	\$	14.0	-

Stock-based compensation under the 2018 CEO Performance Award represents a non-cash expense and is recorded as a selling, general, and administrative operating expense in our consolidated statement of operations. In each quarter since the grant of the 2018 CEO Performance Award, we have recognized expense, generally on a pro-rated basis, for only the number of tranches (up to the maximum of 12 tranches) that corresponds to the number of operational milestones that have been achieved or have been determined probable of being achieved in the future, in accordance with the following principles.

On the grant date, a Monte Carlo simulation was used to determine for each tranche (i) a fixed amount of expense for such tranche and (ii) the future time when the market capitalization milestone for such tranche was expected to be achieved, or its "expected market capitalization milestone achievement time." Separately, based on a subjective assessment of our future financial performance, each quarter we determine whether it is probable that we will achieve each operational milestone that has not previously been achieved or deemed probable of achievement and if so, the future time when we expect to achieve that operational milestone, or its "expected operational milestone achievement time." When we first determine that an operational milestone has become probable of being achieved, we allocate the entire expense for the related tranche over the number of quarters between the grant date and the then-applicable "expected vesting time." The "expected vesting time" at any given time is the later of (i) the expected operational milestone achievement time (if the related operational milestone has not yet been achieved) and (ii) the expected market capitalization milestone achievement time (if the related market capitalization milestone has not yet been achieved). We immediately recognize a catch-up expense for all accumulated expense for the quarters from the grant date through the quarter in which the operational milestone was first deemed probable of being achieved. Each quarter thereafter, we recognize the prorated portion of the then-remaining expense for the tranche based on the number of quarters between such quarter and the then-applicable expected vesting time, except that upon vesting of a tranche, all remaining expense for that tranche is immediately recognized.

As a result, we have experienced, and may experience in the future, significant catch-up expenses in quarters when one or more operational milestones are first determined to be probable of being achieved. Additionally, the expected market capitalization achievement times are generally later than the related expected operational milestone achievement times. Therefore, if market capitalization milestones are achieved earlier than originally forecasted, for example due to periods of rapid stock price appreciation, this has resulted, and may result in the future, in higher catch-up expenses and the remaining expenses being recognized over shorter periods of time at a higher per-quarter rate.

During the three months ended June 30, 2020, the first tranche of the 2018 CEO Performance Award vested upon certification by the Board of Directors that the market capitalization milestone of \$100.0 billion and the operational milestone of \$20.0 billion annualized revenue had been achieved. Therefore, the remaining unamortized expense of \$22 million for that tranche, which was previously expected to be recognized ratably in future quarters as determined on the grant date, was accelerated into the second quarter of 2020. Additionally, the operational milestone of annualized Adjusted EBITDA of \$4.5 billion became probable of being achieved during the second quarter of 2020 and consequently, we recognized a catch-up expense of \$79 million in that quarter.

During the three months ended September 30, 2020, the second and third tranches of the 2018 CEO Performance Award vested upon certification by the Board of Directors that the market capitalization milestones of \$150.0 billion and \$200.0 billion and the operational milestones of annualized Adjusted EBITDA of \$1.5 billion and annualized Adjusted EBITDA of \$3.0 billion had been achieved. Therefore, the remaining unamortized expense of \$95 million and \$118 million associated with the second and third tranches, respectively, which were previously expected to be recognized ratably in future quarters as determined on the grant date were accelerated into the third quarter of 2020. Additionally, the operational milestone of annualized Adjusted EBITDA of \$6.0 billion became probable of being achieved during the third quarter of 2020 and consequently, we recognized a catch-up expense of \$77 million in that quarter.

During the three months ended December 31, 2020, the fourth tranche of the 2018 CEO Performance Award vested upon certification by the Board of Directors that the market capitalization milestone of \$250.0 billion and the operational milestone of annualized Adjusted EBITDA of \$4.5 billion had been achieved. Therefore, the remaining unamortized expense of \$122 million for that tranche, which was previously expected to be recognized ratably in future quarters through the third quarter of 2023 as determined on the grant date, was accelerated into the fourth quarter of 2020. Additionally, during the fourth quarter of 2020, the operational milestone of annualized Adjusted EBITDA of \$8.0 billion became probable of being achieved and consequently, we recognized a catch-up expense of \$75 million in that quarter.

As of December 31, 2020, we had \$264 million of total unrecognized stock-based compensation expense for the operational milestones that were considered either probable of achievement or achieved but not yet certified, which will be recognized over a weighted-average period of 0.6 years. As of December 31, 2020, we had unrecognized stock-based compensation expense of \$712 million for the operational milestones that were considered not probable of achievement. For the years ended December 31, 2020, 2019 and 2018 we recorded stock-based compensation expense of \$838 million, \$296 million and \$175 million related to the 2018 CEO Performance Award.

#### **2014 Performance-Based Stock Option Awards**

In 2014, to create incentives for continued long-term success beyond the Model S program and to closely align executive pay with our stockholders' interests in the achievement of significant milestones by us, the Compensation Committee of our Board of Directors granted stock option awards to certain employees (excluding our CEO) to purchase an aggregate of 5.4 million shares of our common stock, as adjusted to give effect to the Stock Split. Each award consisted of the following four vesting tranches with the vesting schedule based entirely on the attainment of the future performance milestones, assuming continued employment and service through each vesting date:

- 1/4th of each award vests upon completion of the first Model X production vehicle;
- 1/4th of each award vests upon achieving aggregate production of 100,000 vehicles in a trailing 12-month period;
- 1/4th of each award vests upon completion of the first Model 3 production vehicle; and
- 1/4th of each award vests upon achieving an annualized gross margin of greater than 30% for any three-year period.

As of December 31, 2020, the following performance milestones had been achieved:

- Completion of the first Model X production vehicle;
- Completion of the first Model 3 production vehicle; and
- Aggregate production of 100,000 vehicles in a trailing 12-month period.

We begin recognizing stock-based compensation expense as each performance milestone becomes probable of achievement. As of December 31, 2020, we had unrecognized stock-based compensation expense of \$4 million for the performance milestone that was considered not probable of achievement. For the years ended December 31, 2020, 2019 and 2018, we did not record any additional stock-based compensation related to the 2014 Performance-Based Stock Option Awards.

## 2012 CEO Performance Award

In August 2012, our Board of Directors granted 26.4 million stock option awards to our CEO (the "2012 CEO Performance Award"), as adjusted to give effect to the Stock Split. The 2012 CEO Performance Award consists of 10 vesting tranches with a vesting schedule based entirely on the attainment of both performance conditions and market conditions, assuming continued employment and service through each vesting date. Each vesting tranche requires a combination of a pre-determined performance milestone and an incremental increase in our market capitalization of \$4.00 billion, as compared to our initial market capitalization of \$3.20 billion at the time of grant. As of December 31, 2020, the market capitalization conditions for all of the vesting tranches and the following performance milestones had been achieved:

- Successful completion of the Model X alpha prototype;
- Successful completion of the Model X beta prototype;
- Completion of the first Model X production vehicle;
- Aggregate production of 100,000 vehicles;
- Successful completion of the Model 3 alpha prototype;
- Successful completion of the Model 3 beta prototype;
- Completion of the first Model 3 production vehicle;
- Aggregate production of 200,000 vehicles; and
- Aggregate production of 300,000 vehicles.

We begin recognizing stock-based compensation expense as each milestone becomes probable of achievement. As of December 31, 2020, we had unrecognized stock-based compensation expense of \$6 million for the performance milestone that was considered not probable of achievement. For the years ended December 31, 2020 and 2019, we did not record any additional stock-based compensation expense related to the 2012 CEO Performance Award. For the year ended December 31, 2018, the stock-based compensation we recorded related to this award was immaterial.

## Summary Stock-Based Compensation Information

The following table summarizes our stock-based compensation expense by line item in the consolidated statements of operations (in millions):

	Year Ended December 31,		
	2020	2019	2018
Cost of revenues	\$ 281	\$ 128	\$ 109
Research and development	346	285	261
Selling, general and administrative	1,107	482	375
Restructuring and other	—	3	4
Total	\$ 1,734	\$ 898	\$ 749

Our income tax benefits recognized from stock-based compensation arrangements in each of the periods presented were immaterial due to cumulative losses and valuation allowances. During the years ended December 31, 2020, 2019, and 2018, stock-based compensation expense capitalized to our consolidated balance sheets was \$89 million, \$52 million and \$18 million, respectively. As of December 31, 2020, we had \$3.51 billion of total unrecognized stock-based compensation expense related to non-performance awards, which will be recognized over a weighted-average period of 2.7 years.

**Note 15 - Income Taxes**

A provision for income taxes of \$292 million, \$110 million and \$58 million has been recognized for the years ended December 31, 2020, 2019 and 2018, respectively, related primarily to our subsidiaries located outside of the U.S. Our income (loss) before provision for income taxes for the years ended December 31, 2020, 2019 and 2018 was as follows (in millions):

	Year Ended December 31,		
	2020	2019	2018
Domestic	\$ (198)	\$ (287)	\$ (412)
Noncontrolling interest and redeemable noncontrolling interest	141	87	(87)
Foreign	1,211	(465)	(506)
Income (loss) before income taxes	<u>\$ 1,154</u>	<u>\$ (665)</u>	<u>\$ (1,005)</u>

The components of the provision for income taxes for the years ended December 31, 2020, 2019 and 2018 consisted of the following (in millions):

	Year Ended December 31,		
	2020	2019	2018
<b>Current:</b>			
Federal	\$ —	\$ —	\$ (1)
State	4	5	3
Foreign	248	86	24
Total current	<u>252</u>	<u>91</u>	<u>26</u>
<b>Deferred:</b>			
Federal	—	(4)	—
State	—	—	—
Foreign	40	23	32
Total deferred	<u>40</u>	<u>19</u>	<u>32</u>
Total provision for income taxes	<u>\$ 292</u>	<u>\$ 110</u>	<u>\$ 58</u>

Deferred tax assets (liabilities) as of December 31, 2020 and 2019 consisted of the following (in millions):

	December 31, 2020	December 31, 2019
<b>Deferred tax assets:</b>		
Net operating loss carry-forwards	\$ 2,172	\$ 1,846
Research and development credits	624	486
Other tax credits	168	126
Deferred revenue	450	301
Inventory and warranty reserves	315	243
Stock-based compensation	98	102
Operating lease right-of-use liabilities	335	290
Deferred GILTI tax assets	581	—
Accruals and others	205	16
Total deferred tax assets	<u>4,948</u>	<u>3,410</u>
Valuation allowance	(2,930)	(1,956)
Deferred tax assets, net of valuation allowance	2,018	1,454
<b>Deferred tax liabilities:</b>		
Depreciation and amortization	(1,488)	(1,185)
Investment in certain financing funds	(198)	(17)
Operating lease right-of-use assets	(305)	(263)
Deferred revenue	(50)	—
Other	(61)	(24)
Total deferred tax liabilities	<u>(2,102)</u>	<u>(1,489)</u>
Deferred tax liabilities, net of valuation allowance and deferred tax assets	<u>\$ (84)</u>	<u>\$ (35)</u>



As of December 31, 2020, we recorded a valuation allowance of \$2.93 billion for the portion of the deferred tax asset that we do not expect to be realized. The valuation allowance on our net deferred taxes increased by \$974 million, increased by \$150 million, and decreased by \$38 million during the years ended December 31, 2020, 2019 and 2018, respectively. The changes in valuation allowance are primarily due to additional U.S. deferred tax assets and liabilities incurred in the respective year. We have net \$260 million of deferred tax assets in foreign jurisdictions, which management believes are more-likely-than-not to be fully realized given the expectation of future earnings in these jurisdictions. We did not have material release of valuation allowance for the years ended December 31, 2020, 2019 and 2018. We continue to monitor the realizability of the U.S. deferred tax assets taking into account multiple factors, including the results of operations and magnitude of excess tax deductions for stock-based compensation. We intend to continue maintaining a full valuation allowance on our U.S. deferred tax assets until there is sufficient evidence to support the reversal of all or some portion of these allowances. Given the improvement in our operating results and depending on the amount of stock-based compensation tax deduction available in the future, we may release the valuation allowance associated with the U.S. deferred tax assets in the next few years. Release of all, or a portion, of the valuation allowance would result in the recognition of certain deferred tax assets and a decrease to income tax expense for the period the release is recorded.

The reconciliation of taxes at the federal statutory rate to our provision for income taxes for the years ended December 31, 2020, 2019 and 2018 was as follows (in millions):

	Year Ended December 31,		
	2020	2019	2018
Tax at statutory federal rate	\$ 242	\$ (139)	\$ (211)
State tax, net of federal benefit	4	5	3
Nondeductible executive compensations	184	62	39
Other nondeductible expenses	52	32	26
Excess tax benefits related to stock based compensation	(666)	(7)	(44)
Foreign income rate differential	33	189	161
U.S. tax credits	(181)	(107)	(80)
Noncontrolling interests and redeemable noncontrolling interests adjustment	5	(29)	32
GILTI inclusion	133	—	—
Convertible debt	—	(4)	—
Unrecognized tax benefits	1	17	1
Change in valuation allowance	485	91	131
Provision for income taxes	<u>\$ 292</u>	<u>\$ 110</u>	<u>\$ 58</u>

As of December 31, 2020, we had \$9.65 billion of federal and \$6.60 billion of state net operating loss carry-forwards available to offset future taxable income, which will not begin to significantly expire until 2024 for federal and 2031 for state purposes. A portion of these losses were generated by SolarCity and some of the companies we acquired, and therefore are subject to change of control provisions, which limit the amount of acquired tax attributes that can be utilized in a given tax year. We do not expect these change of control limitations to significantly impact our ability to utilize these attributes.

As of December 31, 2020, we had research and development tax credits of \$417 million and \$373 million for federal and state income tax purposes, respectively. If not utilized, the federal research and development tax credits will expire in various amounts beginning in 2024. However, the state of California research and development tax credits can be carried forward indefinitely. In addition, we have other general business tax credits of \$167 million for federal income tax purposes, which will not begin to significantly expire until 2033.

Federal and state laws can impose substantial restrictions on the utilization of net operating loss and tax credit carry-forwards in the event of an "ownership change," as defined in Section 382 of the Internal Revenue Code. We have determined that no significant limitation would be placed on the utilization of our net operating loss and tax credit carry-forwards due to prior ownership changes.

The local government of Shanghai granted a beneficial corporate income tax rate of 15% to certain eligible enterprises, compared to the 25% statutory corporate income tax rate in China. Our Gigafactory Shanghai subsidiary was granted this beneficial income tax rate of 15% for 2019 through 2023.

No deferred tax liabilities for foreign withholding taxes have been recorded relating to the earnings of our foreign subsidiaries since all such earnings are intended to be indefinitely reinvested. The amount of the unrecognized deferred tax liability associated with these earnings is immaterial.

## Uncertain Tax Positions

The changes to our gross unrecognized tax benefits were as follows (in millions):

December 31, 2017	\$	199
Decreases in balances related to prior year tax positions		(6)
Increases in balances related to current year tax positions		60
December 31, 2018		253
Decreases in balances related to prior year tax positions		(39)
Increases in balances related to current year tax positions		59
December 31, 2019		273
Increases in balances related to prior year tax positions		66
Increases in balances related to current year tax positions		41
December 31, 2020	\$	380

As of December 31, 2020, accrued interest and penalties related to unrecognized tax benefits are classified as income tax expense and were immaterial. Unrecognized tax benefits of \$353 million, if recognized, would not affect our effective tax rate since the tax benefits would increase a deferred tax asset that is currently fully offset by a full valuation allowance.

We file income tax returns in the U.S., California and various state and foreign jurisdictions. We are currently under examination by the IRS for the years 2015 to 2018. Additional tax years within the period 2004 to 2014 and 2019 remain subject to examination for federal income tax purposes, and tax years 2004 to 2019 remain subject to examination for California income tax purposes. All net operating losses and tax credits generated to date are subject to adjustment for U.S. federal and California income tax purposes. Tax years 2008 to 2019 remain subject to examination in other U.S. state and foreign jurisdictions.

The potential outcome of the current examination could result in a change to unrecognized tax benefits within the next twelve months. However, we cannot reasonably estimate possible adjustments at this time.

The U.S. Tax Court issued a decision in *Altera Corp v. Commissioner* related to the treatment of stock-based compensation expense in a cost-sharing arrangement. On June 7, 2019, the Ninth Circuit Court of Appeals (Ninth Circuit) reversed the Tax Court decision and upheld the validity of Treas. Reg. Section 1.482-7A(d)(2), requiring stock-based compensation costs be included in the costs shared under a cost sharing agreement. On June 22, 2020, the U.S. Supreme Court denied to review the Ninth Circuit decision. Prior to the U.S. Supreme Court's denial, Tesla has already included stock-based compensation in cost sharing allocation agreement and hence retains its position.

## Note 16 - Commitments and Contingencies

### *Operating Lease Arrangement in Buffalo, New York*

We have an operating lease through the Research Foundation for the State University of New York (the "SUNY Foundation") with respect to Gigafactory New York. Under the lease and a related research and development agreement, we are continuing to designate further buildouts at the facility. The SUNY Foundation covered (i) construction costs related to the manufacturing facility up to \$350 million, (ii) the acquisition and commissioning of the manufacturing equipment in an amount up to \$275 million and (iii) \$125 million for additional specified scope costs, in cases (i) and (ii) only, subject to the maximum funding allocation from the State of New York; and we were responsible for any construction or equipment costs in excess of such amounts. The SUNY Foundation owns the manufacturing facility and the manufacturing equipment purchased by the SUNY Foundation. Following completion of the manufacturing facility, we have commenced leasing of the manufacturing facility and the manufacturing equipment owned by the SUNY Foundation for an initial period of 10 years, with an option to renew, for \$2.00 per year plus utilities.

Under this agreement, we are obligated to, among other things, meet employment targets as well as specified minimum numbers of personnel in the State of New York and in Buffalo, New York and spend or incur \$5.00 billion in combined capital, operational expenses, costs of goods sold and other costs in the State of New York during the 10-year period beginning April 30, 2018. On an annual basis during the initial lease term, as measured on each anniversary of such date, if we fail to meet these specified investment and job creation requirements, then we would be obligated to pay a \$41 million "program payment" to the SUNY Foundation for each year that we fail to meet these requirements. Furthermore, if the arrangement is terminated due to a material breach by us, then additional amounts may become payable by us.

As we temporarily suspended most of our manufacturing operations at Gigafactory New York pursuant to a New York State executive order issued in March 2020 as a result of the COVID-19 pandemic, we were granted a one-year deferral of our obligation to be compliant with our applicable targets under such agreement on April 30, 2020, which was memorialized in an amendment to our agreement with the SUNY Foundation in July 2020. Moreover, we had exceeded our investment and employment obligations under this agreement prior to such mandated reduction of operations. We do not currently expect any issues meeting all applicable future obligations under this agreement. However, if our expectations as to the costs and timelines of our investment and operations at Buffalo or our production ramp of the Solar Roof prove incorrect, we may incur additional expenses or substantial payments to the SUNY Foundation.

### ***Operating Lease Arrangement in Shanghai, China***

We have an operating lease arrangement for an initial term of 50 years with the local government of Shanghai for land use rights where we are constructing Gigafactory Shanghai. Under the terms of the arrangement, we are required to spend RMB 14.08 billion in capital expenditures, and to generate RMB 2.23 billion of annual tax revenues starting at the end of 2023. If we are unwilling or unable to meet such target or obtain periodic project approvals, in accordance with the Chinese government's standard terms for such arrangements, we would be required to revert the site to the local government and receive compensation for the remaining value of the land lease, buildings and fixtures. We believe the capital expenditure requirement and the tax revenue target will be attainable even if our actual vehicle production was far lower than the volumes we are forecasting.

### ***Legal Proceedings***

#### ***Securities Litigation Relating to the SolarCity Acquisition***

Between September 1, 2016 and October 5, 2016, seven lawsuits were filed in the Delaware Court of Chancery by purported stockholders of Tesla challenging our acquisition of SolarCity Corporation ("SolarCity"). Following consolidation, the lawsuit names as defendants the members of Tesla's board of directors as then constituted and alleges, among other things, that board members breached their fiduciary duties in connection with the acquisition. The complaint asserts both derivative claims and direct claims on behalf of a purported class and seeks, among other relief, unspecified monetary damages, attorneys' fees, and costs. On January 27, 2017, defendants filed a motion to dismiss the operative complaint. Rather than respond to the defendants' motion, the plaintiffs filed an amended complaint. On March 17, 2017, defendants filed a motion to dismiss the amended complaint. On December 13, 2017, the Court heard oral argument on the motion. On March 28, 2018, the Court denied defendants' motion to dismiss. Defendants filed a request for interlocutory appeal, and the Delaware Supreme Court denied that request without ruling on the merits but electing not to hear an appeal at this early stage of the case. Defendants filed their answer on May 18, 2018, and mediations were held on June 10, 2019. Plaintiffs and defendants filed respective motions for summary judgment on August 25, 2019, and further mediations were held on October 3, 2019. The Court held a hearing on the motions for summary judgment on November 4, 2019. On January 22, 2020, all of the director defendants except Elon Musk reached a settlement to resolve the lawsuit against them for an amount that would be paid entirely under the applicable insurance policy. The settlement, which does not involve an admission of any wrongdoing by any party, was approved by the Court on August 17, 2020. Tesla received payment of approximately \$43 million on September 16, 2020, which has been recognized in our consolidated statement of operations as a reduction to selling, general and administrative operating expenses for costs previously incurred in the securities litigation related to the acquisition of SolarCity. On February 4, 2020, the Court issued a ruling that denied plaintiffs' previously-filed motion and granted in part and denied in part defendants' previously-filed motion. Fact and expert discovery is complete, and the case was set for trial in March 2020 until it was postponed by the Court due to safety precautions concerning COVID-19. The current tentative dates for the trial are from July 12 to July 23, 2021, subject to change based on any further safety measures implemented by the Court.

These plaintiffs and others filed parallel actions in the U.S. District Court for the District of Delaware on or about April 21, 2017. They include claims for violations of the federal securities laws and breach of fiduciary duties by Tesla's board of directors. Those actions have been consolidated and stayed pending the above-referenced Chancery Court litigation.

We believe that claims challenging the SolarCity acquisition are without merit and intend to defend against them vigorously. We are unable to estimate the possible loss or range of loss, if any, associated with these claims.

#### *Securities Litigation Relating to Production of Model 3 Vehicles*

On October 10, 2017, a purported stockholder class action was filed in the U.S. District Court for the Northern District of California against Tesla, two of its current officers, and a former officer. The complaint alleges violations of federal securities laws and seeks unspecified compensatory damages and other relief on behalf of a purported class of purchasers of Tesla securities from May 4, 2016 to October 6, 2017. The lawsuit claims that Tesla supposedly made materially false and misleading statements regarding Tesla's preparedness to produce Model 3 vehicles. Plaintiffs filed an amended complaint on March 23, 2018, and defendants filed a motion to dismiss on May 25, 2018. The court granted defendants' motion to dismiss with leave to amend. Plaintiffs filed their amended complaint on September 28, 2018, and defendants filed a motion to dismiss the amended complaint on February 15, 2019. The hearing on the motion to dismiss was held on March 22, 2019, and on March 25, 2019, the Court ruled in favor of defendants and dismissed the complaint with prejudice. On April 8, 2019, plaintiffs filed a notice of appeal and on July 17, 2019 filed their opening brief. We filed our opposition on September 16, 2019. A hearing on the appeal before the U.S. Court of Appeals for the Ninth Circuit ("Ninth Circuit") was held on April 30, 2020. On January 26, 2021, the Ninth Circuit affirmed the District Court's dismissal of the stockholder claims. We continue to believe that the claims are without merit and intend to defend against this lawsuit vigorously. We are unable to estimate the possible loss or range of loss, if any, associated with this lawsuit.

On October 26, 2018, in a similar action, a purported stockholder class action was filed in the Superior Court of California in Santa Clara County against Tesla, Elon Musk, and seven initial purchasers in an offering of debt securities by Tesla in August 2017. The complaint alleges misrepresentations made by Tesla regarding the number of Model 3 vehicles Tesla expected to produce by the end of 2017 in connection with such offering and seeks unspecified compensatory damages and other relief on behalf of a purported class of purchasers of Tesla securities in such offering. Tesla thereafter removed the case to federal court. On January 22, 2019, plaintiff abandoned its effort to proceed in state court, instead filing an amended complaint against Tesla, Elon Musk and seven initial purchasers in the debt offering before the same judge in the U.S. District Court for the Northern District of California who is hearing the above-referenced earlier filed federal case. On February 5, 2019, the Court stayed this new case pending a ruling on the motion to dismiss the complaint in such earlier filed federal case. After such earlier filed federal case was dismissed, defendants filed a motion on July 2, 2019 to dismiss this case as well. This case is now stayed pending a ruling from the Ninth Circuit on the earlier filed federal case with an agreement that if defendants prevail on appeal in such case, this case will be dismissed. We believe that the claims are without merit and intend to defend against this lawsuit vigorously. We are unable to estimate the possible loss or range of loss, if any, associated with this lawsuit.

#### *Litigation Relating to 2018 CEO Performance Award*

On June 4, 2018, a purported Tesla stockholder filed a putative class and derivative action in the Delaware Court of Chancery against Elon Musk and the members of Tesla's board of directors as then constituted, alleging corporate waste, unjust enrichment, and that such board members breached their fiduciary duties by approving the stock-based compensation plan. The complaint seeks, among other things, monetary damages and rescission or reformation of the stock-based compensation plan. On August 31, 2018, defendants filed a motion to dismiss the complaint; plaintiff filed its opposition brief on November 1, 2018 and defendants filed a reply brief on December 13, 2018. The hearing on the motion to dismiss was held on May 9, 2019. On September 20, 2019, the Court granted the motion to dismiss as to the corporate waste claim but denied the motion as to the breach of fiduciary duty and unjust enrichment claims. Our answer was filed on December 3, 2019, and trial is set for April 2022. Fact discovery is ongoing. We believe the claims asserted in this lawsuit are without merit and intend to defend against them vigorously. We are unable to estimate the possible loss or range of loss, if any, associated with this lawsuit.

#### *Litigation Related to Directors' Compensation*

On June 17, 2020, a purported Tesla stockholder filed a derivative action in the Delaware Court of Chancery, purportedly on behalf of Tesla, against certain of Tesla's current and former directors regarding compensation awards granted to Tesla's directors, other than Elon Musk, between 2017 and 2020. The suit asserts claims for breach of fiduciary duty and unjust enrichment and seeks declaratory and injunctive relief, unspecified damages, and other relief. Defendants filed their answer on September 17, 2020. Trial is set for September 2022, and fact discovery is ongoing. We believe that the claims are without merit and intend to defend against this lawsuit vigorously. We are unable to estimate the possible loss or range of loss, if any, associated with this lawsuit.

### *Securities Litigation Relating to Potential Going Private Transaction*

Between August 10, 2018 and September 6, 2018, nine purported stockholder class actions were filed against Tesla and Elon Musk in connection with Mr. Musk's August 7, 2018 Twitter post that he was considering taking Tesla private. All of the suits are now pending in the U.S. District Court for the Northern District of California. Although the complaints vary in certain respects, they each purport to assert claims for violations of federal securities laws related to Mr. Musk's statement and seek unspecified compensatory damages and other relief on behalf of a purported class of purchasers of Tesla's securities. Plaintiffs filed their consolidated complaint on January 16, 2019 and added as defendants the members of Tesla's board of directors. The now-consolidated purported stockholder class action was stayed while the issue of selection of lead counsel was briefed and argued before the Ninth Circuit. The Ninth Circuit ruled regarding lead counsel. Defendants filed a motion to dismiss the complaint on November 22, 2019. The hearing on the motion was held on March 6, 2020. On April 15, 2020, the Court denied defendants' motion to dismiss. The parties stipulated to certification of a class of stockholders, which the court granted on November 25, 2020. Trial is set for May 2022. We believe that the claims have no merit and intend to defend against them vigorously. We are unable to estimate the potential loss, or range of loss, associated with these claims.

Between October 17, 2018 and November 9, 2018, five derivative lawsuits were filed in the Delaware Court of Chancery against Mr. Musk and the members of Tesla's board of directors as then constituted in relation to statements made and actions connected to a potential going private transaction. In addition to these cases, on October 25, 2018, another derivative lawsuit was filed in the U.S. District Court for the District of Delaware against Mr. Musk and the members of the Tesla board of directors as then constituted. The Courts in both the Delaware federal court and Delaware Court of Chancery actions have consolidated their respective actions and stayed each consolidated action pending resolution of the above-referenced consolidated purported stockholder class action. We believe that the claims have no merit and intend to defend against them vigorously. We are unable to estimate the potential loss or range of loss, if any, associated with these lawsuits.

Beginning on March 7, 2019, various stockholders filed derivative suits in the Delaware Court of Chancery, purportedly on behalf of Tesla, naming Mr. Musk and Tesla's board of directors as then constituted, also related to Mr. Musk's August 7, 2018 Twitter post that is the basis of the above-referenced consolidated purported stockholder class action, as well as to Mr. Musk's February 19, 2019 Twitter post regarding Tesla's vehicle production. The suit asserts claims for breach of fiduciary duty and seeks declaratory and injunctive relief, unspecified damages, and other relief. Plaintiffs agreed to a stipulation that these derivative cases would be stayed pending the outcome of the above-referenced consolidated purported stockholder class action. In March 2019, plaintiffs in one of these derivative suits moved to lift the stay and for an expedited trial. Briefs were filed on March 13, 2019, and the hearing was held on March 18, 2019. Defendants prevailed, with the Court denying the plaintiffs' request for an expedited trial and granting defendants' request to continue to stay this suit pending the outcome of the above-referenced consolidated purported stockholder class action. On May 4, 2020, the same plaintiffs again filed a motion requesting to lift the stay and for an expedited trial. Briefs were filed on May 13, 2020 and May 15, 2020 and a hearing was held on May 19, 2020. Defendants again prevailed, with the Court denying plaintiffs' request to lift the stay and for an expedited trial. The plaintiffs also sought leave to file an amended complaint, which was granted. The Court entered an order implementing its ruling on May 21, 2020. The amended complaint asserts additional allegations of breach of fiduciary duty related to two additional Twitter posts by Mr. Musk, dated July 29, 2019 and May 1, 2020, and seeks unspecified damages and declaratory and injunctive relief. We believe that the claims have no merit and intend to defend against them vigorously. We are unable to estimate the potential loss or range of loss, if any, associated with these lawsuits.

### *Certain Investigations and Other Matters*

We receive requests for information from regulators and governmental authorities, such as the National Highway Traffic Safety Administration, the National Transportation Safety Board, the SEC, the Department of Justice ("DOJ") and various state, federal, and international agencies. We routinely cooperate with such regulatory and governmental requests.

In particular, the SEC had issued subpoenas to Tesla in connection with (a) Elon Musk's prior statement that he was considering taking Tesla private and (b) certain projections that we made for Model 3 production rates during 2017 and other public statements relating to Model 3 production. The take-private investigation was resolved and closed with a settlement entered into with the SEC in September 2018 and as further clarified in April 2019 in an amendment. On December 4, 2019, the SEC (i) closed the investigation into the projections and other public statements regarding Model 3 production rates and (ii) issued a subpoena seeking information concerning certain financial data and contracts including Tesla's regular financing arrangements. Separately, the DOJ had also asked us to voluntarily provide it with information about the above matters related to taking Tesla private and Model 3 production rates.

Aside from the settlement, as amended, with the SEC relating to Mr. Musk's statement that he was considering taking Tesla private, there have not been any developments in these matters that we deem to be material, and to our knowledge no government agency in any ongoing investigation has concluded that any wrongdoing occurred. As is our normal practice, we have been cooperating and will continue to cooperate with government authorities. We cannot predict the outcome or impact of any ongoing matters. Should the government decide to pursue an enforcement action, there exists the possibility of a material adverse impact on our business, results of operation, prospects, cash flows, and financial position.

We are also subject to various other legal proceedings and claims that arise from the normal course of business activities. If an unfavorable ruling or development were to occur, there exists the possibility of a material adverse impact on our business, results of operations, prospects, cash flows, financial position, and brand.

### ***Indemnification and Guaranteed Returns***

We are contractually obligated to compensate certain fund investors for any losses that they may suffer in certain limited circumstances resulting from reductions in investment tax credits claimed under U.S. federal laws for the installation of solar power facilities and energy storage systems that are charged from a co-sited solar power facility (“ITC”s). Generally, such obligations would arise as a result of reductions to the value of the underlying solar energy systems as assessed by the U.S. Internal Revenue Service (the “IRS”) for purposes of claiming ITCs. For each balance sheet date, we assess and recognize, when applicable, a distribution payable for the potential exposure from this obligation based on all the information available at that time, including any audits undertaken by the IRS. We believe that any payments to the fund investors in excess of the amounts already recognized by us for this obligation are not probable or material based on the facts known at the filing date.

The maximum potential future payments that we could have to make under this obligation would depend on the difference between the fair values of the solar energy systems sold or transferred to the funds as determined by us and the values that the IRS would determine as the fair value for the systems for purposes of claiming ITCs. We claim ITCs based on guidelines provided by the U.S. Treasury department and the statutory regulations from the IRS. We use fair values determined with the assistance of independent third-party appraisals commissioned by us as the basis for determining the ITCs that are passed-through to and claimed by the fund investors. Since we cannot determine exactly how the IRS will evaluate system values used in claiming ITCs, we are unable to reliably estimate the maximum potential future payments that it could have to make under this obligation as of each balance sheet date.

We are eligible to receive certain state and local incentives that are associated with renewable energy generation. The amount of incentives that can be claimed is based on the projected or actual solar energy system size and/or the amount of solar energy produced. We also currently participate in one state’s incentive program that is based on either the fair market value or the tax basis of solar energy systems placed in service. State and local incentives received are allocated between us and fund investors in accordance with the contractual provisions of each fund. We are not contractually obligated to indemnify any fund investor for any losses they may incur due to a shortfall in the amount of state or local incentives actually received.

### ***Letters of Credit***

As of December 31, 2020, we had \$233 million of unused letters of credit outstanding.

### **Note 17 - Variable Interest Entity Arrangements**

We have entered into various arrangements with investors to facilitate the funding and monetization of our solar energy systems and vehicles. In particular, our wholly owned subsidiaries and fund investors have formed and contributed cash and assets into various financing funds and entered into related agreements. We have determined that the funds are variable interest entities (“VIEs”) and we are the primary beneficiary of these VIEs by reference to the power and benefits criterion under ASC 810, *Consolidation*. We have considered the provisions within the agreements, which grant us the power to manage and make decisions that affect the operation of these VIEs, including determining the solar energy systems or vehicles and the associated customer contracts to be sold or contributed to these VIEs, redeploying solar energy systems or vehicles and managing customer receivables. We consider that the rights granted to the fund investors under the agreements are more protective in nature rather than participating.

As the primary beneficiary of these VIEs, we consolidate in the financial statements the financial position, results of operations and cash flows of these VIEs, and all intercompany balances and transactions between us and these VIEs are eliminated in the consolidated financial statements. Cash distributions of income and other receipts by a fund, net of agreed upon expenses, estimated expenses, tax benefits and detriments of income and loss and tax credits, are allocated to the fund investor and our subsidiary as specified in the agreements.

Generally, our subsidiary has the option to acquire the fund investor’s interest in the fund for an amount based on the market value of the fund or the formula specified in the agreements.

Upon the sale or liquidation of a fund, distributions would occur in the order and priority specified in the agreements.

Pursuant to management services, maintenance and warranty arrangements, we have been contracted to provide services to the funds, such as operations and maintenance support, accounting, lease servicing and performance reporting. In some instances, we have guaranteed payments to the fund investors as specified in the agreements. A fund’s creditors have no recourse to our general credit or to that of other funds. None of the assets of the funds had been pledged as collateral for their obligations.

The aggregate carrying values of the VIEs' assets and liabilities, after elimination of any intercompany transactions and balances, in the consolidated balance sheets were as follows (in millions):

	December 31, 2020	December 31, 2019
<b>Assets</b>		
Current assets		
Cash and cash equivalents	\$ 87	\$ 106
Accounts receivable, net	28	27
Prepaid expenses and other current assets	105	100
Total current assets	220	233
Operating lease vehicles, net	—	1,183
Solar energy systems, net	4,749	5,030
Other non-current assets	182	156
Total assets	<u>\$ 5,151</u>	<u>\$ 6,602</u>
<b>Liabilities</b>		
Current liabilities		
Accrued liabilities and other	\$ 63	\$ 80
Deferred revenue	11	78
Customer deposits	14	9
Current portion of debt and finance leases	797	608
Total current liabilities	885	775
Deferred revenue, net of current portion	168	264
Debt and finance leases, net of current portion	1,346	1,516
Other long-term liabilities	19	22
Total liabilities	<u>\$ 2,418</u>	<u>\$ 2,577</u>

#### Note 18 - Lease Pass-Through Financing Obligation

Through December 31, 2020, we had entered into eight transactions referred to as "lease pass-through fund arrangements". Under these arrangements, our wholly owned subsidiaries finance the cost of solar energy systems with investors through arrangements contractually structured as master leases for an initial term ranging between 10 and 25 years. These solar energy systems are subject to lease or PPAs with customers with an initial term not exceeding 25 years. These solar energy systems are included within solar energy systems, net on the consolidated balance sheets.

The cost of the solar energy systems under lease pass-through fund arrangements as of December 31, 2020 and 2019 was \$1.05 billion. The accumulated depreciation on these assets as of December 31, 2020 and 2019 was \$137 million and \$101 million, respectively. The total lease pass-through financing obligation as of December 31, 2020 was \$68 million, of which \$41 million is classified as a current liability. The total lease pass-through financing obligation as of December 31, 2019 was \$94 million, of which \$57 million was classified as a current liability. Lease pass-through financing obligation is included in accrued liabilities and other for the current portion and other long-term liabilities for the long-term portion on the consolidated balance sheets.

Under a lease pass-through fund arrangement, the investor makes a large upfront payment to the lessor, which is one of our subsidiaries, and in some cases, subsequent periodic payments. We allocate a portion of the aggregate investor payments to the fair value of the assigned ITCs, which is estimated by discounting the projected cash flow impact of the ITCs using a market interest rate and is accounted for separately. We account for the remainder of the investor payments as a borrowing by recording the proceeds received as a lease pass-through financing obligation, which is repaid from the future customer lease payments and any incentive rebates. A portion of the amounts received by the investor is allocated to interest expense using the effective interest rate method.

The lease pass-through financing obligation is non-recourse once the associated solar energy systems have been placed in-service and the associated customer arrangements have been assigned to the investors. In addition, we are responsible for any warranties, performance guarantees, accounting and performance reporting. Furthermore, we continue to account for the customer arrangements and any incentive rebates in the consolidated financial statements, regardless of whether the cash is received by us or directly by the investors.

As of December 31, 2020, the future minimum master lease payments to be received from investors, for each of the next five years and thereafter, were as follows (in millions):

2021	\$	41
2022		33
2023		26
2024		18
2025		27
Thereafter		423
Total	\$	568

For two of the lease pass-through fund arrangements, our subsidiaries have pledged its assets to the investors as security for its obligations under the contractual agreements.

Each lease pass-through fund arrangement has a one-time master lease prepayment adjustment mechanism that occurs when the capacity and the placed-in-service dates of the associated solar energy systems are finalized or on an agreed-upon date. As part of this mechanism, the master lease prepayment amount is updated, and we may be obligated to refund a portion of a master lease prepayment or entitled to receive an additional master lease prepayment. Any additional master lease prepayments are recorded as an additional lease pass-through financing obligation while any master lease prepayment refunds would reduce the lease pass-through financing obligation.

#### **Note 19 - Defined Contribution Plan**

We have a 401(k) savings plan that is intended to qualify as a deferred salary arrangement under Section 401(k) of the Internal Revenue Code. Under the 401(k) savings plan, participating employees may elect to contribute up to 100% of their eligible compensation, subject to certain limitations. Participants are fully vested in their contributions. We did not make any contributions to the 401(k) savings plan during the years ended December 31, 2020, 2019 and 2018 (other than employee deferrals of eligible compensation).

#### **Note 20 - Related Party Transactions**

In November 2018, our CEO purchased from us 284,575 shares of our common stock in a private placement at a per share price equal to the last closing price of our stock prior to the execution of the purchase agreement for an aggregate \$20 million, as adjusted to give effect to the Stock Split.

In May 2019, our CEO purchased from us 514,400 shares of our common stock in a public offering at the public offering price for an aggregate \$25 million, as adjusted to give effect to the Stock Split.

In February 2020, our CEO and a member of our Board of Directors purchased from us 65,185 and 6,250 shares, respectively, of our common stock in a public offering at the public offering price for an aggregate \$10 million and \$1 million, respectively, as adjusted to give effect to the Stock Split.

In June 2020, our CEO entered into an indemnification agreement with us for an interim term of 90 days. During the interim term, we resumed our annual evaluation of all available options for providing directors' and officers' indemnity coverage, which we had suspended during the height of shelter-in-place requirements related to the COVID-19 pandemic. As part of such process, we obtained a binding market quote for a directors' and officers' liability insurance policy with an aggregate coverage limit of \$100 million.

Pursuant to the indemnification agreement, our CEO provided, from his personal funds, directors' and officers' indemnity coverage to us during the interim term in the event such coverage is not indemnifiable by us, up to a total of \$100 million. In return, we paid our CEO a total of \$3 million, which represents the market-based premium for the market quote described above as prorated for 90 days and further discounted by 50%. Following the lapse of the 90-day period, we did not extend the term of the indemnification agreement with our CEO and instead bound a customary directors' and officers' liability insurance policy with third-party carriers.



**Note 21 - Segment Reporting and Information about Geographic Areas**

We have two operating and reportable segments: (i) automotive and (ii) energy generation and storage. The automotive segment includes the design, development, manufacturing, sales, and leasing of electric vehicles as well as sales of automotive regulatory credits. Additionally, the automotive segment is also comprised of services and other, which includes non-warranty after-sales vehicle services, sales of used vehicles, retail merchandise, sales by our acquired subsidiaries to third party customers, and vehicle insurance revenue. The energy generation and storage segment includes the design, manufacture, installation, sales, and leasing of solar energy generation and energy storage products and related services and sales of solar energy systems incentives. Our CODM does not evaluate operating segments using asset or liability information. The following table presents revenues and gross profit by reportable segment (in millions):

	Year Ended December 31,		
	2020	2019	2018
<b>Automotive segment</b>			
Revenues	\$ 29,542	\$ 23,047	\$ 19,906
Gross profit	\$ 6,612	\$ 3,879	\$ 3,852
<b>Energy generation and storage segment</b>			
Revenues	\$ 1,994	\$ 1,531	\$ 1,555
Gross profit	\$ 18	\$ 190	\$ 190

The following table presents revenues by geographic area based on the sales location of our products (in millions):

	Year Ended December 31,		
	2020	2019	2018
United States	\$ 15,207	\$ 12,653	\$ 14,872
China	6,662	2,979	1,757
Other	9,667	8,946	4,832
Total	<u>\$ 31,536</u>	<u>\$ 24,578</u>	<u>\$ 21,461</u>

The revenues in certain geographic areas were impacted by the price adjustments we made to our vehicle offerings during the years ended December 31, 2020 and 2019. Refer to Note 2, *Summary of Significant Accounting Policies*, for details.

The following table presents long-lived assets by geographic area (in millions):

	December 31,	December 31,
	2020	2019
United States	\$ 15,989	\$ 15,644
International	2,737	890
Total	<u>\$ 18,726</u>	<u>\$ 16,534</u>

**Note 22 - Restructuring and Other**

During the year ended December 31, 2019, we carried out certain restructuring actions in order to reduce costs and improve efficiency. As a result, we recognized \$50 million of costs primarily related to employee termination expenses and losses from closing certain stores impacting both segments. We recognized \$47 million in impairment related to the IPR&D intangible asset as we abandoned further development efforts and \$15 million for the related equipment within the energy generation and storage segment. We also incurred a loss of \$37 million for closing operations in certain facilities. On the statement of cash flows, the amounts were presented in the captions in which such amounts would have been recorded absent the impairment charges. The employee termination expenses were substantially paid by December 31, 2019, while the remaining amounts were non-cash.

During the year ended December 31, 2018, we carried-out certain restructuring actions in order to reduce costs and improve efficiency and recognized \$37 million of employee termination expenses and estimated losses from sub-leasing a certain facility. The employee termination cash expenses of \$27 million were substantially paid by the end of 2018, while the remaining amounts were non-cash. Also included within restructuring and other activities was \$55 million of expenses (materially all of which were non-cash) from restructuring the energy generation and storage segment, which comprised of disposals of certain tangible assets, the shortening of the useful life of a trade name intangible asset and a contract termination penalty. In addition, we concluded that a small portion of the IPR&D asset is not commercially feasible. Consequently, we recognized an impairment loss of \$13 million. We recognized settlement and legal expenses of \$30 million in the year ended December 31, 2018 for the settlement with the SEC relating to a take-private proposal for Tesla. These expenses were substantially paid by the end of 2018.

## Note 23 - Subsequent Events

### Early Conversions of Convertible Senior Notes

Between January 1, 2021 and February 5, 2021, we have received additional conversion notices on our 2022 Notes and 2024 Notes for \$62 million and \$623 million in aggregate principal amounts, respectively, for which we intend to settle the principal amounts in cash during the three months ended March 31, 2021.

### Investments

In January 2021, we updated our investment policy to provide us with more flexibility to further diversify and maximize returns on our cash that is not required to maintain adequate operating liquidity. As part of the policy, we may invest a portion of such cash in certain specified alternative reserve assets. Thereafter, we invested an aggregate \$1.50 billion in bitcoin under this policy. Moreover, we expect to begin accepting bitcoin as a form of payment for our products in the near future, subject to applicable laws and initially on a limited basis, which we may or may not liquidate upon receipt.

We will account for digital assets as indefinite-lived intangible assets in accordance with ASC 350, *Intangibles-Goodwill and Other*. The digital assets are initially recorded at cost and are subsequently remeasured on the consolidated balance sheet at cost, net of any impairment losses incurred since acquisition. We will perform an analysis each quarter to identify impairment. If the carrying value of the digital asset exceeds the fair value based on the lowest price quoted in the active exchanges during the period, we will recognize an impairment loss equal to the difference in the consolidated statement of operations.

The cost basis of the digital assets will not be adjusted upward for any subsequent increases in their quoted prices on the active exchanges. Gains (if any) will not be recorded until realized upon sale.

## Note 24 - Quarterly Results of Operations (Unaudited)

The following table presents selected quarterly results of operations data for the years ended December 31, 2020 and 2019 (in millions, except per share amounts):

	Three Months Ended			
	March 31	June 30	September 30	December 31
<b>2020</b>				
Total revenues	\$ 5,985	\$ 6,036	\$ 8,771	\$ 10,744
Gross profit	\$ 1,234	\$ 1,267	\$ 2,063	\$ 2,066
Net income attributable to common stockholders	\$ 16	\$ 104	\$ 331	\$ 270
Net income per share of common stock attributable to common stockholders, basic (1)	\$ 0.02	\$ 0.11	\$ 0.32	\$ 0.28
Net income per share of common stock attributable to common stockholders, diluted (1)	\$ 0.02	\$ 0.10	\$ 0.27	\$ 0.24
<b>2019</b>				
Total revenues	\$ 4,541	\$ 6,350	\$ 6,303	\$ 7,384
Gross profit	\$ 566	\$ 921	\$ 1,191	\$ 1,391
Net (loss) income attributable to common stockholders	\$ (702)	\$ (408)	\$ 143	\$ 105
Net (loss) income per share of common stock attributable to common stockholders, basic (1)	\$ (0.82)	\$ (0.46)	\$ 0.16	\$ 0.12
Net (loss) income per share of common stock attributable to common stockholders, diluted (1)	\$ (0.82)	\$ (0.46)	\$ 0.16	\$ 0.11

(1) Prior period results have been adjusted to reflect the Stock Split. See Note 1, *Overview*, for details.

**ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE**

None.

**ITEM 9A. CONTROLS AND PROCEDURES***Evaluation of Disclosure Controls and Procedures*

Our management, with the participation of our Chief Executive Officer and our Chief Financial Officer, evaluated the effectiveness of our disclosure controls and procedures pursuant to Rule 13a-15 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"). In designing and evaluating the disclosure controls and procedures, our management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives. In addition, the design of disclosure controls and procedures must reflect the fact that there are resource constraints and that our management is required to apply its judgment in evaluating the benefits of possible controls and procedures relative to their costs.

Based on this evaluation, our Chief Executive Officer and our Chief Financial Officer concluded that, as of December 31, 2020, our disclosure controls and procedures were designed at a reasonable assurance level and were effective to provide reasonable assurance that the information we are required to disclose in reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer and our Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosures.

*Management's Report on Internal Control over Financial Reporting*

Our management is responsible for establishing and maintaining adequate internal control over financial reporting. Internal control over financial reporting is a process designed by, or under the supervision of, our Chief Executive Officer and Chief Financial Officer to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles and includes those policies and procedures that (1) pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of our assets; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that our receipts and expenditures are being made only in accordance with authorizations of our management and directors and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of our assets that could have a material effect on the financial statements.

Under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, we conducted an evaluation of the effectiveness of our internal control over financial reporting based on criteria established in *Internal Control - Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO"). Our management concluded that our internal control over financial reporting was effective as of December 31, 2020.

Our independent registered public accounting firm, PricewaterhouseCoopers LLP, has audited the effectiveness of our internal control over financial reporting as of December 31, 2020, as stated in their report which is included herein.

*Limitations on the Effectiveness of Controls*

Because of inherent limitations, internal control over financial reporting may not prevent or detect misstatements and projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

*Changes in Internal Control over Financial Reporting*

There was no change in our internal control over financial reporting that occurred during the fourth fiscal quarter of the year ended December 31, 2020, which has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

**ITEM 9B. OTHER INFORMATION**

None.

### PART III

#### **ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE**

The information required by this Item 10 of Form 10-K will be included in our 2021 Proxy Statement to be filed with the Securities and Exchange Commission in connection with the solicitation of proxies for our 2021 Annual Meeting of Stockholders and is incorporated herein by reference. The 2021 Proxy Statement will be filed with the Securities and Exchange Commission within 120 days after the end of the fiscal year to which this report relates.

#### **ITEM 11. EXECUTIVE COMPENSATION**

The information required by this Item 11 of Form 10-K will be included in our 2021 Proxy Statement and is incorporated herein by reference.

#### **ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS**

The information required by this Item 12 of Form 10-K will be included in our 2021 Proxy Statement and is incorporated herein by reference.

#### **ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS AND DIRECTOR INDEPENDENCE**

The information required by this Item 13 of Form 10-K will be included in our 2021 Proxy Statement and is incorporated herein by reference.

#### **ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES**

The information required by this Item 14 of Form 10-K will be included in our 2021 Proxy Statement and is incorporated herein by reference.

### PART IV

#### **ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES**

1. Financial statements (see *Index to Consolidated Financial Statements* in Part II, Item 8 of this report)
2. All financial statement schedules have been omitted since the required information was not applicable or was not present in amounts sufficient to require submission of the schedules, or because the information required is included in the consolidated financial statements or the accompanying notes
3. The exhibits listed in the following *Index to Exhibits* are filed or incorporated by reference as part of this report

**INDEX TO EXHIBITS**

Exhibit Number	Exhibit Description	Incorporated by Reference			Filed Herewith
		Form	File No.	Exhibit	
3.1	<a href="#">Amended and Restated Certificate of Incorporation of the Registrant.</a>	10-K	001-34756	3.1	March 1, 2017
3.2	<a href="#">Certificate of Amendment to the Amended and Restated Certificate of Incorporation of the Registrant.</a>	10-K	001-34756	3.2	March 1, 2017
3.3	<a href="#">Amended and Restated Bylaws of the Registrant.</a>	8-K	001-34756	3.2	February 1, 2017
4.1	<a href="#">Specimen common stock certificate of the Registrant.</a>	10-K	001-34756	4.1	March 1, 2017
4.2	<a href="#">Fifth Amended and Restated Investors' Rights Agreement, dated as of August 31, 2009, between Registrant and certain holders of the Registrant's capital stock named therein.</a>	S-1	333-164593	4.2	January 29, 2010
4.3	<a href="#">Amendment to Fifth Amended and Restated Investors' Rights Agreement, dated as of May 20, 2010, between Registrant and certain holders of the Registrant's capital stock named therein.</a>	S-1/A	333-164593	4.2A	May 27, 2010
4.4	<a href="#">Amendment to Fifth Amended and Restated Investors' Rights Agreement between Registrant, Toyota Motor Corporation and certain holders of the Registrant's capital stock named therein.</a>	S-1/A	333-164593	4.2B	May 27, 2010
4.5	<a href="#">Amendment to Fifth Amended and Restated Investor's Rights Agreement, dated as of June 14, 2010, between Registrant and certain holders of the Registrant's capital stock named therein.</a>	S-1/A	333-164593	4.2C	June 15, 2010
4.6	<a href="#">Amendment to Fifth Amended and Restated Investor's Rights Agreement, dated as of November 2, 2010, between Registrant and certain holders of the Registrant's capital stock named therein.</a>	8-K	001-34756	4.1	November 4, 2010
4.7	<a href="#">Waiver to Fifth Amended and Restated Investor's Rights Agreement, dated as of May 22, 2011, between Registrant and certain holders of the Registrant's capital stock named therein.</a>	S-1/A	333-174466	4.2E	June 2, 2011
4.8	<a href="#">Amendment to Fifth Amended and Restated Investor's Rights Agreement, dated as of May 30, 2011, between Registrant and certain holders of the Registrant's capital stock named therein.</a>	8-K	001-34756	4.1	June 1, 2011
4.9	<a href="#">Sixth Amendment to Fifth Amended and Restated Investors' Rights Agreement, dated as of May 15, 2013 among the Registrant, the Elon Musk Revocable Trust dated July 22, 2003 and certain other holders of the capital stock of the Registrant named therein.</a>	8-K	001-34756	4.1	May 20, 2013

Exhibit Number	Exhibit Description	Incorporated by Reference				Filed Herewith
		Form	File No.	Exhibit	Filing Date	
4.10	<a href="#">Waiver to Fifth Amended and Restated Investor's Rights Agreement, dated as of May 14, 2013, between the Registrant and certain holders of the capital stock of the Registrant named therein.</a>	8-K	001-34756	4.2	May 20, 2013	
4.11	<a href="#">Waiver to Fifth Amended and Restated Investor's Rights Agreement, dated as of August 13, 2015, between the Registrant and certain holders of the capital stock of the Registrant named therein.</a>	8-K	001-34756	4.1	August 19, 2015	
4.12	<a href="#">Waiver to Fifth Amended and Restated Investors' Rights Agreement, dated as of May 18, 2016, between the Registrant and certain holders of the capital stock of the Registrant named therein.</a>	8-K	001-34756	4.1	May 24, 2016	
4.13	<a href="#">Waiver to Fifth Amended and Restated Investors' Rights Agreement, dated as of March 15, 2017, between the Registrant and certain holders of the capital stock of the Registrant named therein.</a>	8-K	001-34756	4.1	March 17, 2017	
4.14	<a href="#">Waiver to Fifth Amended and Restated Investors' Rights Agreement, dated as of May 1, 2019, between the Registrant and certain holders of the capital stock of the Registrant named therein.</a>	8-K	001-34756	4.1	May 3, 2019	
4.15	<a href="#">Indenture, dated as of May 22, 2013, by and between the Registrant and U.S. Bank National Association.</a>	8-K	001-34756	4.1	May 22, 2013	
4.16	<a href="#">Third Supplemental Indenture, dated as of March 5, 2014, by and between the Registrant and U.S. Bank National Association.</a>	8-K	001-34756	4.4	March 5, 2014	
4.17	<a href="#">Form of 1.25% Convertible Senior Note Due March 1, 2021 (included in Exhibit 4.16).</a>	8-K	001-34756	4.4	March 5, 2014	
4.18	<a href="#">Fourth Supplemental Indenture, dated as of March 22, 2017, by and between the Registrant and U.S. Bank National Association.</a>	8-K	001-34756	4.2	March 22, 2017	
4.19	<a href="#">Form of 2.375% Convertible Senior Note Due March 15, 2022 (included in Exhibit 4.18).</a>	8-K	001-34756	4.2	March 22, 2017	
4.20	<a href="#">Fifth Supplemental Indenture, dated as of May 7, 2019, by and between Registrant and U.S. Bank National Association, related to 2.00% Convertible Senior Notes due May 15, 2024.</a>	8-K	001-34756	4.2	May 8, 2019	
4.21	<a href="#">Form of 2.00% Convertible Senior Notes due May 15, 2024 (included in Exhibit 4.20).</a>	8-K	001-34756	4.2	May 8, 2019	
4.22	<a href="#">Indenture, dated as of August 18, 2017, by and among the Registrant, SolarCity, and U.S. Bank National Association, as trustee.</a>	8-K	001-34756	4.1	August 23, 2017	
4.23	<a href="#">Form of 5.30% Senior Note due August 15, 2025.</a>	8-K	001-34756	4.2	August 23, 2017	

Exhibit Number	Exhibit Description	Incorporated by Reference			Filed Herewith
		Form	File No.	Exhibit	
4.24	<a href="#">Indenture, dated as of October 15, 2014, between SolarCity and U.S. Bank National Association, as trustee.</a>	S-3ASR(1)	333-199321	4.1	October 15, 2014
4.25	<a href="#">Fourth Supplemental Indenture, dated as of October 15, 2014, by and between SolarCity and the Trustee, related to SolarCity's 4.00% Solar Bonds, Series 2014/4-7.</a>	8-K(1)	001-35758	4.5	October 15, 2014
4.26	<a href="#">Eighth Supplemental Indenture, dated as of January 29, 2015, by and between SolarCity and the Trustee, related to SolarCity's 4.00% Solar Bonds, Series 2015/4-7.</a>	8-K(1)	001-35758	4.5	January 29, 2015
4.27	<a href="#">Tenth Supplemental Indenture, dated as of March 9, 2015, by and between SolarCity and the Trustee, related to SolarCity's 5.00% Solar Bonds, Series 2015/6-10.</a>	8-K(1)	001-35758	4.3	March 9, 2015
4.28	<a href="#">Eleventh Supplemental Indenture, dated as of March 9, 2015, by and between SolarCity and the Trustee, related to SolarCity's 5.75% Solar Bonds, Series 2015/7-15.</a>	8-K(1)	001-35758	4.4	March 9, 2015
4.29	<a href="#">Fifteenth Supplemental Indenture, dated as of March 19, 2015, by and between SolarCity and the Trustee, related to SolarCity's 4.70% Solar Bonds, Series 2015/C4-10.</a>	8-K(1)	001-35758	4.5	March 19, 2015
4.30	<a href="#">Sixteenth Supplemental Indenture, dated as of March 19, 2015, by and between SolarCity and the Trustee, related to SolarCity's 5.45% Solar Bonds, Series 2015/C5-15.</a>	8-K(1)	001-35758	4.6	March 19, 2015
4.31	<a href="#">Twentieth Supplemental Indenture, dated as of March 26, 2015, by and between SolarCity and the Trustee, related to SolarCity's 4.70% Solar Bonds, Series 2015/C9-10.</a>	8-K(1)	001-35758	4.5	March 26, 2015
4.32	<a href="#">Twenty-First Supplemental Indenture, dated as of March 26, 2015, by and between SolarCity and the Trustee, related to SolarCity's 5.45% Solar Bonds, Series 2015/C10-15.</a>	8-K(1)	001-35758	4.6	March 26, 2015
4.33	<a href="#">Twenty-Sixth Supplemental Indenture, dated as of April 2, 2015, by and between SolarCity and the Trustee, related to SolarCity's 4.70% Solar Bonds, Series 2015/C14-10.</a>	8-K(1)	001-35758	4.5	April 2, 2015
4.34	<a href="#">Thirtieth Supplemental Indenture, dated as of April 9, 2015, by and between SolarCity and the Trustee, related to SolarCity's 4.70% Solar Bonds, Series 2015/C19-10.</a>	8-K(1)	001-35758	4.5	April 9, 2015
4.35	<a href="#">Thirty-First Supplemental Indenture, dated as of April 9, 2015, by and between SolarCity and the Trustee, related to SolarCity's 5.45% Solar Bonds, Series 2015/C20-15.</a>	8-K(1)	001-35758	4.6	April 9, 2015
4.36	<a href="#">Thirty-Fifth Supplemental Indenture, dated as of April 14, 2015, by and between SolarCity and the Trustee, related to SolarCity's 4.70% Solar Bonds, Series 2015/C24-10.</a>	8-K(1)	001-35758	4.5	April 14, 2015

Exhibit Number	Exhibit Description	Incorporated by Reference				Filed Herewith
		Form	File No.	Exhibit	Filing Date	
4.37	<a href="#">Thirty-Sixth Supplemental Indenture, dated as of April 14, 2015, by and between SolarCity and the Trustee, related to SolarCity's 5.45% Solar Bonds, Series 2015/C25-15.</a>	8-K(1)	001-35758	4.6	April 14, 2015	
4.38	<a href="#">Thirty-Eighth Supplemental Indenture, dated as of April 21, 2015, by and between SolarCity and the Trustee, related to SolarCity's 4.70% Solar Bonds, Series 2015/C27-10.</a>	8-K(1)	001-35758	4.3	April 21, 2015	
4.39	<a href="#">Thirty-Ninth Supplemental Indenture, dated as of April 21, 2015, by and between SolarCity and the Trustee, related to SolarCity's 5.45% Solar Bonds, Series 2015/C28-15.</a>	8-K(1)	001-35758	4.4	April 21, 2015	
4.40	<a href="#">Forty-Third Supplemental Indenture, dated as of April 27, 2015, by and between SolarCity and the Trustee, related to SolarCity's 4.70% Solar Bonds, Series 2015/C32-10.</a>	8-K(1)	001-35758	4.5	April 27, 2015	
4.41	<a href="#">Forty-Fourth Supplemental Indenture, dated as of April 27, 2015, by and between SolarCity and the Trustee, related to SolarCity's 5.45% Solar Bonds, Series 2015/C33-15.</a>	8-K(1)	001-35758	4.6	April 27, 2015	
4.42	<a href="#">Forty-Eighth Supplemental Indenture, dated as of May 1, 2015, by and between SolarCity and the Trustee, related to SolarCity's 5.00% Solar Bonds, Series 2015/12-10.</a>	8-K(1)	001-35758	4.5	May 1, 2015	
4.43	<a href="#">Forty-Ninth Supplemental Indenture, dated as of May 1, 2015, by and between SolarCity and the Trustee, related to SolarCity's 5.75% Solar Bonds, Series 2015/13-15.</a>	8-K(1)	001-35758	4.6	May 1, 2015	
4.44	<a href="#">Fifty-Second Supplemental Indenture, dated as of May 11, 2015, by and between SolarCity and the Trustee, related to SolarCity's 4.70% Solar Bonds, Series 2015/C36-10.</a>	8-K(1)	001-35758	4.4	May 11, 2015	
4.45	<a href="#">Fifty-Third Supplemental Indenture, dated as of May 11, 2015, by and between SolarCity and the Trustee, related to SolarCity's 5.45% Solar Bonds, Series 2015/C37-15.</a>	8-K(1)	001-35758	4.5	May 11, 2015	
4.46	<a href="#">Fifty-Seventh Supplemental Indenture, dated as of May 18, 2015, by and between SolarCity and the Trustee, related to SolarCity's 4.70% Solar Bonds, Series 2015/C40-10.</a>	8-K(1)	001-35758	4.4	May 18, 2015	
4.47	<a href="#">Fifty-Eighth Supplemental Indenture, dated as of May 18, 2015, by and between SolarCity and the Trustee, related to SolarCity's 5.45% Solar Bonds, Series 2015/C41-15.</a>	8-K(1)	001-35758	4.5	May 18, 2015	
4.48	<a href="#">Sixty-First Supplemental Indenture, dated as of May 26, 2015, by and between SolarCity and the Trustee, related to SolarCity's 4.70% Solar Bonds, Series 2015/C44-10.</a>	8-K(1)	001-35758	4.4	May 26, 2015	
4.49	<a href="#">Sixty-Second Supplemental Indenture, dated as of May 26, 2015, by and between SolarCity and the Trustee, related to SolarCity's 5.45% Solar Bonds, Series 2015/C45-15.</a>	8-K(1)	001-35758	4.5	May 26, 2015	



Exhibit Number	Exhibit Description	Incorporated by Reference				Filed Herewith
		Form	File No.	Exhibit	Filing Date	
4.50	<a href="#">Seventieth Supplemental Indenture, dated as of June 16, 2015, by and between SolarCity and the Trustee, related to SolarCity's 4.70% Solar Bonds, Series 2015/C52-10.</a>	8-K(1)	001-35758	4.4	June 16, 2015	
4.51	<a href="#">Seventy-First Supplemental Indenture, dated as of June 16, 2015, by and between SolarCity and the Trustee, related to SolarCity's 5.45% Solar Bonds, Series 2015/C53-15.</a>	8-K(1)	001-35758	4.5	June 16, 2015	
4.52	<a href="#">Seventy-Fourth Supplemental Indenture, dated as of June 22, 2015, by and between SolarCity and the Trustee, related to SolarCity's 4.70% Solar Bonds, Series 2015/C56-10.</a>	8-K(1)	001-35758	4.4	June 23, 2015	
4.53	<a href="#">Seventy-Fifth Supplemental Indenture, dated as of June 22, 2015, by and between SolarCity and the Trustee, related to SolarCity's 5.45% Solar Bonds, Series 2015/C57-15.</a>	8-K(1)	001-35758	4.5	June 23, 2015	
4.54	<a href="#">Eightieth Supplemental Indenture, dated as of June 29, 2015, by and between SolarCity and the Trustee, related to SolarCity's 4.70% Solar Bonds, Series 2015/C61-10.</a>	8-K(1)	001-35758	4.5	June 29, 2015	
4.55	<a href="#">Eighty-First Supplemental Indenture, dated as of June 29, 2015, by and between SolarCity and the Trustee, related to SolarCity's 5.45% Solar Bonds, Series 2015/C62-15.</a>	8-K(1)	001-35758	4.6	June 29, 2015	
4.56	<a href="#">Ninetieth Supplemental Indenture, dated as of July 20, 2015, by and between SolarCity and the Trustee, related to SolarCity's 4.70% Solar Bonds, Series 2015/C71-10.</a>	8-K(1)	001-35758	4.5	July 21, 2015	
4.57	<a href="#">Ninety-First Supplemental Indenture, dated as of July 20, 2015, by and between SolarCity and the Trustee, related to SolarCity's 5.45% Solar Bonds, Series 2015/C72-15.</a>	8-K(1)	001-35758	4.6	July 21, 2015	
4.58	<a href="#">Ninety-Fifth Supplemental Indenture, dated as of July 31, 2015, by and between SolarCity and the Trustee, related to SolarCity's 5.00% Solar Bonds, Series 2015/20-10.</a>	8-K(1)	001-35758	4.5	July 31, 2015	
4.59	<a href="#">Ninety-Sixth Supplemental Indenture, dated as of July 31, 2015, by and between SolarCity and the Trustee, related to SolarCity's 5.75% Solar Bonds, Series 2015/21-15.</a>	8-K(1)	001-35758	4.6	July 31, 2015	
4.60	<a href="#">One Hundred-and-Fifth Supplemental Indenture, dated as of August 10, 2015, by and between SolarCity and the Trustee, related to SolarCity's 4.70% Solar Bonds, Series 2015/C81-10.</a>	8-K(1)	001-35758	4.5	August 10, 2015	
4.61	<a href="#">One Hundred-and-Eleventh Supplemental Indenture, dated as of August 17, 2015, by and between SolarCity and the Trustee, related to SolarCity's 5.45% Solar Bonds, Series 2015/C87-15.</a>	8-K(1)	001-35758	4.6	August 17, 2015	

Exhibit Number	Exhibit Description	Incorporated by Reference			Filed Herewith
		Form	File No.	Exhibit	
4.62	<a href="#">One Hundred-and-Sixteenth Supplemental Indenture, dated as of August 24, 2015, by and between SolarCity and the Trustee, related to SolarCity's 5.45% Solar Bonds, Series 2015/C92-15.</a>	8-K(1)	001-35758	4.6	August 24, 2015
4.63	<a href="#">One Hundred-and-Twenty-First Supplemental Indenture, dated as of August 31, 2015, by and between SolarCity and the Trustee, related to SolarCity's 5.45% Solar Bonds, Series 2015/C97-15.</a>	8-K(1)	001-35758	4.6	August 31, 2015
4.64	<a href="#">One Hundred-and-Twenty-Eighth Supplemental Indenture, dated as of September 14, 2015, by and between SolarCity and the Trustee, related to SolarCity's 4.70% Solar Bonds, Series 2015/C101-10.</a>	8-K(1)	001-35758	4.5	September 15, 2015
4.65	<a href="#">One Hundred-and-Twenty-Ninth Supplemental Indenture, dated as of September 14, 2015, by and between SolarCity and the Trustee, related to SolarCity's 5.45% Solar Bonds, Series 2015/C102-15.</a>	8-K(1)	001-35758	4.6	September 15, 2015
4.66	<a href="#">One Hundred-and-Thirty-Third Supplemental Indenture, dated as of September 28, 2015, by and between SolarCity and the Trustee, related to SolarCity's 4.70% Solar Bonds, Series 2015/C106-10.</a>	8-K(1)	001-35758	4.5	September 29, 2015
4.67	<a href="#">One Hundred-and-Thirty-Fourth Supplemental Indenture, dated as of September 28, 2015, by and between SolarCity and the Trustee, related to SolarCity's 5.45% Solar Bonds, Series 2015/C107-15.</a>	8-K(1)	001-35758	4.6	September 29, 2015
4.68	<a href="#">One Hundred-and-Thirty-Eighth Supplemental Indenture, dated as of October 13, 2015, by and between SolarCity and the Trustee, related to SolarCity's 4.70% Solar Bonds, Series 2015/C111-10.</a>	8-K(1)	001-35758	4.5	October 13, 2015
4.69	<a href="#">One Hundred-and-Forty-Third Supplemental Indenture, dated as of October 30, 2015, by and between SolarCity and the Trustee, related to SolarCity's 5.00% Solar Bonds, Series 2015/25-10.</a>	8-K(1)	001-35758	4.5	October 30, 2015
4.70	<a href="#">One Hundred-and-Forty-Fourth Supplemental Indenture, dated as of October 30, 2015, by and between SolarCity and the Trustee, related to SolarCity's 5.75% Solar Bonds, Series 2015/26-15.</a>	8-K(1)	001-35758	4.6	October 30, 2015
4.71	<a href="#">One Hundred-and-Forty-Eighth Supplemental Indenture, dated as of November 4, 2015, by and between SolarCity and the Trustee, related to SolarCity's 4.70% Solar Bonds, Series 2015/C116-10.</a>	8-K(1)	001-35758	4.5	November 4, 2015
4.72	<a href="#">One Hundred-and-Fifty-Third Supplemental Indenture, dated as of November 16, 2015, by and between SolarCity and the Trustee, related to SolarCity's 4.70% Solar Bonds, Series 2015/C121-10.</a>	8-K(1)	001-35758	4.5	November 17, 2015

Exhibit Number	Exhibit Description	Incorporated by Reference				Filed Herewith
		Form	File No.	Exhibit	Filing Date	
4.73	<a href="#">One Hundred-and-Fifty-Fourth Supplemental Indenture, dated as of November 16, 2015, by and between SolarCity and the Trustee, related to SolarCity's 5.45% Solar Bonds, Series 2015/C122-15.</a>	8-K(1)	001-35758	4.6	November 17, 2015	
4.74	<a href="#">One Hundred-and-Fifty-Eighth Supplemental Indenture, dated as of November 30, 2015, by and between SolarCity and the Trustee, related to SolarCity's 4.70% Solar Bonds, Series 2015/C126-10.</a>	8-K(1)	001-35758	4.5	November 30, 2015	
4.75	<a href="#">One Hundred-and-Fifty-Ninth Supplemental Indenture, dated as of November 30, 2015, by and between SolarCity and the Trustee, related to SolarCity's 5.45% Solar Bonds, Series 2015/C127-15.</a>	8-K(1)	001-35758	4.6	November 30, 2015	
4.76	<a href="#">One Hundred-and-Sixty-Third Supplemental Indenture, dated as of December 14, 2015, by and between SolarCity and the Trustee, related to SolarCity's 4.70% Solar Bonds, Series 2015/C131-10.</a>	8-K(1)	001-35758	4.5	December 14, 2015	
4.77	<a href="#">One Hundred-and-Sixty-Fourth Supplemental Indenture, dated as of December 14, 2015, by and between SolarCity and the Trustee, related to SolarCity's 5.45% Solar Bonds, Series 2015/C132-15.</a>	8-K(1)	001-35758	4.6	December 14, 2015	
4.78	<a href="#">One Hundred-and-Sixty-Seventh Supplemental Indenture, dated as of December 28, 2015, by and between SolarCity and the Trustee, related to SolarCity's 3.60% Solar Bonds, Series 2015/C135-5.</a>	8-K(1)	001-35758	4.4	December 28, 2015	
4.79	<a href="#">One Hundred-and-Sixty-Eighth Supplemental Indenture, dated as of December 28, 2015, by and between SolarCity and the Trustee, related to SolarCity's 4.70% Solar Bonds, Series 2015/C136-10.</a>	8-K(1)	001-35758	4.5	December 28, 2015	
4.80	<a href="#">One Hundred-and-Sixty-Ninth Supplemental Indenture, dated as of December 28, 2015, by and between SolarCity and the Trustee, related to SolarCity's 5.45% Solar Bonds, Series 2015/C137-15.</a>	8-K(1)	001-35758	4.6	December 28, 2015	
4.81	<a href="#">One Hundred-and-Seventy-Second Supplemental Indenture, dated as of January 29, 2016, by and between SolarCity and the Trustee, related to SolarCity's 4.00% Solar Bonds, Series 2016/3-5.</a>	8-K(1)	001-35758	4.4	January 29, 2016	
4.82	<a href="#">One Hundred-and-Seventy-Third Supplemental Indenture, dated as of January 29, 2016, by and between SolarCity and the Trustee, related to SolarCity's 5.00% Solar Bonds, Series 2016/4-10.</a>	8-K(1)	001-35758	4.5	January 29, 2016	

Exhibit Number	Exhibit Description	Incorporated by Reference				Filed Herewith
		Form	File No.	Exhibit	Filing Date	
4.83	<a href="#">One Hundred-and-Seventy-Fourth Supplemental Indenture, dated as of January 29, 2016, by and between SolarCity and the Trustee, related to SolarCity's 5.75% Solar Bonds, Series 2016/5-15.</a>	8-K(1)	001-35758	4.6	January 29, 2016	
4.84	<a href="#">One Hundred-and-Seventy-Seventh Supplemental Indenture, dated as of February 26, 2016, by and between SolarCity and the Trustee, related to SolarCity's 5.25% Solar Bonds, Series 2016/8-5.</a>	8-K(1)	001-35758	4.4	February 26, 2016	
4.85	<a href="#">One Hundred-and-Seventy-Ninth Supplemental Indenture, dated as of March 21, 2016, by and between SolarCity and the Trustee, related to SolarCity's 5.25% Solar Bonds, Series 2016/10-5.</a>	8-K(1)	001-35758	4.3	March 21, 2016	
4.86	<a href="#">One Hundred-and-Eighty-First Supplemental Indenture, dated as of June 10, 2016, by and between SolarCity and the Trustee, related to SolarCity's 5.25% Solar Bonds, Series 2016/12-5.</a>	8-K(1)	001-35758	4.3	June 10, 2016	
4.87	<a href="#">Description of Registrant's Securities</a>	10-K	001-34756	4.119	February 13, 2020	
10.1**	<a href="#">Form of Indemnification Agreement between the Registrant and its directors and officers.</a>	S-1/A	333-164593	10.1	June 15, 2010	
10.2**	<a href="#">2003 Equity Incentive Plan.</a>	S-1/A	333-164593	10.2	May 27, 2010	
10.3**	<a href="#">Form of Stock Option Agreement under 2003 Equity Incentive Plan.</a>	S-1	333-164593	10.3	January 29, 2010	
10.4**	<a href="#">Amended and Restated 2010 Equity Incentive Plan.</a>	10-K	001-34756	10.4	February 23, 2018	
10.5**	<a href="#">Form of Stock Option Agreement under 2010 Equity Incentive Plan.</a>	10-K	001-34756	10.6	March 1, 2017	
10.6**	<a href="#">Form of Restricted Stock Unit Award Agreement under 2010 Equity Incentive Plan.</a>	10-K	001-34756	10.7	March 1, 2017	
10.7**	<a href="#">Amended and Restated 2010 Employee Stock Purchase Plan, effective as of February 1, 2017.</a>	10-K	001-34756	10.8	March 1, 2017	
10.8**	<a href="#">2019 Equity Incentive Plan.</a>	S-8	333-232079	4.2	June 12, 2019	
10.9**	<a href="#">Form of Stock Option Agreement under 2019 Equity Incentive Plan.</a>	S-8	333-232079	4.3	June 12, 2019	
10.10**	<a href="#">Form of Restricted Stock Unit Award Agreement under 2019 Equity Incentive Plan.</a>	S-8	333-232079	4.4	June 12, 2019	
10.11**	<a href="#">Employee Stock Purchase Plan, effective as of June 12, 2019.</a>	S-8	333-232079	4.5	June 12, 2019	
10.12**	<a href="#">2007 SolarCity Stock Plan and form of agreements used thereunder.</a>	S-1(1)	333-184317	10.2	October 5, 2012	
10.13**	<a href="#">2012 SolarCity Equity Incentive Plan and form of agreements used thereunder.</a>	S-1(1)	333-184317	10.3	October 5, 2012	
10.14**	<a href="#">2010 Zep Solar, Inc. Equity Incentive Plan and form of agreements used thereunder.</a>	S-8(1)	333-192996	4.5	December 20, 2013	
10.15**	<a href="#">Offer Letter between the Registrant and Elon Musk dated October 13, 2008.</a>	S-1	333-164593	10.9	January 29, 2010	

Exhibit Number	Exhibit Description	Incorporated by Reference				Filed Herewith
		Form	File No.	Exhibit	Filing Date	
10.16**	<a href="#">Performance Stock Option Agreement between the Registrant and Elon Musk dated January 21, 2018.</a>	DEF 14A	001-34756	Appendix A	February 8, 2018	
10.17**	<a href="#">Maxwell Technologies, Inc. 2005 Omnibus Equity Incentive Plan, as amended through May 6, 2010</a>	8-K(2)	001-15477	10.1	May 10, 2010	
10.18**	<a href="#">Maxwell Technologies, Inc. 2013 Omnibus Equity Incentive Plan</a>	DEF 14A(2)	001-15477	Appendix A	June 2, 2017	
10.19	<a href="#">Indemnification Agreement, effective as of June 23, 2020, between Registrant and Elon R. Musk.</a>	10-Q	001-34756	10.4	July 28, 2020	
10.20	<a href="#">Indemnification Agreement, dated as of February 27, 2014, by and between the Registrant and J.P. Morgan Securities LLC.</a>	8-K	001-34756	10.1	March 5, 2014	
10.21	<a href="#">Form of Call Option Confirmation relating to 1.25% Convertible Senior Notes Due March 1, 2021.</a>	8-K	001-34756	10.3	March 5, 2014	
10.22	<a href="#">Form of Warrant Confirmation relating to 1.25% Convertible Senior Notes Due March 1, 2021.</a>	8-K	001-34756	10.5	March 5, 2014	
10.23	<a href="#">Form of Call Option Confirmation relating to 2.375% Convertible Notes due March 15, 2022.</a>	8-K	001-34756	10.1	March 22, 2017	
10.24	<a href="#">Form of Warrant Confirmation relating to 2.375% Convertible Notes due March 15, 2022.</a>	8-K	001-34756	10.2	March 22, 2017	
10.25	<a href="#">Form of Call Option Confirmation relating to 2.00% Convertible Senior Notes due May 15, 2024.</a>	8-K	001-34756	10.1	May 3, 2019	
10.26	<a href="#">Form of Warrant Confirmation relating to 2.00% Convertible Senior Notes due May 15, 2024.</a>	8-K	001-34756	10.2	May 3, 2019	
10.27†	<a href="#">Supply Agreement between Panasonic Corporation and the Registrant dated October 5, 2011.</a>	10-K	001-34756	10.50	February 27, 2012	
10.28†	<a href="#">Amendment No. 1 to Supply Agreement between Panasonic Corporation and the Registrant dated October 29, 2013.</a>	10-K	001-34756	10.35A	February 26, 2014	
10.29	<a href="#">Agreement between Panasonic Corporation and the Registrant dated July 31, 2014.</a>	10-Q	001-34756	10.1	November 7, 2014	
10.30†	<a href="#">General Terms and Conditions between Panasonic Corporation and the Registrant dated October 1, 2014.</a>	8-K	001-34756	10.2	October 11, 2016	
10.31	<a href="#">Letter Agreement, dated as of February 24, 2015, regarding addition of co-party to General Terms and Conditions, Production Pricing Agreement and Investment Letter Agreement between Panasonic Corporation and the Registrant.</a>	10-K	001-34756	10.25A	February 24, 2016	

Exhibit Number	Exhibit Description	Incorporated by Reference				Filed Herewith
		Form	File No.	Exhibit	Filing Date	
10.32†	<a href="#">Amendment to Gigafactory General Terms, dated March 1, 2016, by and among the Registrant, Panasonic Corporation and Panasonic Energy Corporation of North America.</a>	8-K	001-34756	10.1	October 11, 2016	
10.33††	<a href="#">Amended and Restated General Terms and Conditions for Gigafactory, entered into on June 10, 2020, by and among Registrant, Tesla Motors Netherlands B.V., Panasonic Corporation and Panasonic Corporation of North America.</a>	10-Q	001-34756	10.2	July 28, 2020	
10.34†	<a href="#">Production Pricing Agreement between Panasonic Corporation and the Registrant dated October 1, 2014.</a>	10-Q	001-34756	10.3	November 7, 2014	
10.35†	<a href="#">Investment Letter Agreement between Panasonic Corporation and the Registrant dated October 1, 2014.</a>	10-Q	001-34756	10.4	November 7, 2014	
10.36	<a href="#">Amendment to Gigafactory Documents, dated April 5, 2016, by and among the Registrant, Panasonic Corporation, Panasonic Corporation of North America and Panasonic Energy Corporation of North America.</a>	10-Q	001-34756	10.2	May 10, 2016	
10.37††	<a href="#">2019 Pricing Agreement (Japan Cells) with respect to 2011 Supply Agreement, executed September 20, 2019, by and among the Registrant, Tesla Motors Netherlands B.V., Panasonic Corporation and SANYO Electric Co., Ltd.</a>	10-Q	001-34756	10.6	October 29, 2019	
10.38††	<a href="#">2020 Pricing Agreement (Gigafactory 2170 Cells), entered into on June 9, 2020, by and among Registrant, Tesla Motors Netherlands B.V., Panasonic Corporation and Panasonic Corporation of North America.</a>	10-Q	001-34756	10.3	July 28, 2020	
10.39††	<a href="#">2021 Pricing Agreement (Japan Cells) with respect to 2011 Supply Agreement, executed December 29, 2020, by and among the Registrant, Tesla Motors Netherlands B.V., Panasonic Corporation of North America and SANYO Electric Co., Ltd.</a>	—	—	—	—	X
10.40††	<a href="#">Amended and Restated Factory Lease, executed as of March 26, 2019, by and between the Registrant and Panasonic Energy North America, a division of Panasonic Corporation of North America, as tenant.</a>	10-Q	001-34756	10.3	July 29, 2019	
10.41††	<a href="#">Lease Amendment, executed September 20, 2019, by and among the Registrant, Panasonic Corporation of North America, on behalf of its division Panasonic Energy of North America, with respect to the Amended and Restated Factory Lease, executed as of March 26, 2019.</a>	10-Q	001-34756	10.7	October 29, 2019	
10.42††	<a href="#">Second Lease Amendment, entered into on June 9, 2020, by and between the Registrant and Panasonic Energy of North America, a division of Panasonic Corporation of North America, with respect to the Amended and Restated Factory Lease dated January 1, 2017.</a>	10-Q	001-34756	10.1	July 28, 2020	

Exhibit Number	Exhibit Description	Incorporated by Reference				Filed Herewith
		Form	File No.	Exhibit	Filing Date	
10.43	<a href="#">Amendment and Restatement in respect of ABL Credit Agreement, dated as of March 6, 2019, by and among certain of the Registrant's and Tesla Motors Netherlands B.V.'s direct or indirect subsidiaries from time to time party thereto, as borrowers, Wells Fargo Bank, National Association, as documentation agent, JPMorgan Chase Bank, N.A., Goldman Sachs Bank USA, Morgan Stanley Senior Funding Inc. and Bank of America, N.A., as syndication agents, the lenders from time to time party thereto, and Deutsche Bank AG New York Branch, as administrative agent and collateral agent.</a>	S-4/A	333-229749	10.68	April 3, 2019	
10.44	<a href="#">First Amendment to Amended and Restated ABL Credit Agreement, dated as of December 23, 2020, in respect of the Amended and Restated ABL Credit Agreement, dated as of March 6, 2019, by and among certain of the Registrant's and Tesla Motors Netherlands B.V.'s direct or indirect subsidiaries from time to time party thereto, as borrowers, Wells Fargo Bank, National Association, as documentation agent, JPMorgan Chase Bank, N.A., Goldman Sachs Bank USA, Morgan Stanley Senior Funding Inc. and Bank of America, N.A., as syndication agents, the lenders from time to time party thereto, and Deutsche Bank AG New York Branch, as administrative agent and collateral agent.</a>	—	—	—	—	X
10.45†	<a href="#">Agreement for Tax Abatement and Incentives, dated as of May 7, 2015, by and between Tesla Motors, Inc. and the State of Nevada, acting by and through the Nevada Governor's Office of Economic Development.</a>	10-Q	001-34756	10.1	August 7, 2015	
10.46††	<a href="#">Second Amended and Restated Loan and Security Agreement, dated as of August 28, 2020, by and among Tesla 2014 Warehouse SPV LLC, Tesla Finance LLC, the Lenders and Group Agents from time to time party thereto, Deutsche Bank Trust Company Americas, as Paying Agent, and Deutsche Bank AG, New York Branch, as Administrative Agent.</a>	10-Q	001-34756	10.2	October 26, 2020	
10.47†	<a href="#">Loan and Security Agreement, executed on December 28, 2018, by and among LML 2018 Warehouse SPV, LLC, Tesla Finance LLC, the Lenders and Group Agents from time to time party thereto, Deutsche Bank Trust Company Americas, as Paying Agent, and Deutsche Bank AG, New York Branch, as Administrative Agent.</a>	10-K	001-34756	10.55	February 19, 2019	

Exhibit Number	Exhibit Description	Incorporated by Reference			Filed Herewith
		Form	File No.	Exhibit	
10.48††	<a href="#">Letter of Consent, dated as of June 14, 2019, by and among LML 2018 Warehouse SPV, LLC, Deutsche Bank AG, New York Branch, as Administrative Agent, and the Group Agents party thereto, in respect of the Loan and Security Agreement, dated as of August 17, 2017 and as amended from time to time, by and among LML Warehouse SPV, LLC, Tesla Finance LLC, and the Lenders, Group Agents and Administrative Agent from time to time party thereto.</a>	10-Q	001-34756	10.1	July 29, 2019
10.49††	<a href="#">Amendment No. 1 to Loan and Security Agreement, dated as of August 16, 2019, by and among LML 2018 Warehouse SPV, LLC, Deutsche Bank Trust Company Americas, as Paying Agent, and Deutsche Bank AG, New York Branch, as Administrative Agent, and the Lenders and Group Agents from time to time party thereto.</a>	10-Q	001-34756	10.2	October 29, 2019
10.50	<a href="#">Amendment No. 2 to Loan and Security Agreement, dated as of December 13, 2019, by and among LML 2018 Warehouse SPV, LLC, Deutsche Bank Trust Company Americas, as Paying Agent, and Deutsche Bank AG, New York Branch, as Administrative Agent, and the Lenders and Group Agents from time to time party thereto.</a>	10-K	001-34756	10.69	February 13, 2020
10.51	<a href="#">Letter of Consent, dated February 18, 2020, by and among LML 2018 Warehouse SPV, LLC, Tesla 2014 Warehouse SPV LLC, LLC and Deutsche Bank AG, New York Branch, as Administrative Agent and as Group Agent under the 2018 Loan Agreement and the 2014 Loan Agreement, and the Group Agents party thereto, in respect of (i) the Loan and Security Agreement, dated December 27, 2018 and as amended from time to time, among LML 2018 Warehouse SPV, LLC, Tesla Finance LLC, Deutsche Bank Trust Company Americas, as Paying Agent, Deutsche Bank AG, New York Branch, as Administrative Agent, the lenders parties and agent parties thereto, and (ii) the Amended and Restated Loan and Security Agreement, dated August 17, 2017 and as amended from time to time, among Tesla 2014 Warehouse SPV LLC, Tesla Finance LLC, the lenders and group agents party thereto, Deutsche Bank Trust Company Americas, as Paying Agent, and Deutsche Bank AG, New York Branch, as Administrative Agent.</a>	10-Q	001-34756	10.1	April 30, 2020



Exhibit Number	Exhibit Description	Incorporated by Reference				Filed Herewith
		Form	File No.	Exhibit	Filing Date	
10.52††	<a href="#">Letter of Consent, dated as of August 14, 2020, by and among LML 2018 Warehouse SPV, LLC, Tesla 2014 Warehouse SPV LLC, Deutsche Bank AG, New York Branch, as Administrative Agent and Group Agent, and the Group Agents party thereto, in respect of (i) the Loan and Security Agreement, dated as of December 27, 2018 and as amended from time to time, by and among LML 2018 Warehouse SPV, LLC, Tesla Finance LLC, and the Lenders, Group Agents, Paying Agent and Administrative Agent from time to time party thereto, and (ii) the Amended and Restated Loan and Security Agreement, dated as of August 17, 2017 and as amended from time to time, by and among LML Warehouse SPV, LLC, Tesla Finance LLC, and the Lenders, Group Agents and Administrative Agent from time to time party thereto.</a>	10-Q	001-34756	10.1	October 26, 2020	
10.53	<a href="#">Payoff and Termination Letter, executed on August 28, 2020, by and among LML 2018 Warehouse SPV, LLC, the Lenders and Group Agents from time to time party thereto, Deutsche Bank Trust Company Americas, as Paying Agent and Deutsche Bank AG, New York Branch, as Administrative Agent, relating to Loan and Security Agreement.</a>	10-Q	001-34756	10.3	October 26, 2020	
10.54	<a href="#">Purchase Agreement, dated as of August 11, 2017, by and among the Registrant, SolarCity and Goldman Sachs &amp; Co. LLC and Morgan Stanley &amp; Co. LLC as representatives of the several initial purchasers named therein.</a>	8-K	001-34756	10.1	August 23, 2017	
10.55	<a href="#">Amended and Restated Agreement For Research &amp; Development Alliance on Triex Module Technology, effective as of September 2, 2014, by and between The Research Foundation For The State University of New York, on behalf of the College of Nanoscale Science and Engineering of the State University of New York, and Silevo, Inc.</a>	10-Q(1)	001-35758	10.16	November 6, 2014	
10.56	<a href="#">First Amendment to Amended and Restated Agreement For Research &amp; Development Alliance on Triex Module Technology, effective as of October 31, 2014, by and between The Research Foundation For The State University of New York, on behalf of the College of Nanoscale Science and Engineering of the State University of New York, and Silevo, Inc.</a>	10-K(1)	001-35758	10.16a	February 24, 2015	

Exhibit Number	Exhibit Description	Incorporated by Reference			Filed Herewith
		Form	File No.	Exhibit	
10.57	<a href="#">Second Amendment to Amended and Restated Agreement For Research &amp; Development Alliance on Triex Module Technology, effective as of December 15, 2014, by and between The Research Foundation For The State University of New York, on behalf of the College of Nanoscale Science and Engineering of the State University of New York, and Silevo, Inc.</a>	10-K(1)	001-35758	10.16b	February 24, 2015
10.58	<a href="#">Third Amendment to Amended and Restated Agreement For Research &amp; Development Alliance on Triex Module Technology, effective as of February 12, 2015, by and between The Research Foundation For The State University of New York, on behalf of the College of Nanoscale Science and Engineering of the State University of New York, and Silevo, Inc.</a>	10-Q(1)	001-35758	10.16c	May 6, 2015
10.59	<a href="#">Fourth Amendment to Amended and Restated Agreement For Research &amp; Development Alliance on Triex Module Technology, effective as of March 30, 2015, by and between The Research Foundation For The State University of New York, on behalf of the College of Nanoscale Science and Engineering of the State University of New York, and Silevo, Inc.</a>	10-Q(1)	001-35758	10.16d	May 6, 2015
10.60	<a href="#">Fifth Amendment to Amended and Restated Agreement For Research &amp; Development Alliance on Triex Module Technology, effective as of June 30, 2015, by and between The Research Foundation For The State University of New York, on behalf of the College of Nanoscale Science and Engineering of the State University of New York, and Silevo, LLC.</a>	10-Q(1)	001-35758	10.16e	July 30, 2015
10.61	<a href="#">Sixth Amendment to Amended and Restated Agreement For Research &amp; Development Alliance on Triex Module Technology, effective as of September 1, 2015, by and between The Research Foundation For The State University of New York, on behalf of the College of Nanoscale Science and Engineering of the State University of New York, and Silevo, LLC.</a>	10-Q(1)	001-35758	10.16f	October 30, 2015
10.62	<a href="#">Seventh Amendment to Amended and Restated Agreement For Research &amp; Development Alliance on Triex Module Technology, effective as of October 9, 2015, by and between The Research Foundation For The State University of New York, on behalf of the College of Nanoscale Science and Engineering of the State University of New York, and Silevo, LLC.</a>	10-Q(1)	001-35758	10.16g	October 30, 2015

Exhibit Number	Exhibit Description	Incorporated by Reference				Filed Herewith
		Form	File No.	Exhibit	Filing Date	
10.63	<a href="#">Eighth Amendment to Amended and Restated Agreement For Research &amp; Development Alliance on Triex Module Technology, effective as of October 26, 2015, by and between The Research Foundation For The State University of New York, on behalf of the College of Nanoscale Science and Engineering of the State University of New York, and Silevo, LLC.</a>	10-Q(1)	001-35758	10.16h	October 30, 2015	
10.64	<a href="#">Ninth Amendment to Amended and Restated Agreement For Research &amp; Development Alliance on Triex Module Technology, effective as of December 9, 2015, by and between The Research Foundation For The State University of New York, on behalf of the College of Nanoscale Science and Engineering of the State University of New York, and Silevo, LLC.</a>	10-K(1)	001-35758	10.16i	February 10, 2016	
10.65	<a href="#">Tenth Amendment to Amended and Restated Agreement For Research &amp; Development Alliance on Triex Module Technology, effective as of March 31, 2017, by and between The Research Foundation For The State University of New York, on behalf of the Colleges of Nanoscale Science and Engineering of the State University of New York, and Silevo, LLC.</a>	10-Q	001-34756	10.8	May 10, 2017	
10.66	<a href="#">Eleventh Amendment to Amended and Restated Agreement for Research &amp; Development Alliance on Triex Module Technology, effective as of July 22, 2020, among the Research Foundation for the State University of New York, Silevo, LLC and Tesla Energy Operations, Inc.</a>	10-Q	001-34756	10.6	July 28, 2020	
10.67††	<a href="#">Grant Contract for State-Owned Construction Land Use Right, dated as of October 17, 2018, by and between Shanghai Planning and Land Resource Administration Bureau, as grantor, and Tesla (Shanghai) Co., Ltd., as grantee (English translation).</a>	10-Q	001-34756	10.2	July 29, 2019	
10.68††	<a href="#">Facility Agreement, dated as of September 26, 2019, by and between China Merchants Bank Co., Ltd. Beijing Branch and Tesla Automobile (Beijing) Co., Ltd. (English translation).</a>	10-Q	001-34756	10.3	October 29, 2019	
10.69††	<a href="#">Statement Letter to China Merchants Bank Co., Ltd. Beijing Branch from Tesla Automobile (Beijing) Co., Ltd., dated as of September 26, 2019 (English translation).</a>	10-Q	001-34756	10.4	October 29, 2019	

Exhibit Number	Exhibit Description	Incorporated by Reference				Filed Herewith
		Form	File No.	Exhibit	Filing Date	
10.70††	<a href="#">Fixed Asset Syndication Loan Agreement, dated as of December 18, 2019, by and among Tesla (Shanghai) Co., Ltd., China Construction Bank Corporation, China (Shanghai) Pilot Free Trade Zone Special Area Branch, Agricultural Bank of China Shanghai Changning Sub-branch, Shanghai Pudong Development Bank Co., Ltd., Shanghai Branch, and Industrial and Commercial Bank of China Limited, China (Shanghai) Pilot Free Trade Zone Special Area Branch (English translation).</a>	10-K	001-34756	10.85	February 13, 2020	
10.71††	<a href="#">Fixed Asset Syndication Loan Agreement and Supplemental Agreement, dated as of December 18, 2019, by and among Tesla (Shanghai) Co., Ltd., China Construction Bank Corporation, China (Shanghai) Pilot Free Trade Zone Special Area Branch, Agricultural Bank of China Shanghai Changning Sub-branch, Shanghai Pudong Development Bank Co., Ltd., Shanghai Branch, and Industrial and Commercial Bank of China Limited, China (Shanghai) Pilot Free Trade Zone Special Area Branch (English translation).</a>	10-K	001-34756	10.86	February 13, 2020	
10.72††	<a href="#">Syndication Revolving Loan Agreement, dated as of December 18, 2019, by and among Tesla (Shanghai) Co., Ltd. China Construction Bank Corporation, China (Shanghai) Pilot Free Trade Zone Special Area Branch, Agricultural Bank of China Shanghai Changning Sub-branch, Shanghai Pudong Development Bank Co., Ltd., Shanghai Branch, and Industrial and Commercial Bank of China Limited, China (Shanghai) Pilot Free Trade Zone Special Area Branch (English translation).</a>	10-K	001-34756	10.87	February 13, 2020	
10.73††	<a href="#">Working Capital Loan Contact, dated as of May 7, 2020, between Industrial and Commercial Bank of China, China (Shanghai) Pilot Free Trade Zone Lingang Special Area Branch and Tesla (Shanghai) Co., Ltd.</a>	10-Q	001-34756	10.5	July 28, 2020	
21.1	<a href="#">List of Subsidiaries of the Registrant</a>	—	—	—	—	X
23.1	<a href="#">Consent of PricewaterhouseCoopers LLP, Independent Registered Public Accounting Firm</a>	—	—	—	—	X
31.1	<a href="#">Rule 13a-14(a) / 15(d)-14(a) Certification of Principal Executive Officer</a>	—	—	—	—	X
31.2	<a href="#">Rule 13a-14(a) / 15(d)-14(a) Certification of Principal Financial Officer</a>	—	—	—	—	X
32.1*	<a href="#">Section 1350 Certifications</a>	—	—	—	—	X
101.INS	Inline XBRL Instance Document	—	—	—	—	X
101.SCH	Inline XBRL Taxonomy Extension Schema Document	—	—	—	—	X

Exhibit Number	Exhibit Description	Incorporated by Reference				Filed Herewith
		Form	File No.	Exhibit	Filing Date	
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document.	—	—	—	—	X
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document	—	—	—	—	X
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document	—	—	—	—	X
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document	—	—	—	—	X
104	Cover Page Interactive Data File (formatted as inline XBRL with applicable taxonomy extension information contained in Exhibits 101)					

\* Furnished herewith

\*\* Indicates a management contract or compensatory plan or arrangement

† Confidential treatment has been requested for portions of this exhibit

†† Portions of this exhibit have been redacted in compliance with Regulation S-K Item 601(b)(10).

(1) Indicates a filing of SolarCity

(2) Indicates a filing of Maxwell Technologies, Inc.

**ITEM 16. SUMMARY**

None

**SIGNATURES**

Pursuant to the requirements of Section 13 or 15(d) the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

Tesla, Inc.

Date: February 8, 2021

\_\_\_\_\_  
/s/ Elon Musk  
Elon Musk  
Chief Executive Officer  
(Principal Executive Officer)

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Elon Musk</u> Elon Musk	Chief Executive Officer and Director (Principal Executive Officer)	February 8, 2021
<u>/s/ Zachary J. Kirkhorn</u> Zachary J. Kirkhorn	Chief Financial Officer (Principal Financial Officer)	February 8, 2021
<u>/s/ Vaibhav Taneja</u> Vaibhav Taneja	Chief Accounting Officer (Principal Accounting Officer)	February 8, 2021
<u>/s/ Robyn Denholm</u> Robyn Denholm	Director	February 8, 2021
<u>/s/ Ira Ehrenpreis</u> Ira Ehrenpreis	Director	February 8, 2021
<u>/s/ Lawrence J. Ellison</u> Lawrence J. Ellison	Director	February 8, 2021
<u>/s/ Antonio J. Gracias</u> Antonio J. Gracias	Director	February 8, 2021
<u>/s/ Hiromichi Mizuno</u> Hiromichi Mizuno	Director	February 8, 2021
<u>/s/ James Murdoch</u> James Murdoch	Director	February 8, 2021
<u>/s/ Kimbal Musk</u> Kimbal Musk	Director	February 8, 2021
<u>/s/ Kathleen Wilson-Thompson</u> Kathleen Wilson-Thompson	Director	February 8, 2021

Certain identified information has been omitted from this document because it is not material and would be competitively harmful if publicly disclosed, and has been marked with "[\*\*\*]" to indicated where omissions have been made.

**Exhibit 10.39**

**2021 Pricing Agreement (Japan Cells)**

**PPA Effective Date:** 10/01/2020

<b>Seller's Vendor Number with Tesla:</b>	106644
<b>[***] Pricing Validity Period:</b>	1/1/2021 through 7/31/2022
<b>[***] Volume Commitment Period:</b>	1/1/2021 through 7/31/2022
<b>[***] Pricing Validity Period:</b>	1/1/2021 through 3/31/2022
<b>[***] Volume Commitment Period:</b>	4/1/2021 through 3/31/2022
<b>Seller Guaranteed Capacity Commitment during each Volume Commitment Period:</b>	See Section 3 below
<b>Payment Terms:</b>	[***] - DAP (Incoterms 2010) Fremont, California or Oakland Port or FCA (Incoterms 2010) Seller's designated location in Japan, as applicable (depending on Cell type)

- This 2021 Pricing Agreement (Japan Cells) (the "PPA") is entered into by the Tesla, Inc. and Tesla Motors Netherlands B.V. (collectively, "Tesla") and Panasonic Corporation of North America ("PNA"), and SANYO Electric Co., Ltd. acting through Tesla Energy Business Division, the assignee of the Supply Agreement from Panasonic Corporation, acting through Energy Company ("Sanyo") (collectively, "Seller") (each a "Party"; collectively, the "Parties") with respect to the cylindrical lithium-ion battery cells referenced herein made by or on behalf of Seller (collectively, "Cells") in Japan. The Parties shall meet and confer in good faith to finalize an agreed, written Specification for each type of Cells, including the agreed watt-hour (Wh) capacity and size. The pricing herein shall apply to Cells produced by Seller in Japan and continue throughout the Pricing Period. Terms used herein with initial capitalization have the meanings given where used or in the Japan Contract (as defined below). Unless expressly stated otherwise, all

quarterly dates in this PPA refer to the calendar year and not a Party's fiscal year. Subject to Exhibit C, in the event of any conflict between the terms of this PPA and the 2019 Pricing Agreement (Japan Cells) between the Parties (the "2019 PPA"), the terms of the 2019 PPA shall take precedence over those in this PPA to the extent of the conflict until the end of the Pricing Validity Period in the 2019 PPA.

2. **Orders.** Tesla and any of its Affiliates ("Authorized Purchaser") may order goods pursuant to Orders issued directly to Seller and each such Order shall be governed by the Japan Contract. The applicable delivery dates will be specified in Orders issued and accepted per Section 3 (Forecasts and Orders) of the Supply Agreement or otherwise agreed in writing by the Parties. Seller shall direct all invoices under an Order to the Tesla entity identified in the Order.
3. **Volumes.**
  - a. Cell Volumes.
    - i. Seller shall guarantee availability of [\*\*\*] Cells produced on [\*\*\*] at [\*\*\*] Japan ("[\*\*\*]") during the [\*\*\*] Volume Commitment Period up to a volume of [\*\*\*] Cells (the "[\*\*\*] Seller Guaranteed Capacity Commitment"). Seller and Tesla shall have a good faith discussion with regard to a corresponding reduction in Seller's Guaranteed Capacity Commitment in the event that Tesla significantly reduces its Orders for [\*\*\*] Cells as a result of [\*\*\*].

- ii. Tesla commits to order and purchase a minimum volume of [\*\*\*] conforming and non-defective [\*\*\*] Cells produced on [\*\*\*] during the [\*\*\*] Volume Commitment Period (“[\*\*\*] Purchase Commitment”).
  - iii. In the event that the actual production volume of [\*\*\*] Cells produced on [\*\*\*] during the [\*\*\*] Volume Commitment Period exceeds the [\*\*\*] Seller Guaranteed Capacity Commitment and Tesla desires to purchase a volume of [\*\*\*] Cells in excess of the [\*\*\*] Purchase Commitment, the Parties shall discuss Tesla’s request in good faith.
  - iv. If Tesla and its Authorized Purchasers fail, collectively, to order an aggregate volume of [\*\*\*] Cells produced on [\*\*\*] from Seller at least equal to the [\*\*\*] Purchase Commitment during the [\*\*\*] Volume Commitment Period and purchase the Cells delivered by Seller in connection with such Orders, then, [\*\*\*], Tesla will, [\*\*\*] subject to Sections 3.c through 3.e. below, [\*\*\*] for the shortfall volume not ordered pursuant to the foregoing clause (“[\*\*\*] Shortfall Volume”) (and neither Tesla nor its Authorized Purchasers would [\*\*\*]); provided that, upon Tesla’s request to Seller in writing [\*\*\*], the Parties shall discuss in good faith [\*\*\*] by Tesla and/or its Authorized Purchasers for the [\*\*\*] Shortfall Volume (subject to the then [\*\*\*] of [\*\*\*]) before the end of the [\*\*\*] Volume Commitment Period as an alternative to the foregoing [\*\*\*]; further provided that the [\*\*\*] in response to [\*\*\*] shall be [\*\*\*] after the end of [\*\*\*] Volume Commitment Period.
- b. [\*\*\*] Cell Volumes.
- i. Seller shall guarantee availability of [\*\*\*] Cells produced at the [\*\*\*] and [\*\*\*] factories on the production lines specified in Exhibit A during the [\*\*\*] Volume Commitment Period up to a volume of [\*\*\*] Cells (“[\*\*\*] Seller Guaranteed Capacity Commitment”). Seller and Tesla shall have a good faith discussion with regard to [\*\*\*] in the event that Tesla significantly reduces its orders for [\*\*\*] Cells as a result of [\*\*\*].
  - ii. Tesla commits to purchase a minimum of [\*\*\*] conforming and non-defective [\*\*\*] Cells produced during the [\*\*\*] Volume Commitment Period (“[\*\*\*] Purchase Commitment”).
  - iii. If Tesla and its Authorized Purchasers fail, collectively, to order an aggregate volume of [\*\*\*] Cells from Seller at least equal the [\*\*\*] Purchase Commitment during the [\*\*\*] Volume Commitment Period and purchase the Cells delivered by Seller in connection with such Orders, then, [\*\*\*], Tesla will, [\*\*\*] subject to Sections 3.c through 3.e below, [\*\*\*] for the shortfall volume not ordered pursuant to the foregoing clause (“[\*\*\*] Shortfall Volume”) (and neither Tesla nor its Authorized Purchasers would [\*\*\*]); provided that, upon Tesla’s request to Seller in writing [\*\*\*], the Parties shall discuss in good faith an [\*\*\*] by Tesla and/or its Authorized Purchasers for the [\*\*\*] Shortfall Volume (subject to the then [\*\*\*] of the specified production lines set forth above) before the end of the [\*\*\*] Volume Commitment Period as an alternative to the foregoing [\*\*\*]; further provided that the [\*\*\*] produced on such production lines in [\*\*\*] shall be [\*\*\*] after the [\*\*\*] Volume Commitment Period. In addition, if the aggregate volumes of [\*\*\*] Cells ordered and purchased by Tesla and its Authorized Purchaser during the [\*\*\*] Volume Commitment Period are below [\*\*\*] Cells, the Parties agree to discuss in good faith [\*\*\*] for [\*\*\*].
- c. After notifying Tesla in writing, Seller shall use Commercially Reasonable Efforts (as defined below) [\*\*\*]. If and to the extent that Seller is able to [\*\*\*], Tesla’s Shortfall Volume payment obligations as set forth in Section 3.a and 3.b. above, as applicable, shall be [\*\*\*]. “Commercially Reasonable Efforts” means taking all such steps and performing in such a manner as a well-managed company would undertake where it was acting in a determined, prudent and reasonable manner to achieve a particular desired result for its own benefit.



- d. For the avoidance of doubt, Tesla’s purchase commitments hereunder shall be deemed to be satisfied and shall be reduced, as applicable, to the extent that one or more Authorized Purchasers purchases Cells in connection with this PPA.
- e. Tesla’s purchase commitments shall be reduced by the quantity of Cells that are [\*\*\*].

4. **Pricing**

- a. **Baseline and Unit Price.** The price per Cell payable by Tesla is referred to as the “Unit Price.” The Parties agree that the Unit Prices for Cells will be firm and fixed prices determined with reference to the applicable baseline price (“Baseline Price”) and the applicable adjustments set forth herein and will not change for any reason except as expressly set forth herein. No further amounts shall be payable by Tesla for any reason, except as may be applicable per Section 3 (Volumes) and Section 5 (Customs) herein. The Unit Prices for Cells will not increase for any reason except as expressly contemplated in this PPA or otherwise mutually agreed by the Parties through either a formal signed amendment hereof or an Order that is issued by Tesla and accepted by Seller. The Parties will adjust the [\*\*\*] according to the method described in Exhibit B.
- b. **[\*\*\*] Cells Pricing**
  - i. **Baseline Price:** The Baseline Price for the ‘[\*\*\*]’ Cells during the [\*\*\*] Pricing Period shall be the applicable rate set forth in Table 4-A, based on the date of delivery of the Cells. The Parties agree that the following Baseline Prices include a depreciation charge based on an annual aggregate volume of [\*\*\*] Cells. The Parties will adjust the [\*\*\*] according to the method described in Exhibit B.
  - ii. **Table 4-A: ‘[\*\*\*]’ Cell Baseline Prices.**

Table 4-A - ‘[***]’ Cell Baseline Prices			
Baseline Price			[***]
[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]

- \* The above [\*\*\*] is for reference only and calculated using a currency exchange rate of USD1:JPY[\*\*\*].
- \*\* Transportation cost ([\*\*\*/cell) to Oakland is not included in above.

- iii. **Metals Adjustment.** At the beginning of each [\*\*\*] during the [\*\*\*] Pricing Period, the metals identified below will be adjusted as follows: the Parties will measure the [\*\*\*] per the applicable index or metric for the applicable measurement window in Table 4-B below (this is the “Index Average Cost”), and adjust the Baseline Price (up or down) based on the difference between the then-current Index Average Cost for each material and the baseline commodity assumptions set forth below. For purposes of this adjustment, the raw materials prices shall be converted from United States Dollars (USD) into Japanese Yen (JPY) using the average trailing exchange rate and the average trailing commodity prices for the applicable [\*\*\*] period set forth in Table 4-B below.

Table 4-B: ‘[***]’ Cell Metals Adjustment and Currency Exchange					
Cell Material	[***]	[***]	[***]	[***]	[***]
<b>Index/Metric</b>	[***]	[***]	[***]	[***]	[***]
<b>Measurement Window</b>	[***]	[***]	[***]	[***]	[***]

**Table 4-B: '[\*\*\*]' Cell Metals Adjustment and Currency Exchange**

<b>Cell Material</b>	[***]	[***]	[***]	[***]	[***]
<b>Content per Cell: [***]</b>	[***] per Cell	[***] per Cell	[***] per Cell ([***])	[***] per Cell ([***])	N/A
<b>Commodity Price Baseline</b>	[***]	[***]	[***] per Cell ([***])	[***] per Cell ([***])	[***] JPY/USD

iv. **Lithium Adjustment.** Each [\*\*\*] during the Pricing Period starting [\*\*\*], the Baseline Price shall adjust as follows: the Parties will measure the [\*\*\*] prices for [\*\*\*] for the applicable measurement window in the table below, and adjust the Baseline Price (up or down) based on the difference between the then-current Index Average Cost and the baseline commodity assumption set forth below.

**Table 4-C: '[\*\*\*]' Cell Lithium Adjustment**

<b>Cell Material</b>	[***]
<b>Index/Metric</b>	[***]
<b>Measurement Window</b>	See Table 4-D below
<b>Content per Cell: [***] Baseline</b>	[***] per Cell ([***]) [***] per Cell ([***])
<b>Commodity Price Baseline</b>	[***]
<b>Measurement Window for Currency Exchange</b>	[***] average at [***] prior to delivery ([***])

**Table 4-D: '[\*\*\*]' Cell Measurement Window for Lithium Adjustment**

Pricing Period	Measurement Window
Calendar Year [***]	[***]
Calendar Year [***]	[***]
Calendar Year [***]	[***]
Calendar Year [***]	[***]

c. **'[\*\*\*]' Cell Pricing**

i. **Baseline Price.** The Baseline Price for '[\*\*\*]' Cells during the [\*\*\*] Pricing Period shall be the applicable rate set forth in Table 4-E in each case based on the date of delivery of the Cells. The baseline pricing shown in Table 4-E was calculated using [\*\*\*] per Cell [\*\*\*]. If the actual [\*\*\*] per Cell [\*\*\*] of [\*\*\*] Cells is [\*\*\*] than the agreed [\*\*\*] specification, the Parties agree to discuss in good faith [\*\*\*].

ii. **Table 4-E: '[\*\*\*]' Cell Baseline Prices.**

**Table 4-E - '[\*\*\*]' Cell Baseline Prices**

	[***]	[***]	[***]	[***]	[***]
<b>Baseline (Yen/cell)</b>	[***]	[***]	[***]	[***]	[***]

\* Transportation cost to Fremont ([\*\*\*]/cell) is [\*\*\*] in above.

iii. **Metals Adjustment.** At the [\*\*\*] during the [\*\*\*] Pricing Period, the metals identified below will be adjusted as follows: the Parties will measure the [\*\*\*] per the applicable index or metric

for the applicable measurement window in Table 4-G below (this is the “Index Average Cost”), and adjust the Baseline Price (up or down) based on the difference between the then-current Index Average Cost for each material and the baseline commodity assumptions set forth below. For purposes of this adjustment, the raw materials prices shall be converted from United States Dollars (USD) into Japanese Yen (JPY) using the [\*\*\*] and the [\*\*\*] for the applicable [\*\*\*] period set forth in Table 4-I below.

<b>Table 4-G: ‘[***]’ Cell Metals Adjustment</b>				
<b>Cell Material</b>	[***]	[***]	[***]	[***]
<b>Index/Metric</b>	[***]	[***]	[***]	[***]
<b>Measurement Window</b>	Per Table 4-I below	Per Table 4-I below	Per Table 4-I below	Per Table 4-I below
<b>Content Per Cell: [***]</b>	[***] per Cell	[***] per Cell	[***] per Cell ([***])	[***] per Cell ([***])
<b>Commodity Price Baseline</b>	[***]	[***]	[***] per Cell ([***])	[***] per Cell ([***])
<b>Exchange Rate (Yen/\$)</b> *	[***] (* Baseline assumes [***] JPY/USD)			

iv. Lithium Adjustment. At the [\*\*\*] during the [\*\*\*] Pricing Period, the Baseline Price shall adjust as follows: the Parties will measure the [\*\*\*] based [\*\*\*] for the applicable measurement window in Table 4-I below, and adjust the Baseline Price (up or down) based on the difference between the then-current Index Average Cost for [\*\*\*] and the baseline commodity assumption set forth below. For purposes of this adjustment, the raw materials prices shall be converted from United States Dollars (USD) into Japanese Yen (JPY) using [\*\*\*] and the [\*\*\*] for the applicable [\*\*\*] period set forth in Table 4-I below.

<b>Table 4-H: ‘[***]’ Cell Lithium Adjustment</b>	
<b>Cell Material</b>	[***]
<b>Index/Metric</b>	Average of actual price paid for [***], provided that Tesla must approve in writing the pricing for all new [***] volume commitments created after the PPA Effective Date. If Seller fails to obtain Tesla’s prior written consent, the price for purposes of this adjustment shall not exceed the [***] and made available to Seller from [***].
<b>Measurement Window</b>	See Table 4-I below
<b>Content per [***] Cell Baseline</b>	[***] per Cell till [***] [***] per Cell from [***]
<b>Commodity Price Baseline</b>	[***]
<b>Exchange rate (Yen/\$) *</b>	[***] (*Baseline assumes [***]JPY/USD)

<b>Table 4-I: ‘[***]’ Cell Measurement Windows for Metals and Lithium Adjustments and corresponding Currency Exchange</b>			
Pricing Period	Measurement Window: Metals	Measurement Window: Lithium	Measurement Window: Currency Exchange
Calendar Year [***]	[***]	[***]	[***]

Calendar Year [***]	[***]	[***]	[***]
Calendar Year [***]	[***]	[***]	[***]
Calendar Year [***]	[***]	[***]	[***]

v.

d. **Line Conversion.** In connection with any conversion of [\*\*\*] production lines between production of [\*\*\*], the Parties shall [\*\*\*] the following [\*\*\*] in connection with [\*\*\*] which may include a [\*\*\*]; and [\*\*\*]. Tesla shall [\*\*\*], except to the extent expressly provided herein or agreed in writing by both Parties prior to the conversion. Without limiting anything to the contrary herein, the Parties will discuss in good faith if Tesla requests that Seller convert [\*\*\*] to a [\*\*\*] from the production of [\*\*\*], and Seller will [\*\*\*] except as agreed in writing by both Parties.

5. **Customs.** Upon arrival at the port of entry to the United States, Cells will be moved under customs bond by [\*\*\*] designated customs broker into [\*\*\*] Foreign Trade Zone (FTZ) against the bond of [\*\*\*] selected carrier. Seller shall provide all [\*\*\*] required for passage through customs and governmental reporting through [\*\*\*] FTZ. [\*\*\*] will act as the importer of record for purposes of each such shipment. In the event that new, additional, or increased duties or tariffs are imposed on the import of Cells after the PPA Effective Date, including any antidumping duties, countervailing duties, or 'national security' or similar tariffs (collectively, "**New Duties**"), the Parties shall explore all options to minimize the impact of such New Duties, the Parties shall discuss options to share responsibility for the cost of such New Duties, and [\*\*\*] shall undertake Commercially Reasonable Efforts to minimize New Duties.

6. **Material Sourcing.**

a. Seller will comply with the Tesla Supplier Code of Conduct which is available at <https://www.tesla.com/sites/default/files/about/legal/tesla-supplier-code-of-conduct.pdf> and, to the extent applicable, the Tesla Human Rights And Conflict Minerals Policy which is available at <https://www.tesla.com/about/legal/#human-rights-and-conflict-minerals-policy> (the foregoing two policies are referred to, collectively, as "**Tesla's Conduct Policies**").

b. **Sustainability.** Tesla and Seller each acknowledge the importance of maintaining a sustainable supply chain, in which vendors and suppliers at all levels comply in full with all applicable Laws, industry standards, and Tesla's Conduct Policies (defined above), in each case with respect to sustainable labor practices, including a zero-tolerance policy with respect to child or forced labor and robust safety standards (collectively, the "**Sustainability Standards**"). Accordingly, the Parties agree as follows:

- i. Seller shall contractually require its suppliers and sub-suppliers to [\*\*\*] for purposes of production of Cells under this PPA. "Minerals" means any form of cobalt and/or 'conflict minerals' (as that term is used in Tesla's Conduct Policies).
- ii. At least [\*\*\*] during the Term, Seller shall [\*\*\*] (collectively, "Minerals Suppliers"). Seller shall conduct each [\*\*\*] in accordance with [\*\*\*], including as applicable the [\*\*\*] from [\*\*\*] and the commitments adopted [\*\*\*], [\*\*\*] firm with relevant industry experience. The scope and methodology of [\*\*\*], and shall schedule [\*\*\*] to facilitate [\*\*\*]. Seller will provide Tesla and its independent auditors with a [\*\*\*]. Seller shall complete each [\*\*\*] and deliver a [\*\*\*] during the Term.
- iii. If and to the extent that a [\*\*\*], then the Parties shall promptly discuss in good faith and one of the following shall apply:
  - (i) Seller shall promptly: (a) cause the [\*\*\*] and provide evidence to Tesla that [\*\*\*]; and/or (b) [\*\*\*] related to this PPA [\*\*\*]; or

(ii) If Seller is unable to achieve compliance as contemplated in Subsection (i) above, the Parties shall promptly [\*\*\*].

**7. Capital Investment for [\*\*\*] Cell.**

- a. Seller commits to [\*\*\*] in [\*\*\*] to [\*\*\*] the [\*\*\*] Seller Guaranteed Capacity Commitment. The aggregate amount of [\*\*\*] for the foregoing shall be [\*\*\*] JPY.
- b. The Parties agree and acknowledge that Seller shall be entitled to [\*\*\*](including, without limitation, [\*\*\*]) in connection with the foregoing [\*\*\*] through the [\*\*\*] on [\*\*\*] at the [\*\*\*] provided in this PPA and in any successive pricing agreement (until [\*\*\*]), which the Parties agree and acknowledge include [\*\*\*] for [\*\*\*] of the [\*\*\*] in accordance with Exhibit B, provided that [\*\*\*].
- c. Seller will [\*\*\*]. If Tesla's program of the [\*\*\*] Cells produced on [\*\*\*] is terminated prior to [\*\*\*], Seller shall [\*\*\*] as agreed in writing by the Parties following a good faith discussion. The Parties acknowledge and agreed that this Section 7 shall survive expiration or termination of this PPA. Tesla's obligation to [\*\*\*] shall be reduced to the extent that Seller [\*\*\*] after the termination of this PPA [\*\*\*].

**8. Miscellaneous.**

- a. The Parties' Supply Agreement dated October 5, 2011 (as amended) ("Supply Agreement"), Non-Disclosure Agreement for Commercial Agreement, Japan dated July 1, 2019 ("NDA"), and the letter agreement of May 26, 2020 regarding [\*\*\*] Cell Production ("[\*\*\*] Cell Investment Letter") are incorporated by reference as integral parts hereof.
- b. The Supply Agreement, the NDA, this PPA, the [\*\*\*] Cell Investment Letter, and Orders issued by or for Tesla hereunder (collectively, "Japan Contract") constitute the entire agreement between the Parties with respect to the subject matter herein and supersede all prior oral or written representations or agreements by the Parties with respect to its subject matter. No subsequent terms, conditions, understandings, or agreements purporting to modify the terms of this PPA will be binding unless in writing and signed by both Parties. For the avoidance of doubt, the terms and conditions of the 2019 Pricing Agreement dated September 17, 2019 shall continue to apply to the sale of [\*\*\*] Cells by Seller to Authorized Purchasers on and after the Effective Date of this PPA.
- c. In the event of a conflict between or among the document comprising the Japan Contract, the conflict shall be resolved per Section 15.e (Entire Agreement) of the Supply Agreement.
- d. This PPA may be executed in counterparts, each of which when so executed and delivered will be deemed an original, and all of which taken together will constitute one and the same instrument.

[Signature page follows]

**Tesla, Inc.**

By: /s/ Dinesh Swamynathan  
Printed: Dinesh Swamynathan  
Title: Director, Supply Chain  
Date: 12/28/2020

**Tesla Motors Netherlands B.V.**

By: /s/ Stephan Werkman  
Printed: Stephan Werkman  
Title: Director  
Date: 12/29/2020

**Panasonic Corporation of North America**

By: /s/ Kenji Shimonishi  
Printed: Kenji Shimonishi  
Title: Chief Financial Officer  
Date: 12/23/2020

**Sanyo Electric Co., Ltd.**

By: /s/ Keisuke Matsukara  
Printed: Keisuke Matsukara  
Title: Director  
Date: 12/24/2020

**Exhibit A - [\*\*\*] and [\*\*\*] Factories Production Lines**

Factories	Line	Cell type	Customers	Anticipated Monthly Capacity (millions of Cells / month)
[***]	[***]	[***]	[***]	[***]
	[***]	[***]	[***]	[***]
	[***]	[***]	[***]	[***]
	[***]	[***]	[***]	[***]
	[***]	[***]	[***]	[***]
	[***]	[***]	[***]	[***]
	[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]	[***]
	[***]	[***]	[***]	[***]

Any contents described in the above schedule are for reference only and will not constitute Seller's commitment in any respect. Seller reserves its right to change any of them at any time at its sole discretion so long as Seller fulfills its obligation of [\*\*\*].

## **Exhibit B Volume-Based Adjustment**

### **1. [\*\*\*] Cell [\*\*\*] Adjustment.**

The [\*\*\*] adjustment of the '[\*\*\*]' lithium-ion battery cells shall consist of following two adjustments, i.e., "Adjustment A" and "Adjustment B" and both such adjustments shall apply to the '[\*\*\*]' lithium-ion battery cell Unit Prices simultaneously.

### **A. Adjustment A.**

- 1) **General.** The '[\*\*\*]' lithium-ion battery cell Unit Prices include a [\*\*\*] which is based on the agreed annual quantities reflected in [\*\*\*] ('baseline cell quantity') of the table below (as applicable, this is the "[\*\*\*] Cell Quantity") and the [\*\*\*]. The [\*\*\*] based on the [\*\*\*] Cell Quantities is set forth in [\*\*\*] ('Baseline cost/cell') of the table below (this is the "[\*\*\*] Cell [\*\*\*]").
- 2) **[\*\*\*] Adjustment.**
  - a) At the [\*\*\*] during the Pricing Period (as applicable, the "[\*\*\*]"), the Parties shall adjust the Unit Price for [\*\*\*] as set forth in Section 2(b) below based on [\*\*\*] for '[\*\*\*]' lithium-ion battery cells in Japan for such [\*\*\*]. This [\*\*\*] shall include the [\*\*\*]. The [\*\*\*] shall include [\*\*\*]. Seller shall [\*\*\*]. The [\*\*\*] in the [\*\*\*] may only [\*\*\*].
  - b) The adjustment to Item Prices shall be calculated as illustrated through the examples in [\*\*\*] of the table below (this is the "[\*\*\*] Adjustment"). This adjustment is subject to the following:
    - i) If and to the extent that the [\*\*\*];
    - ii) If and to the extent that the [\*\*\*]; and
    - iii) If and to the extent that the [\*\*\*].
- 3) **[\*\*\*] Adjustment.**
  - a) At the [\*\*\*], the Parties shall adjust the Item Price for the [\*\*\*] as set forth in Section 3(b) below based on the [\*\*\*] (this is the "[\*\*\*] Cell [\*\*\*]").
  - b) This adjustment is subject to the following:
    - i) The Parties will determine the [\*\*\*] quantities of '18650' lithium-ion battery cells produced in Japan and sold to (i) Tesla, any Affiliate of Tesla, or any authorized purchaser of Tesla (the "Tesla Quantity"), [\*\*\*] during the Prior Year (collectively, the [\*\*\*] are referred to herein as the "[\*\*\*]"). The [\*\*\*] shall include any and all battery cells [\*\*\*] such as [\*\*\*] and form factor '[\*\*\*]', and similar battery cells, without regard to the [\*\*\*] of such battery cells.
    - ii) If and to the extent that the [\*\*\*];
    - iii) If and to the extent that the [\*\*\*]; and
    - iv) If and to the extent that the [\*\*\*].
- 4) If and to the extent that [\*\*\*], the Parties shall adjust the table to reflect the [\*\*\*].
- 5) The foregoing adjustments in Sections 2) and 3) together with Section B.2) below are [\*\*\*] lithium-ion battery [\*\*\*] under the Japan Contract, and it is understood that Tesla shall [\*\*\*]. Unless otherwise agreed by both parties, the total amounts [\*\*\*] shall not exceed the amounts shown in [\*\*\*] of the table below for the purpose of this Adjustment A.

[\*\*\*]

### **B. Adjustment B.**



- 1) General. The '[\*\*\*]' lithium-ion battery cell Unit Prices include a [\*\*\*] which is based on [\*\*\*] of the table below (this is the "[\*\*\*] Cell [\*\*\*]").
- 2) True-Up Adjustment.
  - a) At the [\*\*\*], the Parties shall adjust the Item Price for the [\*\*\*] based on the [\*\*\*], relative to the [\*\*\*] (this is the "[\*\*\*] Cell [\*\*\*]").
  - b) This adjustment is subject to the following:
    - i) The Parties will determine the [\*\*\*] quantities of '[\*\*\*]' lithium-ion battery cells produced in Japan and sold to Tesla, any Affiliate of Tesla, or any authorized purchaser of Tesla (the "[\*\*\*] Tesla Quantity B"), [\*\*\*].
    - ii) If and to the extent that the [\*\*\*] Tesla Quantity is [\*\*\*], the adjustment shall be based on [\*\*\*] in the [\*\*\*] Tesla Quantity B;
- 3) Unless otherwise agreed by both parties, the total amounts recoverable by Seller hereunder for [\*\*\*].  
[\*\*\*]

## 2. [\*\*\*] Cell [\*\*\*] Adjustment.

- 1) General. The '[\*\*\*]' lithium-ion battery cell Unit Prices include a [\*\*\*] which is based on the [\*\*\*] ('[\*\*\*]') of the table below.
- 2) 2021 True-Up Adjustment.
  - a) At the [\*\*\*], the Parties shall adjust the Item Price for the [\*\*\*] based on the [\*\*\*] (this is the "[\*\*\*] Cell [\*\*\*]").
  - b) This adjustment is subject to the following:
    - i) The Parties will determine the actual, [\*\*\*] '[\*\*\*]' lithium-ion battery cells produced on [\*\*\*] in Japan ("[\*\*\*]") and sold to (i) Tesla, any Affiliate of Tesla, or any authorized purchaser of Tesla (the "[\*\*\*] Tesla Quantity [\*\*\*]" during [\*\*\*] (collectively, the [\*\*\*] are referred to herein as the "[\*\*\*]"). The [\*\*\*] shall include any and all battery cells [\*\*\*] and form factor '[\*\*\*]', and similar battery cells, without regard to the [\*\*\*] of such battery cells.
    - ii) If and to the extent that the [\*\*\*];
    - iii) If and to the extent that the [\*\*\*];
    - iv) If and to the extent that the [\*\*\*]; and
    - v) If and to the extent that the [\*\*\*];
- 3) If and to the extent [\*\*\*], the Parties shall adjust the table to [\*\*\*].
- 4) The foregoing adjustments are [\*\*\*] lithium-ion battery [\*\*\*], and it is understood that Tesla shall have [\*\*\*]. Unless otherwise agreed by both parties, [\*\*\*].
- 5) The [\*\*\*] adjustment of the [\*\*\*] lithium-ion battery cells produced on [\*\*\*] shall be made based on the same methodology as set forth above.

**Exhibit C- Agreement Regarding  
2020 Commitment under the 2019 PPA**

In complete and final settlement and resolution of all claims and potential claims relating to i) [\*\*\*]; and ii) [\*\*\*], the Parties agree as follows:

1. The [\*\*\*] is agreed to be [\*\*\*];
2. The actual [\*\*\*] is agreed to be [\*\*\*]; and
3. In addition, as a result of the Parties' good faith discussion on the impact of [\*\*\*], Tesla shall [\*\*\*].
4. Tesla shall [\*\*\*] within the timeframes indicated below:

Date	Amount
[***]	[***]
[***]	[***]

5. Panasonic agrees to provide [\*\*\*]. During the course of [\*\*\*], if the Parties reasonably determine that [\*\*\*], the Parties shall have a good faith discussion on [\*\*\*].

**FIRST AMENDMENT TO AMENDED AND RESTATED ABL CREDIT AGREEMENT**

FIRST AMENDMENT TO AMENDED AND RESTATED ABL CREDIT AGREEMENT (this "Amendment"), dated as of December 23, 2020, in respect of the Amended and Restated ABL Credit Agreement, dated as of March 6, 2019 (as amended, supplemented or otherwise modified prior to the date hereof, the "Credit Agreement"; and the Credit Agreement as amended by this Amendment, the "Amended Credit Agreement"), among Tesla, Inc. (the "Company"), and together with each Wholly-Owned Domestic Subsidiary of the Company that becomes a U.S. Borrower pursuant to the terms of the Credit Agreement, collectively, the "U.S. Borrowers"), Tesla Motors Netherlands B.V. ("Tesla B.V."), and together with each Wholly-Owned Dutch Subsidiary of Tesla B.V. that becomes a Dutch Borrower pursuant to the terms of the Credit Agreement, collectively, the "Dutch Borrowers"), the lenders from time to time party thereto (the "Lenders"), Deutsche Bank AG New York Branch, as administrative agent and collateral agent (in such capacities, the "Administrative Agent"), and the other agents party thereto.

**RECITALS:**

WHEREAS, the Company has requested an amendment to the Credit Agreement and certain other Credit Documents;

WHEREAS, Tesla Motors Limited, a company incorporated in England and Wales with registered number 04384008 and having its registered office at 197 Horton Road, West Drayton, England UB7 8JD ("Tesla UK" and, together with each other Wholly-Owned English Subsidiary of Tesla UK that becomes a Borrower pursuant to the terms of the Amended Credit Agreement, collectively, the "UK Borrowers" and the UK Borrowers, together with the Dutch Borrowers and the U.S. Borrowers, collectively, the "Borrowers") desires to execute and deliver this Amendment in order to become a party to the Credit Agreement and other Credit Documents as a Borrower;

WHEREAS, the UK Borrower will obtain benefits from the incurrence of Loans by the UK Borrowers, and the issuance of, and participation in, Letters of Credit for the account of the UK Borrowers, in each case pursuant to the Amended Credit Agreement, and, accordingly, desires to execute this Amendment in order to induce the Lenders to make Loans to the UK Borrowers and issue, and/or participate in, Letters of Credit for the account of the UK Borrowers;

WHEREAS, pursuant to Sections 13.05 and 13.13 of the Credit Agreement, the Credit Agreement may be amended to add additional Borrowers and make other requested amendments with the written consent of the Lenders and each Credit Party thereto; and

WHEREAS, the parties now wish to amend the Credit Agreement and certain other Credit Documents in certain respects.

**AGREEMENT:**

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, the parties hereto agree as follows:

Section 1. *Defined Terms.* Unless otherwise specifically defined herein, each term used herein (including in the recitals above) has the meaning assigned to such term in the Amended Credit Agreement.

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Section 2. *Joinder and Assumption of Obligations.*

(a) Tesla UK, by its signature below, becomes a "Borrower" and a "UK Borrower" for all purposes under the Amended Credit Agreement.

(b) Tesla UK, by its signature below, (i) agrees to perform, comply with and be bound by all of the terms, provisions, conditions, and covenants of the Amended Credit Agreement applicable to it as a "Borrower" thereunder or a "UK Borrower" thereunder, (ii) agrees that the Administrative Agent shall have all rights, remedies and interests, including security interests in and liens upon the Collateral granted to the Administrative Agent or the Lenders under and pursuant to the Credit Documents, with respect to Tesla UK and its properties and assets, and (iii) assumes and agrees to be directly liable to the Administrative Agent and Lenders for all Obligations of Tesla UK under, contained in, or arising pursuant to the Amended Credit Agreement or any of the other Credit Documents.

Section 3. *Amendments to Credit Agreement; other Credit Documents.* The parties hereto agree that on the Amendment Effective Date (as defined below), the Credit Agreement, the U.S. Guaranty and the Dutch Guaranty shall be amended as follows:

(a) The Credit Agreement is hereby amended to delete the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and to add the double-underlined text (indicated textually in the same manner as the following example: double-underlined text) as set forth in the pages of the Credit Agreement attached as Exhibit A to this Amendment.

(b) Exhibit B-5 to the Amended Credit Agreement shall be in the form set forth in Exhibit B attached to this Amendment.

(c) Exhibit O to the Amended Credit Agreement shall be in the form set forth in Exhibit C attached to this Amendment.

(d) Exhibit P to the Amended Credit Agreement shall be in the form set forth in Exhibit D attached to this Amendment.

(e) Exhibit Q to the Amended Credit Agreement shall be in the form set forth in Exhibit E attached to this Amendment.

(f) Schedule 1.01(a) to the Amended Credit Agreement shall be in the form set forth in Exhibit F attached to this Amendment.

(g) The U.S. Guaranty is hereby amended such that, after giving effect to the Amendment, each reference therein to a "Borrower" or the "Borrowers" shall be deemed to include the UK Borrower.

(h) The Dutch Guaranty is hereby amended by deleting the last sentence of the first paragraph of Section 1 thereof and replacing such sentence with the following sentence: "For the avoidance of doubt, in no event shall the Guaranteed Obligations of any Guarantor include any Obligations of any U.S. Borrower, any U.S. Subsidiary Guarantor or any UK Borrower."

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Section 4. *Conditions.* This Amendment shall become effective on the date on which the following conditions precedent have been satisfied or waived (the date on which such conditions shall have been so satisfied or waived, the "Amendment Effective Date"):

(a) The Administrative Agent shall have received a counterpart of this Amendment, executed and delivered by the Credit Parties, the Administrative Agent and the Lenders.

(b) Each of the representations and warranties made by the Credit Parties in or pursuant to the Credit Agreement and each of the representations and warranties made by the Credit Parties in or pursuant to the other Credit Documents shall be true and correct in all material respects (except that any representation and warranty that is qualified or subject to "materiality", "Material Adverse Effect" or similar language shall be true and correct in all respects) on and as of the Amendment Effective Date as if made on and as of such date except for such representations and warranties expressly stated to be made as of an earlier date (in which case such representations and warranties shall be true and correct in all material respects as of such earlier date, except that any representation and warranty that is qualified or subject to "materiality", "Material Adverse Effect" or similar language shall be true and correct in all respects as of such earlier date).

(c) No Default or Event of Default shall exist on the Amendment Effective Date.

(d) The Administrative Agent shall have received an officer's certificate from an Authorized Officer of the Company, dated as of the Amendment Effective Date, certifying that each condition set forth in Sections 4(b) and (c) hereof have been satisfied on and as of the Amendment Effective Date.

(e) The Administrative Agent shall have received from Wilson Sonsini Goodrich & Rosati, P.C., special New York counsel to the Credit Parties, an opinion in form and substance reasonably satisfactory to the Administrative Agent addressed to the Administrative Agent, the Collateral Agent and each of the Lenders and dated the Amendment Effective Date covering such matters incident to the transactions contemplated herein as the Administrative Agent may reasonably request.

(f) The Administrative Agent shall have received from Simpson Thacher & Bartlett LLP, special English law counsel to the Administrative Agent, an opinion in form and substance reasonably satisfactory to the Administrative Agent addressed to the Administrative Agent, the Collateral Agent and each of the Lenders and dated the Amendment Effective Date covering such matters incident to the transactions contemplated herein as the Administrative Agent may reasonably request.

(g) The Administrative Agent shall have received a certificate from each Credit Party, dated the Amendment Effective Date, signed by an Authorized Officer of such Credit Party (or, with respect to Tesla B.V. or Tesla UK, one of its directors), and, if signed by an Authorized Officer of such Credit Party (or director), attested to by another Authorized Officer (or director) of such Credit Party, in the form of Exhibit E-2 to the Credit Agreement (or such other form reasonably acceptable to the Administrative Agent) with appropriate insertions, together with copies of the certificate or articles of incorporation and by-laws (or other equivalent organizational documents relating to any Dutch Credit Party and UK Credit Party), as applicable, of such Credit Party and the resolutions of such Credit Party referred to in such certificate (including, with respect to each UK Credit Party, (i) resolutions of the shareholder of that UK Credit Party, (ii) a copy of the specimen signatures of persons duly authorized to sign the Credit Documents (including, without limitation, any Notice of Borrowing) on behalf of that UK Credit Party, and (iii) confirming that borrowing, guaranteeing or securing (as appropriate) the Total Revolving Loan Commitment would not cause any borrowing, guarantee, security or similar limit binding

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on it to be exceeded), and each of the foregoing shall be in form and substance reasonably acceptable to the Administrative Agent.

(h) The Administrative Agent shall have received a good standing certificate (or equivalent) for each Credit Party (excluding Tesla UK) from its jurisdiction of formation.

(i) All fees required to be paid to the Administrative Agent and the Lenders in connection herewith, accrued reasonable and documented out-of-pocket costs and expenses (including, to the extent invoiced in advance, reasonable legal fees and out-of-pocket expenses of counsel) and other compensation due and payable to the Administrative Agent and the Lenders on or prior to the Amendment Effective Date shall have been paid to the extent invoices therefor have been provided to the Borrowers at least one Business Day in advance of the Amendment Effective Date.

(j) The Administrative Agent shall have received a solvency certificate from the vice president, treasurer of the Company in the form of Exhibit J to the Credit Agreement.

(k) The Administrative Agent shall have received the results of a recent search, by a Person reasonably satisfactory to the Collateral Agent, of all effective UCC financing statements (or equivalent filings) made with respect to any personal or mixed property, the creation of security interests in, which is governed by the UCC of any Credit Party (to the extent applicable) in the jurisdiction of formation of each such entity and the location (state and county) where such entities maintain their chief executive offices, together with copies of all such filings disclosed by such search.

(l) The Administrative Agent shall have received evidence or otherwise be reasonably satisfied that all other actions required to be taken under each Security Agreement on or prior to the Amendment Effective Date to perfect and protect the security interests purported to be created by each Security Agreement have been taken (other than, in respect of any Security Agreement signed by a UK Credit Party, proper filings to be made in the appropriate filing offices against such UK Credit Party), and each Security Agreement shall be in full force and effect.

(m) (i) The Administrative Agent shall have received, at least five days prior to the Amendment Effective Date, all documentation and other information regarding the Borrowers requested in connection with applicable "know your customer" and anti-money laundering rules and regulations, including the Patriot Act, to the extent requested in writing of the Borrowers at least 10 days prior to the Amendment Effective Date and (ii) to the extent any Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, at least five days prior to the Amendment Effective Date, any Lender that has requested, in a written notice to the Company at least 10 days prior to the Amendment Effective Date, a Beneficial Ownership Certification in relation to the applicable Borrower shall have received such Beneficial Ownership Certification (provided that, upon the execution and delivery by such Lender of its signature page to this Amendment, the condition set forth in this clause (ii) shall be deemed to be satisfied).

(n) The UK Borrower shall have duly authorized, executed and delivered the UK Guaranty in the form of Exhibit P, and the UK Guaranty shall be in full force and effect.

(o) The UK Borrower shall have duly authorized, executed and delivered the UK Security Agreement in the form of Exhibit Q, covering all of such UK Borrower's Security Agreement Collateral.

(p) The Administrative Agent shall have received a completed "Life-of-Loan" Federal Emergency Management Agency standard flood hazard determination with respect to each

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improved Mortgaged Property (together with a notice about special flood hazard area status and flood disaster assistance duly executed by the applicable Credit Party relating thereto) and, with respect to any Mortgaged Property on which any "building" (as defined in the Flood Insurance Laws) is located in a special flood hazard area, evidence of flood insurance as and to the extent required under Section 9.03 of the Credit Agreement.

Section 5. *Representations and Warranties, etc.* The Borrowers hereby confirm, reaffirm and restate that each of the representations and warranties made by any Credit Party in the Credit Documents is true and correct in all material respects on and as of the Amendment Effective Date (it being understood and agreed that (x) any representation or warranty which by its terms is made as of a specified date shall be required to be true and correct in all material respects only as of such specified date and (y) any representation or warranty that is qualified by "materiality", "Material Adverse Effect" or similar language shall be true and correct in all respects). The Borrowers represent and warrant that, immediately after giving effect to the occurrence of the Amendment Effective Date, no Default or Event of Default has occurred and is continuing. The Borrowers represent and warrant that each Credit Party (i) has the Business power and authority to execute, deliver and perform the terms and provisions of this Amendment and has taken all necessary Business action to authorize the execution, delivery and performance by such Credit Party thereof and (ii) has duly executed and delivered this Amendment, and that this Amendment constitutes a legal, valid and binding obligation of the Borrowers enforceable against each Borrower in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law). The Borrowers represent and warrant that the information included on any Beneficial Ownership Certification provided on or prior to the Amendment Effective Date to any Lender in connection with this Amendment is true and correct in all respects.

Section 6. *Reaffirmation.* Each Credit Party hereby agrees that (i) all of its Obligations under the Credit Documents shall remain in full force and effect on a continuous basis after giving effect to this Amendment and (ii) each Credit Document, as amended hereby (if applicable), is ratified and affirmed in all respects.

Section 7. *No Novation.* Neither this Amendment nor the execution, delivery or effectiveness of this Amendment shall extinguish or in any way limit or impair the obligations outstanding under the Security Documents or the other Credit Documents or discharge or release the lien or priority of the Security Documents. Nothing herein contained shall be construed as a substitution or novation of the Credit Agreement, any other Credit Document or of the obligations outstanding under the Security Documents or the other Credit Documents or instruments securing the same, which shall remain in full force and effect, except to any extent expressly modified hereby or by instruments executed concurrently herewith. Nothing implied in this Amendment, the Credit Agreement, the Amended Credit Agreement, the Security Documents, the other Credit Documents or in any other document contemplated hereby or thereby shall (a) be construed as a release or other discharge of any Borrower or any other Credit Party from any of its obligations and liabilities as a "U.S. Borrower," "Dutch Borrower", "UK Borrower", "Borrower", "Guarantor," "Credit Party," "Obligor" or "Grantor" under the Credit Agreement or the Amended Credit Agreement, the Security Documents or any other Credit Document or (b) be construed to limit, impair, constitute a waiver of or otherwise affect the rights and remedies of any Lender or Agent under the Amended Credit Agreement or any other Credit Document. Each of the Credit Documents shall remain in full force and effect, until (as applicable) and except to any extent expressly modified hereby or in connection herewith.

Section 8. *Governing Law.* This Amendment and the rights of the parties hereunder shall be governed by and construed in accordance with the laws of the State of New York (without regard to

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conflicts of law principles that would result in the application of any law other than the law of the State of New York).

Section 9. *Effect of This Amendment.* Nothing herein shall be deemed to entitle any party to a consent to, or a waiver, amendment, modification or other change of, any of the terms, conditions, obligations, covenants or agreements contained in any Credit Document in similar or different circumstances.

Section 10. *Counterparts.* This Amendment may be signed in any number of counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one agreement. Delivery of an executed counterpart of a signature page of this Amendment by facsimile, scan, photograph or other electronic transmission shall be effective as delivery of a manually executed counterpart hereof. The words "execution," "signed," "signature," "delivery," and words of like import in or relating to this agreement and the transactions contemplated hereby shall be deemed to include Electronic Signatures (as defined below), deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paperbased recordkeeping system, as the case may be. "Electronic Signatures" means any electronic symbol or process attached to, or associated with, any contract or other record and adopted by a person with the intent to sign, authenticate or accept such contract or record.

Section 11. *Miscellaneous.* This Amendment shall constitute a Credit Document for all purposes of the Amended Credit Agreement. The Borrowers shall pay all reasonable fees, costs and expenses of the Administrative Agent incurred in connection with the negotiation, preparation and execution of this Amendment and the transactions contemplated hereby.

*[remainder of page intentionally left blank]*

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IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed as of the date first above written.

TESLA, INC.

By: /s/ Yaron Klein

Name: Yaron Klein

Title: Vice President, Treasurer

TESLA MOTORS NETHERLANDS B.V.

By: /s/ Stephan Werkman

Name: Stephan Werkman

Title: Director

TESLA MOTORS LIMITED

By: /s/ Stephan Werkman

Name: Stephan Werkman

Title: Director

[First Amendment - Signature Page]

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DEUTSCHE BANK AG NEW YORK BRANCH, as Administrative Agent, Collateral Agent, Issuing Lender, Swingline Lender and a Lender

By: /s/ Frank Fazio

Name: Frank Fazio  
Title: Managing Director

By: /s/ Stephen Lapidus

Name: Stephen Lapidus  
Title: Director

[First Amendment - Signature Page]

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Bank of America, N.A. as an Issuing Lender and a Lender

By: /s/ Mia Bolin

Name: Mia Bolin

Title: Senior Vice President

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[First Amendment - Signature Page]

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BARCLAYS BANK PLC, as a Lender

By: /s/ Martin Corrigan

Name: Martin Corrigan

Title: Vice President

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[First Amendment - Signature Page]

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CITIBANK, N.A., as a Lender

By: /s/ Dave Smith

Name: Dave Smith

Title: Vice President & Director

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[First Amendment - Signature Page]

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Goldman Sachs Bank USA, as a Lender

By: /s/ Vinay Menon

Name: Vinay Menon

Title: Authorized Signatory

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MORGAN STANLEY SENIOR FUNDING INC., as a Lender

By: /s/ Jonathan Kerner

Name: Jonathan Kerner

Title: Vice President

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[First Amendment - Signature Page]

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CREDIT SUISSE, AG CAYMAN ISLANDS BRANCH, as a Lender

By: /s/ Vipul Dhadha

Name: Vipul Dhadha

Title: Authorized Signatory

By: /s/ Brady Bingham

Name: Brady Bingham

Title: Authorized Signatory

[First Amendment - Signature Page]

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Société Générale, as a Lender

By: /s/ John Hogan

Name: John Hogan

Title: Director

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[First Amendment - Signature Page]

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Wells Fargo Bank, National Association, as a Lender

By: /s/ Jake Elliott

Name: Jake Elliott

Title: Authorized Signatory

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[First Amendment - Signature Page]

Bank of the West, as a Lender

By: /s/ Adriana Collins

Name: Adriana Collins

Title: Director

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[First Amendment - Signature Page]

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[To be attached]

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AMENDED AND RESTATED ABL CREDIT AGREEMENT<sup>1</sup>

among

TESLA, INC.,  
TESLA MOTORS NETHERLANDS B.V.,

VARIOUS LENDERS,

DEUTSCHE BANK AG NEW YORK BRANCH,  
as ADMINISTRATIVE AGENT and COLLATERAL AGENT,

GOLDMAN SACHS BANK USA,  
MORGAN STANLEY SENIOR FUNDING INC.

and

BANK OF AMERICA, N.A.,  
as SYNDICATION AGENTS,

and

SOCIÉTÉ GÉNÉRALE

and

WELLS FARGO BANK, NATIONAL ASSOCIATION,  
as CO-DOCUMENTATION AGENTS

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Dated as of March 6, 2019

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DEUTSCHE BANK SECURITIES INC.,  
BANK OF AMERICA, N.A.,  
BARCLAYS BANK PLC,  
CITIBANK, N.A.,  
GOLDMAN SACHS BANK USA,  
and  
MORGAN STANLEY SENIOR FUNDING INC.,  
as JOINT LEAD ARRANGERS AND BOOKRUNNERS

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<sup>1</sup> As amended by that certain First Amendment to Amended and Restated ABL Credit Agreement, dated as of December 23, 2020 among the Company, Tesla B.V., Tesla UK, the lenders party thereto, the Collateral Agent and the Administrative Agent.

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Exhibit N Form of Joinder Agreement  
Exhibit O Form of Borrowing Base Certificate  
[Exhibit P Form of UK Guaranty](#)  
[Exhibit Q Form of UK Security Agreement](#)

AMENDED AND RESTATED ABL CREDIT AGREEMENT, dated as of March 6, 2019, among Tesla, Inc., a Delaware corporation (the “Company”, and together with each other Wholly-Owned Domestic Subsidiary of the Company that becomes a U.S. Borrower pursuant to the terms hereof, collectively, the “U.S. Borrowers”), Tesla Motors Netherlands B.V., a company organized under the laws of the Netherlands and a wholly-owned subsidiary of the Company, having its official seat in Amsterdam, the Netherlands and registered with the trade register under number 52601196 (“Tesla B.V.” and, together with each other Wholly-Owned Dutch Subsidiary of Tesla B.V. that becomes a Borrower pursuant to the terms hereof, collectively, the “Dutch Borrowers”, ~~and~~), Tesla Motors Limited, a company incorporated in England and Wales with registered number 04384008 and having its registered office at 197 Horton Road, West Drayton, England UB7 8JD (“Tesla UK” and, together with each other Wholly-Owned English Subsidiary of Tesla UK that becomes a Borrower pursuant to the terms hereof, collectively, the “UK Borrowers”), and each other Person that becomes a borrower pursuant to Section 9.12(g) hereof (any such Person together with the UK Borrowers, the Dutch Borrowers, ~~together with~~ and the U.S. Borrowers, collectively, the “Borrowers”), the Lenders party hereto from time to time, Deutsche Bank AG New York Branch, as Administrative Agent and Collateral Agent, Goldman Sachs Bank USA, Morgan Stanley Senior Funding Inc. and Bank of America, N.A., as Syndication Agents, and Société Générale and Wells Fargo Bank, National Association, as Co-Documentation Agents. All capitalized terms used herein and defined in Section 1.01 are used herein as therein defined.

WHEREAS, subject to and upon the terms and conditions set forth herein, the Arrangers have arranged, and the Lenders are willing to make available to the Borrowers, the credit facilities provided for herein;

NOW, THEREFORE, IT IS AGREED:

SECTION 1. Definitions and Accounting Terms.

1.01. Defined Terms. As used in this Agreement, the following terms shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

“~~20182021~~ Convertible Notes” shall mean the Company’s ~~1.50~~1.25% convertible senior notes due ~~June~~March 1, ~~2018~~2021, issued pursuant to the ~~2018~~2021 Convertible Notes Indenture.

“~~20182021~~ Convertible Notes Documents” shall mean the ~~2018~~2021 Convertible Notes and the ~~2018~~2021 Convertible Notes Indenture.

“~~20182021~~ Convertible Notes Indenture” shall mean the Indenture, dated as of May 22, 2013, between the Company, as issuer, and U.S. Bank National Association, as trustee, as supplemented by the ~~First~~Third Supplemental Indenture, dated as of ~~May 22~~March 5, ~~2013~~2014, by and between the Company and U.S. Bank National Association, as trustee, as amended, modified or supplemented from time to time in respect of the ~~2018~~2021 Convertible Notes in accordance with the terms hereof and thereof.

“~~20192022~~ Convertible Notes” shall mean the Company’s ~~0.25~~2.375% convertible senior notes due March ~~15~~15, ~~2019~~2022, issued pursuant to the ~~2019~~2022 Convertible Notes Indenture.

“~~20192022~~ Convertible Notes Documents” shall mean the ~~2019~~2022 Convertible Notes and the ~~2019~~2022 Convertible Notes Indenture.

“~~20192022~~ Convertible Notes Indenture” shall mean the Indenture, dated as of May 22, 2013, between the Company, as issuer, and U.S. Bank National Association, as trustee, as supplemented by the

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~~Second~~Fourth Supplemental Indenture, dated as of March ~~522, 2014~~2017, by and between the Company and U.S. Bank National Association, as trustee, as amended, modified or supplemented from time to time in respect of the ~~2019~~2022 Convertible Notes in accordance with the terms hereof and thereof.

~~“2021~~2024 Convertible Notes” shall mean the Company’s ~~1.25~~2.00% convertible senior notes due ~~March 1, 2021~~2024, issued pursuant to the ~~2021~~2024 Convertible Notes Indenture.

~~“2021~~2024 Convertible Notes Documents” shall mean the ~~2021~~2024 Convertible Notes and the ~~2021~~2024 Convertible Notes Indenture.

~~“2021~~2024 Convertible Notes Indenture” shall mean the Indenture, dated as of May 22, 2013, between the Company, as issuer, and U.S. Bank National Association, as trustee, as supplemented by the ~~Third~~Fifth Supplemental Indenture, dated as of ~~March 5~~May 7, 20142019, by and between the Company and U.S. Bank National Association, as trustee, as amended, modified or supplemented from time to time in respect of the ~~2021~~2024 Convertible Notes in accordance with the terms hereof and thereof:

~~“2022 Convertible Notes” shall mean the Company’s 2.375% convertible senior notes due March 15, 2022, issued pursuant to the 2022 Convertible Notes Indenture.~~

~~“2022 Convertible Notes Documents” shall mean the 2022 Convertible Notes and the 2022 Convertible Notes Indenture.~~

~~“2022 Convertible Notes Indenture” shall mean the Indenture, dated as of May 22, 2013, between the Company, as issuer, and U.S. Bank National Association, as trustee, as supplemented by the Fourth Supplemental Indenture, dated as of March 22, 2017, by and between the Company and U.S. Bank National Association, as trustee, as amended, modified or supplemented from time to time in respect of the 2022 Convertible Notes in accordance with the terms hereof and thereof.~~ “30-Day Excess Availability” shall mean, on a given date, the quotient obtained by dividing (a) the sum of each day’s Excess Availability during the 30 consecutive day period immediately preceding such date (or, if shorter, the period commencing on the Effective Date and ending on the day immediately preceding such date) by (b) 30 (or, if applicable, the number of days (which is less than 30) from the Effective Date to the day immediately preceding such date).

~~“2023 Extended Maturity Date” shall mean July 1, 2023.~~

~~“2023 Extended Revolving Loan” shall mean each Revolving Loan pursuant to a 2023 Extended Revolving Loan Commitment.~~

~~“2023 Extended Revolving Loan Commitments” shall mean for each Lender, the amount set forth opposite such Lender’s name in Schedule 1.01(a) directly below the column entitled “2023 Extended Revolving Loan Commitment,” as same may be (x) reduced from time to time or terminated pursuant to Sections 4.02, 4.03 and/or 11, as applicable, (y) adjusted from time to time as a result of assignments to or from such Lender pursuant to Section 2.13 or Section 13.04(b) or (z) increased from time to time pursuant to Section 2.14 or 2.19(g).~~

~~“ABL Priority Collateral” shall mean (i) at any time when no Permitted Additional Secured Indebtedness is outstanding, the Collateral, and (ii) at all times when any Permitted Additional Secured Indebtedness is outstanding, “ABL Priority Collateral” as defined in the Intercreditor Agreement (which shall be defined on a basis customary for transactions of this type and, in any event, shall include all cash and Cash Equivalents related to Accounts (other than Rental Accounts), all cash and Cash Equivalents subject to a Cash Management Control Agreement, Accounts (other than Rental Accounts), Pledged~~

Equipment, Inventory, assets (other than intellectual property) related to Accounts (other than Rental Accounts), Inventory and Pledged Equipment and proceeds thereof of the Credit Parties) in each case constituting Collateral.

“Acceptable Appraisal” shall mean (a) in respect of Inventory, an appraisal of the Inventory of the Borrowers from a third-party appraiser reasonably satisfactory to the Administrative Agent for which the results of such appraisal are in form and substance reasonably satisfactory to the Administrative Agent (it being understood and agreed that the appraisal, dated April 23, 2015, constitutes an Acceptable Appraisal), (b) in respect of Equipment, an appraisal of the Equipment of the U.S. Borrowers from a third-party appraiser reasonably satisfactory to the Administrative Agent for which the results of such appraisal are in form and substance reasonably satisfactory to the Administrative Agent (it being understood and agreed that the appraisal, dated April 22, 2015, constitutes an Acceptable Appraisal) and (c) in respect of Real Property, a Real Property Appraisal.

“Acceptable Existing Appraisal” shall mean, in respect of any Equipment and as of any date, an Acceptable Appraisal in respect of substantially identical Equipment, which Acceptable Appraisal (i) has been obtained within the prior six months and (ii) has assigned a specific value to such substantially identical Equipment.

“Acceptable Field Examination” shall mean a collateral examination of the Inventory and the Accounts of the Borrowers, in scope, and from a third-party consultant reasonably satisfactory to the Administrative Agent for which the results of such collateral examination are in form and substance reasonably satisfactory to the Administrative Agent.

“Acceptable Foreign Currency” shall mean any Foreign Currency (other than Euros) (a) for which the LIBO Rate can be determined by reference to the applicable Reuters screen as provided in the definition of “LIBO Rate” and (b) that has been designated by the Administrative Agent as an Acceptable Foreign Currency at the request of the Company and with the consent of (i) the Administrative Agent, (ii) each Lender and (iii) with respect to any Letter of Credit to be denominated in such Acceptable Foreign Currency, the applicable Issuing Lender in respect of such Letter of Credit; for purposes of this clause (iii), Canadian Dollars and Sterling are Acceptable Foreign Currency.

“Acceptable Jurisdiction” shall mean, as of the Effective Date, the countries listed on Schedule 1.01(d) to the Disclosure Letter; provided that the Administrative Agent may, in its Permitted Discretion, add or remove countries as Acceptable Jurisdictions by written notice to the Company.

“Account” shall mean an “account” as such term is defined in Article 9 of the UCC, and any and all supporting obligations in respect thereof.

“Account Debtor” shall mean each Person who is obligated on an Account.

“Acquisition” shall mean the acquisition of either (x) all or substantially all of the assets of, or the assets constituting a business, division or product line of, any Person not already a Subsidiary of the Company or (y) 100% of the Equity Interests of any such Person (or at least a majority of such Equity Interests if such acquisition is expected to be promptly followed by the acquisition of the remaining Equity Interests), which Person shall, as a result of the acquisition of such Equity Interests, become a Wholly-Owned Subsidiary of the Company (or shall be merged with and into a Borrower or a Wholly-Owned Subsidiary of the Company).

“Additional Appraisal/Exam Period” shall mean any time that Excess Availability is less than 15% of the Total Revolving Loan Commitment; provided that (solely for purposes of determining

whether an Additional Appraisal/Exam Period is in effect) at any time that the Total Borrowing Base is in excess of the Total Revolving Loan Commitment, Excess Availability shall be deemed to be increased in an amount (not to exceed 5% of the Total Revolving Loan Commitment) equal to such excess.

“Additional Convertible Notes” shall mean unsecured convertible senior securities of the Company issued pursuant to, and containing the requirements of, clause (y) of Section 10.04(l) or Section 10.04(n), which unsecured convertible senior securities are convertible into Equity Interests, cash or a combination of cash and Equity Interests.

“Additional Convertible Notes Documents” shall mean any Additional Convertible Notes and any Additional Convertible Notes Indenture.

“Additional Convertible Notes Indenture” shall mean each indenture (or similar document) pursuant to which any Additional Convertible Notes are issued.

“Additional Security Documents” shall have the meaning provided in Section 9.12(e).

“Administrative Agent” shall mean DBNY, in its capacity as Administrative Agent for the Lenders hereunder and under the other Credit Documents, and shall include any successor to the Administrative Agent appointed pursuant to Section 12.09.

“Affected Financial Institution” shall mean (a) any EEA Financial Institution or (b) any UK Financial Institution.

“Affiliate” shall mean, with respect to any Person, any other Person directly or indirectly controlling (including, but not limited to, all directors and officers of such Person), controlled by, or under direct or indirect common control with, such Person. A Person shall be deemed to control another Person if such Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such other Person, whether through the ownership of voting securities, by contract or otherwise; provided, however, that none of the Administrative Agent, any Lender or any of their respective Affiliates shall be considered an Affiliate of the Company or any Subsidiary thereof.

“Agent Advance” shall have the meaning provided in Section 2.01(e).

“Agent Advance Period” shall have the meaning provided in Section 2.01(e).

“Agents” shall mean and include the Administrative Agent, the Collateral Agent, the Syndication Agents and the Co-Documentation Agents.

“Aggregate Dutch Borrower Exposure” shall mean, at any time, the sum of (a) the aggregate principal amount of all Dutch Borrower Revolving Loans outstanding at such time (for this purpose, using the U.S. Dollar Equivalent of amounts denominated in Euros or any Acceptable Foreign Currency), (b) the aggregate amount of all Letter of Credit Outstandings (for this purpose, using the U.S. Dollar Equivalent of amounts denominated in Euros or any Acceptable Foreign Currency) at such time in respect of Letters of Credit issued for the account of any Dutch Borrower (exclusive of such Letter of Credit Outstandings which are repaid with the proceeds of, and simultaneously with the incurrence of, the respective incurrence of Dutch Borrower Revolving Loans or Dutch Borrower Swingline Loans) and (c) the aggregate principal amount of all Dutch Borrower Swingline Loans outstanding at such time (exclusive of Dutch Borrower Swingline Loans which are repaid with the proceeds of, and simultaneously with the incurrence of, the respective incurrence of Dutch Borrower Revolving Loans).

“Aggregate Exposure” shall mean, at any time, the sum of (a) the Aggregate U.S. Borrower Exposure at such time ~~and~~, (b) the Aggregate Dutch Borrower Exposure at such time and (c) the Aggregate UK Borrower Exposure at such time.

“Aggregate UK Borrower Exposure” shall mean, at any time, the sum of (a) the aggregate principal amount of all UK Borrower Revolving Loans outstanding at such time (for this purpose, using the U.S. Dollar Equivalent of amounts denominated in Euros or any Acceptable Foreign Currency) and (b) the aggregate amount of all Letter of Credit Outstandings (for this purpose, using the U.S. Dollar Equivalent of amounts denominated in Euros or any Acceptable Foreign Currency) at such time in respect of Letters of Credit issued for the account of any UK Borrower (exclusive of such Letter of Credit Outstandings which are repaid with the proceeds of, and simultaneously with the incurrence of, the respective incurrence of UK Borrower Revolving Loans).

“Aggregate U.S. Borrower Exposure” shall mean, at any time, the sum of (a) the aggregate principal amount of all U.S. Borrower Revolving Loans outstanding at such time (for this purpose, using the U.S. Dollar Equivalent of amounts denominated in Euros or any Acceptable Foreign Currency), (b) the aggregate amount of all Letter of Credit Outstandings (for this purpose, using the U.S. Dollar Equivalent of amounts denominated in Euros or any Acceptable Foreign Currency) at such time in respect of Letters of Credit issued for the account of any U.S. Borrower (exclusive of such Letter of Credit Outstandings which are repaid with the proceeds of, and simultaneously with the incurrence of, the respective incurrence of U.S. Borrower Revolving Loans or U.S. Borrower Swingline Loans) and (c) the aggregate principal amount of all U.S. Borrower Swingline Loans outstanding at such time (exclusive of U.S. Borrower Swingline Loans which are repaid with the proceeds of, and simultaneously with the incurrence of, the respective incurrence of U.S. Borrower Revolving Loans).

“Agreement” shall mean this credit agreement, as modified, supplemented, amended, restated (including any amendment and restatement hereof), extended or renewed from time to time.

“Amendment and Restatement Agreement” shall mean the Amendment and Restatement Agreement to the Credit Agreement, dated as of the Amendment and Restatement Effective Date, among the Company, Tesla B.V., the lenders party thereto, the Collateral Agent and the Administrative Agent.

“Amendment and Restatement Effective Date” shall mean March 6, 2019.

“Amortized Value” shall mean, as of any date of determination and with respect to any Eligible Machinery and Equipment, the value of such Eligible Machinery and Equipment determined by reference to the most recent Acceptable Appraisal of such Eligible Machinery and Equipment and assuming monthly straight-line amortization of the value thereof from the date (the “Amortization Commencement Date”) that is one year after the date of such Acceptable Appraisal through the date that is the seven-year anniversary of the Amortization Commencement Date.

“Anti-Corruption Laws” shall mean all laws, rules and regulations of any jurisdiction applicable to the Company or its Subsidiaries from time to time concerning or relating to bribery or corruption, including, but not limited to, the Foreign Corrupt Practices Act of 1977 and the United Kingdom Bribery Act 2010, each as amended, and the rules and regulations thereunder.

“Applicable Margin” shall mean a percentage per annum equal to (i) in the case of Revolving Loans maintained as (A) Base Rate Loans, 0%, and (B) LIBOR Loans, 1.00%, and (ii) in the case of Swingline Loans, 0%.

"Applicable Value" shall mean, as of any date of determination and with respect to any Eligible Machinery and Equipment, (a) if the Administrative Agent has received an Acceptable Appraisal in respect of such Eligible Machinery and Equipment dated as of a date no more than 12 months prior to such date of determination, the Net Orderly Liquidation Value of such Eligible Machinery and Equipment and (b) otherwise, the Amortized Value of such Eligible Machinery and Equipment.

"Appraised Fair Market Value" shall mean, at any time, with respect to any Eligible Real Property, the fair market value of such Real Property, as determined pursuant to the most recent Real Property Appraisal of such Eligible Real Property.

"Arranger" shall mean each of Deutsche Bank Securities Inc., Bank of America, N.A., Barclays Bank PLC, Citibank, N.A., Goldman Sachs Bank USA and Morgan Stanley Senior Funding Inc.

"Asset Sale" shall mean any sale, transfer or other disposition by the Company or any of its Subsidiaries to any Person (including by way of redemption by such Person and whether effected pursuant to a Division or otherwise) other than to a Credit Party of any asset (including any capital stock or other securities of, or Equity Interests in, another Person).

"Assignment and Assumption Agreement" shall mean an Assignment and Assumption Agreement substantially in the form of Exhibit L (appropriately completed) or such other form reasonably acceptable to the Administrative Agent and the Company.

"Attributes Buyer" shall mean that Person separately identified in writing by the Company to the Administrative Agent.

"Authorized Officer" shall mean, with respect to (i) delivering Notices of Borrowing, Notices of Conversion/Continuation and similar notices, any person or persons that has or have been authorized by the board of directors (or equivalent governing body) of the applicable Borrower to deliver such notices pursuant to this Agreement and that has or have appropriate signature cards or certificates of incumbency on file with the Administrative Agent, the Swingline Lender or the respective Issuing Lender, (ii) delivering financial information and officer's certificates pursuant to this Agreement, the chief financial officer; the vice president, finance; the treasurer or the principal accounting officer of the Company, and (iii) any other matter in connection with this Agreement or any other Credit Document, any officer (or a person or persons so designated by any two officers) of the applicable Credit Party.

"Available" shall mean, with respect to cash and Cash Equivalents, that either (i) such cash and Cash Equivalents are owned by the Company or any of its Domestic Subsidiaries or (ii) such cash and Cash Equivalents are owned by a Foreign Subsidiary and are able to be repatriated to the Company or one or more of its Domestic Subsidiaries; provided that with respect to this clause (ii), such cash and Cash Equivalents shall be calculated net of any costs (including taxes) that would be incurred in respect of such repatriation (as reasonably determined by the Company).

"Available Currency" shall mean U.S. Dollars, Euros and any Acceptable Foreign Currency.

"Available Currency Equivalent" shall mean, for any amount of any Available Currency (other than U.S. Dollars), at the time of determination thereof, (a) if such amount is expressed in such Available Currency, such amount and (b) if such amount is expressed in U.S. Dollars, the equivalent of such amount in such Available Currency determined by using the rate of exchange for the purchase of such Available Currency with U.S. Dollars last provided (either by publication or otherwise provided to the Administrative Agent) by the applicable Reuters source on the Business Day (New York City time) immediately preceding the date of determination or if such service ceases to be available or ceases to provide a rate of exchange



for the purchase of such Available Currency with U.S. Dollars, as provided by such other publicly available information service which provides that rate of exchange at such time in place of Reuters chosen by the Administrative Agent in its sole discretion (or if such service ceases to be available or ceases to provide such rate of exchange, the equivalent of such amount in U.S. Dollars as determined by the Administrative Agent using any method of determination it deems appropriate in its sole discretion).

“Available Tenor” shall mean, as of any date of determination and with respect to the then-current Benchmark, as applicable, any tenor for such Benchmark or payment period for interest calculated with reference to such Benchmark, as applicable, that is or may be used for determining the length of an Interest Period pursuant to this Agreement as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “Interest Period” pursuant to clause (b)(v) of Section 2.10.

“Availability” at any time shall mean the lesser of (i) the Total Borrowing Base at such time and (ii) the Total Revolving Loan Commitment at such time.

“Bail-In Action” shall mean the exercise of any Write-Down and Conversion Powers by the applicable EEA-Resolution Authority in respect of any liability of an EEA-Affected Financial Institution.

“Bail-In Legislation” shall mean: (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule; and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

“Bankruptcy Code” shall have the meaning provided in Section 11.05.

“Bankruptcy Event” shall mean, with respect to any Person, such Person becomes the subject of an Insolvency Proceeding, or has had a receiver, conservator, trustee, administrator, custodian, assignee for the benefit of creditors or similar Person charged with the reorganization or liquidation of its business appointed for it, or, in the good faith determination of the Administrative Agent, has taken any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any such proceeding or appointment, provided that a Bankruptcy Event shall not result solely by virtue of any ownership interest, or the acquisition of any ownership interest, in such Person by a Governmental Authority or instrumentality thereof, provided, further, that such ownership interest does not result in or provide such Person with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Person (or such Governmental Authority or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made by such Person.

“Base Rate” shall mean, at any time, the highest of (i) the Prime Lending Rate at such time, (ii) ½ of 1% per annum in excess of the overnight Federal Funds Rate at such time, and (iii) the LIBO Rate for a LIBOR Loan denominated in U.S. Dollars with a one month Interest Period commencing on such day plus 1.00%. For purposes of this definition, the LIBO Rate shall be determined using the LIBO Rate as otherwise determined by the Administrative Agent in accordance with the definition of LIBO Rate, except that (x) if a given day is a Business Day, such determination shall be made on such day (rather than two Business Days prior to the commencement of an Interest Period) or (y) if a given day is not a Business Day, the LIBO Rate for such day shall be the rate determined by the Administrative Agent

pursuant to preceding clause (x) for the most recent Business Day preceding such day. Any change in the Base Rate due to a change in the Prime Lending Rate, the Federal Funds Rate or such LIBO Rate shall be effective as of the opening of business on the day of such change in the Prime Lending Rate, the Federal Funds Rate or such LIBO Rate, respectively; provided, that if the Base Rate is less than zero, such rate shall be deemed to be zero for purposes hereof.

“Base Rate Loan” shall mean (i) each Swingline Loan and (ii) each U.S. Dollar Denominated Revolving Loan designated or deemed designated as a Base Rate Loan by the relevant Borrower of such U.S. Dollar Denominated Revolving Loan at the time of the incurrence thereof or conversion thereto.

“Basket-Related Permitted Indebtedness” shall mean any Indebtedness incurred by the Company and its Subsidiaries (which Indebtedness may be guaranteed pursuant to a SolarCity Guarantee) that is not Ratio-Related Permitted Indebtedness up to an aggregate outstanding principal amount of \$3,000,000,000.

“Benchmark” shall mean, initially, the Relevant Rate; provided that if a Benchmark Transition Event, a Term SOFR Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date have occurred with respect to the LIBO Rate or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to clause (b)(i) or (ii) of Section 2.10.

“Benchmark Replacement” shall mean, for any Available Tenor, the first alternative set forth in the order below that can be determined by the Administrative Agent for the applicable Benchmark Replacement Date; provided that, in the case of any Loan denominated in an currency other than U.S. Dollars, “Benchmark Replacement” shall mean the alternative set forth in (c) below:

(a) the sum of: (i) Term SOFR and (ii) the related Benchmark Replacement Adjustment;

(b) the sum of: (i) Daily Simple SOFR and (ii) the related Benchmark Replacement Adjustment;

(c) the sum of: (i) the alternate benchmark rate that has been selected by the Administrative Agent and the U.S. Borrower as the replacement for the then-current Benchmark for the applicable Corresponding Tenor giving due consideration to (x) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (y) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then-current Benchmark for syndicated credit facilities denominated in the applicable Available Currency at such time and (ii) the related Benchmark Replacement Adjustment;

provided that, in the case of clause (a), such Unadjusted Benchmark Replacement is displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion; provided further that, solely with respect to a Loan denominated in U.S. Dollars, notwithstanding anything to the contrary in this Agreement or in any other Credit Document, upon the occurrence of a Term SOFR Transition Event, and the delivery of a Term SOFR Notice, on the applicable Benchmark Replacement Date the “Benchmark Replacement” shall revert to and shall be deemed to be the sum of (i) Term SOFR and (ii) the related Benchmark Replacement Adjustment, as set forth in clause (a) of this definition (subject to the first proviso above).

If the Benchmark Replacement as determined pursuant to clause (a), (b) or (c) above would be less than zero, the Benchmark Replacement will be deemed to be zero for the purposes of this Agreement and the other Credit Documents.

“Benchmark Replacement Adjustment” shall mean, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement for any applicable Interest Period and Available Tenor for any setting of such Unadjusted Benchmark Replacement:

(a) for purposes of clauses (a) and (b) of the definition of “Benchmark Replacement,” the first alternative set forth in the order below that can be determined by the Administrative Agent:

(i) the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) as of the Reference Time such Benchmark Replacement is first set for such Interest Period that has been selected or recommended by the Relevant Governmental Body for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for the applicable Corresponding Tenor;

(ii) the spread adjustment (which may be a positive or negative value or zero) as of the Reference Time such Benchmark Replacement is first set for such Interest Period that would apply to the fallback rate for a derivative transaction referencing the ISDA Definitions to be effective upon an index cessation event with respect to such Benchmark for the applicable Corresponding Tenor; and

(b) for purposes of clause (c) of the definition of “Benchmark Replacement,” the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the U.S. Borrower for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body on the applicable Benchmark Replacement Date and/or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for syndicated credit facilities denominated in the applicable Available Currency at such time;

provided that, in the case of clause (a) above, such adjustment is displayed on a screen or other information service that publishes such Benchmark Replacement Adjustment from time to time as selected by the Administrative Agent in its reasonable discretion.

“Benchmark Replacement Conforming Changes” shall mean, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Base Rate,” the definition of “Business Day,” the definition of “Interest Period,” timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that the Administrative Agent, in consultation with the Company, decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market

practice for the administration of such Benchmark Replacement exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Credit Documents).

“Benchmark Replacement Date” shall mean, with respect to any Benchmark, the earliest to occur of the following events with respect to such then-current Benchmark:

(a) in the case of clause (a) or (b) of the definition of “Benchmark Transition Event,” the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof);

(b) in the case of clause (c) of the definition of “Benchmark Transition Event,” the date of the public statement or publication of information referenced therein; or

(c) in the case of a Term SOFR Transition Event, the date that is 30 days after the date a Term SOFR Notice is provided to the Lenders and the U.S. Borrower pursuant to Section 2.10(b)(ii); or

(d) in the case of an Early Opt-in Election, the sixth Business Day after the date notice of such Early Opt-in Election is provided to the Lenders, so long as the Administrative Agent has not received, by 5:00 p.m. (New York City time) on the fifth Business Day after the date notice of such Early Opt-in Election is provided to the Lenders, written notice of objection to such Early Opt-in Election from Lenders comprising the Required Lenders.

For the avoidance of doubt, (i) if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for such determination and (ii) the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (a) or (b) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

“Benchmark Transition Event” shall mean, with respect to any Benchmark, the occurrence of one or more of the following events with respect to such then-current Benchmark:

(a) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

(b) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the NYFRB, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), in each case which states that the administrator of such Benchmark (or such

component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

(c) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are no longer representative.

For the avoidance of doubt, a "Benchmark Transition Event" will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

"Benchmark Unavailability Period" shall mean, with respect to any Benchmark, the period (if any) (x) beginning at the time that a Benchmark Replacement Date pursuant to clauses (a) or (b) of that definition has occurred if, at such time, no Benchmark Replacement has replaced such then-current Benchmark for all purposes hereunder and under any Credit Document in accordance with Section 2.10 and (y) ending at the time that a Benchmark Replacement has replaced such then-current Benchmark for all purposes hereunder and under any Credit Document in accordance with Section 2.10.

"Beneficial Ownership Certification" shall mean a certification regarding beneficial ownership or control as required by the Beneficial Ownership Regulation.

"Beneficial Ownership Regulation" shall mean 31 C.F.R. § 1010.230.

"Benefit Plan" shall mean any of (a) an "employee benefit plan" (as defined in ERISA) that is subject to Title I of ERISA, (b) a "plan" as defined in and subject to Section 4975 of the Code, or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such "employee benefit plan" or "plan."

"BHC Act Affiliate" of a party shall mean an "affiliate" (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k) of such party).

"Board" shall mean the Board of Governors of the Federal Reserve System of the United States.

"Borrower" and "Borrowers" shall have the meaning provided in the first paragraph of this Agreement.

"Borrower Obligations" shall mean the Dutch Borrower Obligations and/or the UK Borrower Obligations and/or the U.S. Borrower Obligations, as applicable.

"Borrowing" shall mean the borrowing by a Borrower of one Type of Revolving Loan from all the Lenders, or from the Swingline Lender in the case of Swingline Loans, on a given date (or resulting from a conversion or conversions on such date) having in the case of LIBOR Loans the same Interest Period, provided that Base Rate Loans incurred pursuant to Section 2.10(~~b~~c) shall be considered part of the related Borrowing of LIBOR Loans.

"Borrowing Base" shall mean the Dutch Borrowing Base, the UK Borrowing Base, the U.S. Borrowing Base and/or the Total Borrowing Base, as applicable.

"Borrowing Base Certificate" shall have the meaning provided in Section 9.01(h).

"Business" shall mean any corporation, limited liability company, partnership or other business entity (or the adjectival form thereof, where appropriate) or the equivalent of the foregoing in any foreign jurisdiction.

"Business Day" shall mean (i) for all purposes other than as covered by clauses (ii), (iii) ~~and~~, (iv) and (v) below, any day except Saturday, Sunday and any day which shall be in New York, New York, a legal holiday or a day on which banking institutions are authorized or required by law or other government action to close, (ii) with respect to all notices and determinations in connection with, and payments of principal and interest on, LIBOR Loans, any day which is a Business Day described in clause (i) above and which is also a day for trading by and between banks in U.S. ~~e~~Dollar deposits in the London interbank market, (iii) with respect to all notices and determinations in connection with, and payments of principal and interest on, Euro Denominated Loans, any day which is a Business Day described in clause (i) above and is also a TARGET Day ~~and~~, (iv) with respect to all notices and determinations in connection with, and payments of principal and interest on, Loans made to a Dutch Borrower or Letters of Credit issued to a Dutch Borrower, any day which is a Business Day described in clause (i) above and which is also a day which is not a legal holiday or a day on which banking institutions are authorized or required by law or other government action to close in Amsterdam, the Netherlands or London, England; and (v) with respect to all notices and determinations in connection with, and payments of principal and interest on, Loans made to a UK Borrower or Letters of Credit issued to a UK Borrower, any day which is a Business Day described in clause (i) above and which is also a day which is not a legal holiday or a day on which banking institutions are authorized or required by law or other government action to close in London, England.

"Calculation Period" shall mean, with respect to any event expressly required to be calculated on a Pro Forma Basis pursuant to the terms of this Agreement, the Test Period most recently ended prior to the date of such event for which financial statements have been delivered to the Lenders pursuant to this Agreement.

"Capital Expenditures" shall mean, with respect to any Person, all cash expenditures by such Person which should be capitalized in accordance with GAAP.

"Capitalized Lease Obligations" shall mean, with respect to any Person, all rental obligations of such Person which, under GAAP, are or will be required to be capitalized on the books of such Person, in each case taken at the amount thereof accounted for as indebtedness in accordance with such principles; provided that Capitalized Lease Obligations shall not include (i) any obligations in respect of leases that would be treated as operating leases in accordance with GAAP as in effect on the Tenth Amendment Effective Date and (ii) any obligations in respect of operating leases that are capitalized as a result of build-to-suit lease accounting rules.

"Cash Contribution" shall mean, as of any date, the sum of the Dutch Cash Contribution to the Dutch Borrowing Base and the U.S. Cash Contribution to the U.S. Borrowing Base.

"Cash Equivalents" shall mean, as to any Person, (i) securities issued or directly and fully guaranteed or insured by the United States or any agency or instrumentality thereof (provided that the full faith and credit of the United States is pledged in support thereof) having maturities of not more than 24 months from the date of acquisition, (ii) marketable direct obligations issued by any state of the United States or any political subdivision of any such state or any public instrumentality thereof maturing within 12 months from the date of acquisition thereof and, at the time of acquisition, having one of the two highest ratings obtainable from either S&P or Moody's, (iii) U.S. Dollar-denominated demand deposits or

time deposits, certificates of deposit and bankers acceptances of any Lender or any commercial bank having, or which is the principal banking subsidiary of a bank holding company having, a long-term unsecured debt rating of at least "A" or the equivalent thereof from S&P or "A2" or the equivalent thereof from Moody's with maturities of not more than 12 months from the date of acquisition by such Person, (iv) repurchase obligations with a term of not more than 30 days for underlying securities of the types described in clause (i) above entered into with any bank meeting the qualifications specified in clause (iii) above, (v) commercial paper issued by any Person incorporated in the United States rated at least A-1 or the equivalent thereof by S&P or at least P-1 or the equivalent thereof by Moody's and in each case maturing not more than 12 months after the date of acquisition by such Person, (vi) investments in money market funds regulated under Rule 2a-7 of the Investment Company Act of 1940, (vii) securities of the types described in clause (ii) above having maturities of not more than 24 months from the date of acquisition thereof so long as such securities are fully guaranteed for both principal and interest by an irrevocable letter of credit issued by a commercial bank with a minimum credit rating of Aa3 from Moody's or AA- from Standard & Poor's and at least \$500,000,000 in consolidated total assets, (viii) in the case of any Foreign Subsidiary of the Company, substantially similar investments of the type described in clauses (i) through (vii) above denominated in foreign currencies and from similarly capitalized and rated foreign banks or other Persons in the jurisdiction in which such Foreign Subsidiary is organized, and (ix) any other investments permitted by the Company's investment policy as such policy is in effect, and as disclosed to the Administrative Agent, prior to the [First Amendment](#) Effective Date, together with any amendments, restatements, supplements or other modifications thereto that the Administrative Agent shall have consented to for purposes of this definition (which consent will not be unreasonably withheld or delayed).

"Cash Flow Revolving Indebtedness" shall have the meaning provided in Section 10.04(q).

"Cash Flow Revolving Documents" shall mean, on and after the execution and delivery thereof, each loan agreement, credit agreement, guaranty, security agreement and other document relating to the incurrence or issuance of any Cash Flow Revolving Indebtedness, as the same may be amended, modified, restated, renewed, extended and/or supplemented from time to time in accordance with the terms hereof and thereof.

"Cash Management Control Agreement" shall mean (i) (x) in respect of a Deposit Account located in the United States, a "control agreement" in form and substance reasonably acceptable to the Administrative Agent and containing terms regarding the treatment of all cash and other amounts on deposit in the respective Deposit Account governed by such Cash Management Control Agreement consistent with the requirements of Section 5.03 and (y) in respect of a Deposit Account located outside of the United States, an agreement in form and substance reasonably satisfactory to the Administrative Agent perfecting the Lien of the Administrative Agent in the amounts on deposit therein and containing terms regarding the treatment of all cash and other amounts on deposit in the respective Deposit Account governed by such Cash Management Control Agreement consistent with the requirements of Section 5.03 and (ii) (x) in respect of a securities account located in the United States, a "control agreement" in form and substance reasonably acceptable to the Administrative Agent and containing terms regarding the treatment of all securities and other amounts on deposit in the respective securities account governed by such Cash Management Control Agreement and (y) in respect of a securities account located outside of the United States, an agreement in form and substance reasonably satisfactory to the Administrative Agent perfecting the Lien of the Administrative Agent in the securities and other amounts on deposit therein.

"Cash Management Reserve" shall mean a reserve established by the Administrative Agent in connection with treasury, depository or cash management services (including, overnight overdraft services) provided to the Company and its Subsidiaries, and automated clearinghouse transfers of funds,

as adjusted from time to time by the Administrative Agent in its Permitted Discretion to reasonably reflect anticipated obligations under such services then provided or outstanding.

“Change of Control” shall mean (i) the Company shall at any time cease to own, directly or indirectly, 100% of the Equity Interests of each other Borrower, (ii) any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act) other than a Permitted Holder, is or shall become the “beneficial owner” (as defined in Rules 13(d)-3 and 13(d)-5 under the Exchange Act), directly or indirectly, of 35% or more of the Voting Stock of the Company or (iii) a “change of control” or similar event (which, in the case of Permitted Convertible Notes, shall include any “fundamental change”, “make-whole fundamental change” or other similar event risk provision) shall occur as provided in any Permitted Convertible Notes Document or any Permitted Additional Indebtedness Document and in connection with such “change of control” or similar event, the Company shall be obligated to repurchase or offer to repurchase all of the affected Permitted Convertible Notes or Permitted Additional Indebtedness.

“Charging Agreements” shall mean electric vehicle charging station related agreements, including lease and license agreements and all associated real property and other rights provided in the applicable agreement; agreements and other rights related to customer accounts, payments and data; equipment lease agreements entered into with a customer pursuant to which such customer agrees to lease a Charging System, and all rights related thereto; and agreements to provide vehicle charging related services such as equipment installation, equipment maintenance or customer billing services.

“Charging Assets” shall mean Charging Systems, Charging Agreements, Equity Interests in Excluded Charging Subsidiaries and Vehicle Environmental Attributes.

“Charging Systems” shall mean all parts of an electric vehicle charging station, including charge posts, charging connectors, power electronics equipment, switchgear, conduit, wiring, metering equipment, concrete pads, signage, fences or visual barriers, mobile charging stations, canopies, solar panels, energy storage systems and other related equipment.

“Charging Working Capital Facility” shall mean a credit facility providing working capital or warehouse financing for the acquisition or development of Charging Assets.

“Chattel Paper” shall mean “chattel paper” (as such term is defined in Article 9 of the UCC).

“Co-Documentation Agents” shall mean Société Générale and Wells Fargo Bank, National Association, each in its capacity as a co-documentation agent for the Lenders hereunder and under the other Credit Documents.

“Code” shall mean the United States Internal Revenue Code of 1986, as amended from time to time, and the regulations promulgated and rulings issued thereunder. Unless otherwise provided herein, section references to the Code are to the Code, as in effect at the date of this Agreement and any subsequent provisions of the Code, amendatory thereof, supplemental thereto or substituted therefor.

“Collateral” shall mean all property (whether real or personal) with respect to which any security interests have been granted (or purported to be granted) pursuant to any Security Document, including all Security Agreement Collateral, all Mortgaged Properties (if any) and all cash and Cash Equivalents delivered as collateral pursuant to Section 5.02 or 11; provided that in no event shall the term “Collateral” include any property, interest or other rights with respect to SolarCity or any of its Subsidiaries or any Equity Interests of SolarCity or any of its Subsidiaries.



"Collateral Agent" shall mean DBNY in its capacity as collateral agent for the Secured Creditors pursuant to the Security Documents and shall include any successor to the Collateral Agent as provided in Section 12.09.

"Collateralized Letter of Credit" shall have the meaning provided in Section 3.02(b).

"Commingled Inventory" shall mean Inventory of any Borrower that is commingled (whether pursuant to a consignment, a toll manufacturing agreement or otherwise) with Inventory of another Person (other than a Borrower) at a location owned or leased by any Borrower to the extent that such Inventory of the applicable Borrower is not readily identifiable.

"Commitment Commission" shall have the meaning provided in Section 4.01(a).

"Commitment Commission Percentage" shall mean 0.25% per annum; ~~provided that until the First Usage Date, the Commitment Commission Percentage shall be (i) 0% for the period from the Effective Date until the date 30 days thereafter, (ii) 0.125% per annum for the period from the date that is 30 days after the Effective Date until the date that is 60 days after the Effective Date and (iii) 0.25% thereafter.~~ From and after any Extension with respect to any Extended Revolving Loan Commitments and Extended Loans, the Commitment Commission Percentage specified for such Extended Revolving Loan Commitments and Extended Loans shall be those set forth in the applicable definitive documentation thereof.

"Commodity Exchange Act" shall mean the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

"Company" shall have the meaning provided in the first paragraph of this Agreement.

"Company Common Stock" shall mean authorized shares of common stock of the Company.

"Company Factory" shall mean (i) the Fremont Factory, (ii) the Company's manufacturing facility located in Lathrop, California, (iii) the Company's manufacturing facility located at 5640 Executive Parkway SE, Grand Rapids, Michigan, (iv) the Company's manufacturing facility located in Buffalo, New York, (v) the Company's Gigafactory located at 1 Electric Avenue, Sparks, Nevada and (vi) any other ~~m~~Manufacturing ~~f~~Facilities established by the Company from time to time and located in the United States.

"Compliance Period" shall mean, subject to Section 3.02(b), any period commencing on the date on which (a)(i) Designated Cash is less than the Liquidity Threshold and (ii) Excess Availability is less than the greater of (x) 10% of Availability at such time or (y) \$80,000,000 and (b) ending on the first date thereafter on which (i) Designated Cash is equal to or greater than the Liquidity Threshold or (ii) Excess Availability is greater than the greater of (x) 10% of Availability at such time and (y) \$80,000,000 for 30 consecutive days.

"Consent Letter" shall mean that certain letter, dated as of April 28, 2017, between the Borrowers and the Required Lenders.

"Consolidated EBITDA" shall mean, for any period, Consolidated Net Income for such period (without giving effect to (w) any extraordinary gains or losses, (x) any non-cash income, (y) any gains or losses from sales of assets other than those assets sold in the ordinary course of business, or (z) any foreign currency gains or losses) adjusted by (A) adding thereto (in each case to the extent deducted in determining Consolidated Net Income for such period (other than clause (ix) below which need not be so

deducted)), without duplication, the amount of (i) total interest expense (inclusive of amortization or write-off of deferred financing fees and other original issue discount and banking fees, charges and commissions (e.g., letter of credit issuance and facing fees (including Letter of Credit Fees and Facing Fees), commitment fees, issuance costs and other transactional costs)) of the Company and its Consolidated Subsidiaries determined on a consolidated basis for such period, (ii) provision for taxes based on income and foreign withholding taxes for the Company and its Consolidated Subsidiaries (including state, franchise, capital and similar taxes paid or accrued) determined on a consolidated basis for such period, (iii) all depreciation and amortization expense of the Company and its Consolidated Subsidiaries determined on a consolidated basis for such period, (iv) in the case of any period, the amount of all fees and expenses incurred in connection with ~~the Transaction (including in connection with~~ any amendments, restatements, modifications, waivers or consents to the Credit Documents) during such fiscal quarter, (v) any unusual or non-recurring cash charges, (vi) any cash restructuring charges or reserves (which, for the avoidance of doubt, shall include retention, severance, system establishment costs, excess pension charges, contract and lease termination costs and costs to consolidate facilities and relocate employees) for such period (a)(x) incurred in connection with an Acquisition consummated after the Effective Date or (y) otherwise incurred in connection with the Company's and its Consolidated Subsidiaries' operations in an aggregate amount for all cash charges added back pursuant to this clause (vi) not to exceed 15% of Consolidated EBITDA in any Test Period (calculated before giving effect to this clause (vi)), (vii) any expenses incurred in connection with any actual or proposed Investment, incurrence, amendment or repayment of Indebtedness, issuance of Equity Interests or acquisition or disposition, in each case, outside the ordinary course of business for such period, (viii) expenses incurred to the extent covered by indemnification provisions in any agreement in connection with an a Acquisition to the extent reimbursed in cash to the Company or any of its Consolidated Subsidiaries and such indemnification payments are not otherwise included in Consolidated Net Income, in each case, for such period, (ix) proceeds received by the Company or any of its Consolidated Subsidiaries from any business interruption insurance to the extent such proceeds are not otherwise included in such Consolidated Net Income for such period, (x) all other non-cash charges of the Company and its Consolidated Subsidiaries determined on a consolidated basis for such period, (xi) [RESERVED], and (xii) any expenses associated with stock based compensation and (B) subtracting therefrom (to the extent not otherwise deducted in determining Consolidated Net Income for such period) (i) the amount of all cash payments or cash charges made (or incurred) by the Company or any of its Consolidated Subsidiaries for such period on account of any non-cash charges added back to Consolidated EBITDA pursuant to preceding sub-clause (A)(x) in a previous period and (ii) any unusual or non-recurring cash gains. For the avoidance of doubt, it is understood and agreed that, to the extent any amounts are excluded from Consolidated Net Income by virtue of the proviso to the definition thereof contained herein, any add backs to Consolidated Net Income in determining Consolidated EBITDA as provided above shall be limited (or denied) in a fashion consistent with the proviso to the definition of Consolidated Net Income contained herein.

"Consolidated Interest Expense" shall mean, for any period, (i) the total consolidated cash interest expense of the Company and its Consolidated Subsidiaries (including all commissions, discounts and other commitment and banking fees and charges (e.g., fees with respect to Interest Rate Protection Agreements and Other Hedging Agreements, letter of credit issuance and facing fees (including Letter of Credit Fees and Facing Fees) and other transactional costs) for such period, adjusted to exclude (to the extent same would otherwise be included in the calculation above in this clause (i)) the amortization of any deferred financing costs for such period and any interest expense actually "paid in kind" or accreted during such period, plus (ii) without duplication, that portion of Capitalized Lease Obligations of the Company and its Consolidated Subsidiaries on a consolidated basis representing the interest factor for such period.

"Consolidated Net Income" shall mean, for any period, the net income (or loss) of the Company and its Consolidated Subsidiaries determined on a consolidated basis for such period (taken as a single

accounting period) in accordance with GAAP (after any deduction for minority interests); provided that the following items shall be excluded in computing Consolidated Net Income (without duplication): (i) the net income (or loss) of any Person in which a Person or Persons other than the Company and its Wholly-Owned Subsidiaries has an Equity Interest or Equity Interests to the extent of such Equity Interests held by such Persons (provided that the net income (or loss) included in the Company's financial statements as a result of variable interest entity accounting shall be excluded, except to the extent of dividends received by the Company or any of its Wholly-Owned Subsidiaries) and (ii) except for determinations expressly required to be made on a Pro Forma Basis, the net income (or loss) of any Person accrued prior to the date it becomes a Consolidated Subsidiary or all or substantially all of the property or assets of such Person are acquired by a Consolidated Subsidiary.

"Consolidated Subsidiaries" shall mean, as of any date, all Subsidiaries of the Company and SolarCity and its Subsidiaries (determined without giving effect to the proviso in the definition of Subsidiary), in each case to the extent the accounts of such Person are consolidated with the accounts of the Company as of such date in accordance with the principles of consolidation reflected in the audited financial statements most recently delivered in accordance with Section 9.01(b).

"Consolidated Total Assets" shall mean, at any time of determination thereof, the aggregate amount of all assets of the Company and its Consolidated Subsidiaries as set forth in the most recent consolidated balance sheet of the Company and its Consolidated Subsidiaries delivered to the Lenders pursuant to this Agreement and computed in accordance with GAAP.

"Consolidated Total Indebtedness" shall mean, at any time, the sum of (without duplication) (i) the principal amount (or accreted principal amount in the case of Indebtedness issued with original issue discount) of all Indebtedness of the Company and its Subsidiaries at such time of the type described in clauses (i), (ii),(iii), (iv) and (v) of the definition of Indebtedness and (ii) all Contingent Obligations of the Company and its Subsidiaries in respect of Indebtedness of any third Person of the type referred to in preceding clause; provided that the aggregate amount available to be drawn (i.e., unfunded amounts) under all letters of credit, bankers' acceptances and bank guarantees issued for the account of the Company or any of its Subsidiaries (but excluding, for avoidance of doubt, all unpaid drawings or other matured monetary obligations owing in respect of such letters of credit, bankers' acceptances and bank guarantees) shall not be included in any determination of "Consolidated Total Indebtedness"; provided further, that the aggregate amount of surety bonds, customs bonds and other similar bonds issued for the account of the Company or any of its Subsidiaries shall not be included in any determination of "Consolidated Total Indebtedness".

"Contingent Obligation" shall mean, as to any Person, any obligation of such Person as a result of such Person being a general partner of any other Person, unless the underlying obligation is expressly made non-recourse as to such general partner, and any obligation of such Person guaranteeing or intended to guarantee any Indebtedness, leases, dividends or other obligations (solely for the purpose of this definition, "primary obligations") of any other Person (solely for the purpose of this definition, the "primary obligor") in any manner, whether directly or indirectly, including any obligation of such Person, whether or not contingent, (i) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (ii) to advance or supply funds (x) for the purchase or payment of any such primary obligation or (y) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation, (iii) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (iv) otherwise to assure or hold harmless the holder of such primary obligation against loss in respect thereof; provided, however, that the term Contingent Obligation shall not include endorsements of

instruments for deposit or collection in the ordinary course of business. The amount of any Contingent Obligation shall be deemed to be an amount equal to the lesser of (x) the stated or determinable amount of the primary obligation in respect of which such Contingent Obligation is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such Person is required to perform thereunder) as determined by such Person in good faith and (y) the maximum amount for which the guaranteeing person may be liable pursuant to the terms of the instrument embodying such primary obligation.

“Controlled Securities Account” shall mean a securities account of a Credit Party subject to a Cash Management Control Agreement.

“Convertible Notes Maturity Default” shall mean the occurrence of any of the following events: (i) any of the Company’s 2021 Convertible Notes shall be outstanding on January 1, 2021 and the sum of Unrestricted and Available cash and Cash Equivalents of the Company and its Subsidiaries and Excess Availability as of such date is not in excess of the principal amount of 2021 Convertible Notes then outstanding ~~plus \$400,000,000~~ or (ii) any of the Company’s 2022 Convertible Notes are outstanding on January 15, 2022 and the sum of Unrestricted and Available cash and Cash Equivalents of the Company and its Subsidiaries and Excess Availability as of such date is not in excess of the principal amount of 2022 Convertible Notes then outstanding ~~plus \$400,000,000~~.

“Core Deposit Accounts” shall mean, collectively, the Core U.S. Deposit Accounts ~~and~~ the Core Dutch Deposit Accounts and the Core UK Deposit Accounts.

“Core Dutch Deposit Account” shall have the meaning provided in Section 5.03(c).

“Core UK Deposit Account” shall have the meaning provided in Section 5.03(d).

“Core U.S. Deposit Account” shall have the meaning provided in Section 5.03(b).

“Corresponding Tenor” with respect to any Available Tenor shall mean, as applicable, either a tenor (including overnight) or an interest payment period having approximately the same length (disregarding business day adjustment) as such Available Tenor.

“Credit Account” shall have the meaning provided in Section 5.03(~~h~~).

“Covered Entity” shall mean any of the following:

- (i) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);
- (ii) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or
- (iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“Covered Party” shall have the meaning provided in Section 13.26.

“Credit Documents” shall mean this Agreement, each Guaranty, each Security Agreement and, after the execution and delivery thereof pursuant to the terms of this Agreement, each Note, each

Incremental Commitment Agreement, each Joinder Agreement, the Intercreditor Agreement and each other Security Document.

“Credit Event” shall mean the making of any Loan or the issuance, amendment, extension or renewal of any Letter of Credit (other than any amendment, extension or renewal that does not increase the maximum Stated Amount of such Letter of Credit).

“Credit Party” shall mean each U.S. Credit Party ~~and~~ each Dutch Credit Party and each UK Credit Party.

“Customer Deposit Reserve” shall mean a reserve established by the Administrative Agent in connection with customer deposits in respect of motor vehicles that are in production (as recorded in final assembly work in process inventory), are Eligible Finished Goods Inventory or are Eligible In-Transit Inventory, as adjusted from time to time by the Administrative Agent in its Permitted Discretion.

“Customer Lease Agreement” shall mean a lease agreement entered into with a customer, pursuant to which such customer agrees to lease an Energy Storage System.

“Daily Simple SOFR” shall mean, for any day, SOFR, with the conventions for this rate (which will include a lookback) being established by the Administrative Agent in accordance with the conventions for this rate selected or recommended by the Relevant Governmental Body for determining “Daily Simple SOFR” for business loans; provided that, if the Administrative Agent decides that any such convention is not administratively feasible for the Administrative Agent, then the Administrative Agent may establish another convention in its reasonable discretion.

“DB Account” shall mean each DB Netherlands Account and each DB U.S. Account.

“DB Netherlands Account” shall have the meaning provided in Section 5.03(e~~f~~).

“DB UK Account” shall have the meaning provided in Section 5.03(g).

“DB U.S. Account” shall have the meaning provided in Section 5.03(e~~e~~).

“DBNY” shall mean Deutsche Bank AG New York Branch, in its individual capacity, and any successor corporation by merger, consolidation or otherwise.

“Default” shall mean any event, act or condition which with notice or lapse of time, or both, would constitute an Event of Default.

“Default Right” shall have the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

“Defaulting Lender” shall mean any Lender that (a) has failed, within two Business Days of the date required to be funded or paid, to (i) fund its portion of any Borrowing (including a Mandatory Borrowing), (ii) fund any portion of its participations in Letters of Credit or (iii) pay over to any Lender Party any other amount required to be paid by it hereunder, unless, in the case of clause (i) above, such Lender notifies the Administrative Agent in writing that such failure is the result of such Lender’s good faith determination that a condition precedent to funding (specifically identified and including the particular default, if any) has not been satisfied, (b) has notified the Company or any Lender Party in writing (and such Lender Party has notified the Company or the Administrative Agent thereof in writing), or has made a public statement to the effect, that it does not intend or expect to comply with any of its

funding obligations under this Agreement (unless such writing or public statement indicates that such position is based on such Lender's good faith determination that a condition precedent (specifically identified and including the particular default, if any) to funding a loan under this Agreement cannot be satisfied) or generally under other agreements in which it commits to extend credit, (c) has failed, within three Business Days after request by the Administrative Agent, an Issuing Lender or the Swingline Lender, acting in good faith, to provide a certification in writing from an authorized officer of such Lender that it will comply with its obligations (and is financially able to meet such obligations) to fund prospective Loans and participations in then outstanding Letters of Credit and Swingline Loans under this Agreement, provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon the receipt by the Administrative Agent, the applicable Issuing Lender or the Swingline Lender, as applicable, of such certification in form and substance satisfactory to it and the Administrative Agent, (d) has, or has a direct or indirect parent company that has, become the subject of a Bankruptcy Event, or (e) has, or has a direct or indirect parent company that has, become the subject of a Bail-In Action.

"Deposit Account" shall mean a demand, time, savings, passbook or like account with a bank, savings and loan association, credit union or like organization.

"Designated Cash" shall mean, at any time, the U.S. Dollar Equivalent of the aggregate amount of U.S. Dollars and Cash Equivalents of the U.S. Borrowers and U.S. Guarantors that is (a) Unrestricted, (b) deposited in a Deposit Account or securities account located in the United States that is subject to a Cash Management Control Agreement in favor of the Administrative Agent, (c) subject to a First Priority Lien in favor of the Collateral Agent on behalf of the Secured Creditors, (d) subject to no other Liens other than Permitted Cash Management Liens and (e) not Eligible U.S. Cash and Cash Equivalents.

"Dilution Percentage" shall mean the average of the rolling twelve month dilution percentages, calculated to the first decimal place, determined for the Company's most recently completed twelve month period, which shall be measured at the end of the second month of each fiscal quarter of the Company most recently ended. The dilution percentage shall equal (a) in respect of the U.S. Borrowers, the proportion of (i) bad debt write-downs or write-offs, discounts, returns, promotions, credits, credit memos, and other dilutive items with respect to Accounts of the U.S. Borrowers for such twelve monthly period, divided by (ii) gross billings of the U.S. Borrowers for such twelve monthly period and (b) in respect of the Dutch Borrowers, the proportion of (i) bad debt write-downs or write-offs, discounts, returns, promotions, credits, credit memos, and other dilutive items with respect to Accounts of the Dutch Borrowers for such twelve monthly period, divided by (ii) gross billings of the Dutch Borrowers for such twelve monthly period.

"Dilution Reserve" shall mean a reserve against the applicable Borrowing Base in an amount equal to the percentage (calculated to the first decimal place) that the Dilution Percentage exceeds 5%.

"Disclosure Letter" shall mean the disclosure letter, dated as of the Effective Date, delivered by Company to the Administrative Agent for the benefit of the Lenders.

"Dividend" shall mean, with respect to any Person, that such Person has declared or paid a dividend or distribution or returned any equity capital to its stockholders, partners or members in their capacity as such or authorized or made any other distribution, payment or delivery of property (in each case other than common Equity Interests of such Person or Preferred Equity of such Person meeting the requirements of Qualified Preferred Stock) or cash to its stockholders, partners or members in their capacity as such, or redeemed, retired, purchased or otherwise acquired, directly or indirectly, for a consideration any shares of any class of its capital stock or any other Equity Interests outstanding on or after the Effective Date, or set aside any funds for any of the foregoing purposes, or shall have permitted any of its Subsidiaries to purchase or otherwise acquire for a consideration any shares of any class of the

capital stock or any other Equity Interests of such Person outstanding on or after the Effective Date. Without limiting the foregoing, "Dividends" with respect to any Person shall also include all payments made or required to be made by such Person to any other Person (solely in such other Person's capacity as an equity holder of such Person) with respect to any stock appreciation rights, plans, equity incentive or achievement plans or any similar plans or setting aside of any funds for the foregoing purposes. For the avoidance of doubt, no conversion or Net Share Settlement of Permitted Convertible Notes or the SolarCity Convertible Notes, nor the purchase, sale or performance of obligations under any Issuer Option shall constitute a Dividend.

"Dividing Person" shall have the meaning provided in the definition of Division.

"Division" shall mean the statutory division of the assets, liabilities and/or obligations of a Person (the "Dividing Person") among two or more Persons (whether pursuant to a "plan of division" or similar arrangement) pursuant to the applicable limited liability company statutes, which may or may not include the Dividing Person and pursuant to which the Dividing Person may or may not survive.

"Domestic Subsidiary" of any Person shall mean any Subsidiary of such Person incorporated or organized in the United States or any State thereof or the District of Columbia (other than (i) any such Subsidiary where all or substantially all of its assets consist of Equity Interests of one or more Foreign Subsidiaries (for this purpose, determined without giving effect to this parenthetical) that are controlled foreign corporations as defined in Section 957 of the Code or intercompany obligations owed or treated as owed by one or more Foreign Subsidiaries that are controlled foreign corporations as defined in Section 957 of the Code and (ii) any Domestic Subsidiary that is a direct or indirect Subsidiary of a Foreign Subsidiary).

"Dominion Period" shall mean any period (a) commencing on the date on which (x) an Event of Default has occurred and is continuing or (y) Excess Availability is less than the greater of (i) 10% of Availability at such time and (ii) \$80,000,000 for a period of five consecutive Business Days and (b) ending on the first date thereafter on which (1) no Event of Default exists and (2) in the case of a Dominion Period commencing as a result of clause (a)(y) above, Excess Availability has been equal to or greater than the greater of (i) 10% of Availability at such time and (ii) \$80,000,000 for 30 consecutive days.

"Drawing" shall have the meaning provided in Section 3.05(b).

"DTTP Passport" shall have the meaning provided in Section 5.04(e)(iv).

"Dutch Borrower" and "Dutch Borrowers" shall have the meaning provided in the first paragraph of this Agreement.

"Dutch Borrower Loans" shall mean each Dutch Borrower Revolving Loan and each Dutch Borrower Swingline Loan.

"Dutch Borrower Obligations" shall mean all Obligations owing to the Administrative Agent, the Collateral Agent, any Issuing Lender or any Lender by any Dutch Borrower.

"Dutch Borrower Revolving Loan" shall have the meaning provided in Section 2.01(a).

"Dutch Borrower Revolving Note" shall have the meaning provided in Section 2.05~~(a)~~.

"Dutch Borrower Swingline Loan" shall have the meaning provided in Section 2.01(b).

“Dutch Borrower Swingline Note” shall have the meaning provided in Section 2.05(a).

“Dutch Borrowing Base” shall mean, as of any date of calculation, the amount calculated pursuant to the Borrowing Base Certificate most recently delivered to the Administrative Agent in accordance with Section 9.01(h) equal to, without duplication:

- (a) the sum of:
- (i) 100% of the U.S. Dollar Equivalent of Eligible Dutch Cash and Cash Equivalents (the “Dutch Cash Contribution”),
  - (ii) 85% of Eligible Dutch Accounts,
  - (iii) 85% of the then extant Net Orderly Liquidation Value of Eligible Dutch Vendor In-Transit Inventory,
  - (iv) 85% of the then extant Net Orderly Liquidation Value of Eligible Dutch Raw Materials Inventory (other than Eligible Dutch Vendor In-Transit Inventory),
  - (v) 85% of the then extant Net Orderly Liquidation Value of Eligible Dutch WIP Inventory,
  - (vi) 85% of the then extant Net Orderly Liquidation Value of Eligible Dutch Service Parts Inventory,
  - (vii) 85% of the then extant Net Orderly Liquidation Value of Eligible Dutch Finished Goods Inventory, and
  - (viii) 85% of the then extant Net Orderly Liquidation Value of Eligible Dutch In-Transit Inventory
- minus
- (b) the sum (without duplication) of any Reserves (including the Dutch Priority Payables Reserve and without duplication of any Inventory Reserve) then established by the Administrative Agent with respect to the Dutch Borrowing Base;

provided, however, that (i) Eligible Dutch Inventory shall only be included in the Dutch Borrowing Base to the extent that the Administrative Agent shall have received an Acceptable Appraisal in respect of such Eligible Dutch Inventory and (ii) the Eligible Inventory included in the Borrowing Base pursuant to clauses (a)(iii) through (viii) above shall be calculated net of any applicable Inventory Reserves. The Administrative Agent shall have the right (but no obligation) to review such computations and if, in its Permitted Discretion, such computations have not been calculated in accordance with the terms of this Agreement, the Administrative Agent shall have the right to correct any such errors in such manner as it shall determine in its Permitted Discretion and the Administrative Agent will notify the Company promptly after making any such correction.

“Dutch Cash Contribution” shall have the meaning provided in the definition of Dutch Borrowing Base.

“Dutch Civil Code” shall mean the Dutch Civil Code (*Burgerlijk Wetboek*).

“Dutch Collection Banks” shall have the meaning provided in Section 5.03(c).



“Dutch Corresponding Debt” shall mean the Obligations of a Dutch Credit Party under or in connection with the Credit Documents.

“Dutch Credit Parties” shall mean each Dutch Borrower and each Dutch Subsidiary Guarantor.

“Dutch General Security Agreement” shall mean the Dutch Security Agreement, dated as of the Effective Date, in the form of Exhibit I-3, as amended, modified, restated and/or supplemented from time to time in accordance with the terms hereof and thereof.

“Dutch Guarantors” shall mean and include each Dutch Borrower (in its capacity as a guarantor under the Dutch Guaranty) and each Dutch Subsidiary Guarantor.

“Dutch Guaranty” shall mean the Dutch Guaranty, dated as of the Effective Date, in the form of Exhibit G-1, as amended, modified, restated and/or supplemented from time to time in accordance with the terms hereof and thereof.

“Dutch Insolvency Law” shall mean any of *Faillissementswet*, *Insolventieverordening (EC) 1346/2000* and *Invorderingswet 1990*, each as now and hereafter in effect, and any successors to such statutes and any proceeding under applicable corporate law seeking an arrangement or compromise of any debts of the corporation, or a stay of proceedings to enforce any claims of the corporation’s creditors against it.

“Dutch Inventory Security Agreement” shall mean the Security Agreement (Inventory), dated as of the Effective Date, in the form of Exhibit I-1, as amended, modified, restated and/or supplemented from time to time in accordance with the terms hereof and thereof.

“Dutch Parallel Debt” shall have the meaning provided in Section 12.12(a).

“Dutch Priority Payables” shall mean, at any time, with respect to any Credit Party which has employees in the Netherlands or otherwise carries on business in the Netherlands or which leases, sells or otherwise owns goods in the Netherlands or has Accounts with Account Debtors located in the Netherlands, the aggregate amount of any liabilities of such Credit Party which are secured by a security interest, pledge, lien, charge, right or claim on any Collateral or the holder of which enjoys a right, in each case, pursuant to any applicable law, rule or regulation and which trust, security interest, pledge, lien, charge, right or claim ranks or is capable of ranking in priority to or pari passu with one or more of the Liens granted in the Security Documents.

“Dutch Priority Payables Reserve” shall mean, on any date of determination for the Dutch Borrowing Base, a reserve established from time to time by the Administrative Agent in its Permitted Discretion in such amount as the Administrative Agent may reasonably determine in respect of Dutch Priority Payables of the Dutch Credit Parties.

“Dutch Receivables Security Agreement” shall mean the Security Agreement (Receivables), dated as of the Effective Date, in the form of Exhibit I-2, as amended, modified, restated and/or supplemented from time to time in accordance with the terms hereof and thereof.

“Dutch Retention of Title Reserve” shall mean, on any date of determination for the Dutch Borrowing Base, a reserve established from time to time by the Administrative Agent in its Permitted Discretion for amounts of any claims preferred by law which rank or are capable of ranking senior to the Obligations.

“Dutch Security Agreements” shall mean the Dutch Inventory Security Agreement, the Dutch Receivables Security Agreement and the Dutch General Security Agreement.

“Dutch Subsidiary” of any Person shall mean any Subsidiary of such Person incorporated, organized, or established in the Netherlands or any province or territory thereof.

“Dutch Subsidiary Guarantor” shall mean each Wholly-Owned Dutch Subsidiary of Tesla B.V. (other than any Dutch Borrower, any Securitization Subsidiary, any Excluded Energy Storage Subsidiary, any Excluded Charging Subsidiary, any Tesla Finance Subsidiary and any Immaterial Subsidiary), whether existing on the Effective Date or established, created or acquired after the Effective Date, in each case unless and until such time as the respective Wholly-Owned Dutch Subsidiary is released from all of its obligations under the Security Documents to which it is a party in accordance with the terms and provisions thereof.

“Early Opt-in Election” shall mean:

(a) in the case of Loans denominated in U.S. Dollars, the occurrence of:

(i) a notification by the Administrative Agent to (or the request by the U.S. Borrower to the Administrative Agent to notify) each of the other parties hereto that at least five currently outstanding U.S. Dollar-denominated syndicated credit facilities at such time contain (as a result of amendment or as originally executed) a SOFR-based rate (including SOFR, a term SOFR or any other rate based upon SOFR) as a benchmark rate (and such syndicated credit facilities are identified in such notice and are publicly available for review), and

(ii) the joint election by the Administrative Agent and the U.S. Borrower to trigger a fallback from LIBO Rate and the provision by the Administrative Agent of written notice of such election to the Lenders; and

(b) in the case of Loans denominated in any Available Currency (other than U.S. Dollars), the occurrence of:

(i) (x) a determination by the Administrative Agent or (y) a notification by the Required Lenders to the Administrative Agent (with a copy to the U.S. Borrower) that the Required Lenders have determined that syndicated credit facilities denominated in the applicable Available Currency being executed at such time, or that include language similar to that contained in Section 2.10 are being executed or amended, as applicable, to incorporate or adopt a new benchmark interest rate to replace the Relevant Rate, and

(ii) (x) the election by the Administrative Agent or (y) the election by the Required Lenders, in either case, in consultation with the Company, to declare that an Early Opt-in Election has occurred and the provision, as applicable, by the Administrative Agent of written notice of such election to the U.S. Borrower and the Lenders or by the Required Lenders of written notice of such election to the Administrative Agent.

“ECP” shall have the meaning set forth in the definition of Excluded Swap Obligation.

“EEA Financial Institution” shall mean (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any

entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

“EEA Member Country” shall mean any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“EEA Resolution Authority” shall mean any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

“Effective Date” shall have the meaning provided in Section ~~13.10~~13.11. For avoidance of doubt, the Effective Date occurred on June 10, 2015.

“Eligible Accounts” shall mean each Account (other than Rental Accounts and Accounts in respect of the sale of solar panels or solar shingles) created by any of the Borrowers other than the UK Borrowers in the ordinary course of its business, that arises out of its sale of goods or its rendition of services or that is a Permitted Bank Financing Account, that complies in all material respects with each of the representations and warranties respecting Eligible Accounts made in the Credit Documents, that are reflected in the most recent Borrowing Base Certificate delivered to the Administrative Agent pursuant to Section 9.01(h) and that are not excluded as ineligible by virtue of one or more of the excluding criteria set forth below; provided, however, that such criteria may only be revised or any new criteria for Eligible Accounts may only be established by the Administrative Agent in its Permitted Discretion based on either (i) an event, condition or other circumstance arising after the date hereof, or (ii) an event, condition or other circumstance existing on the date hereof to the extent the Administrative Agent has no written notice thereof from a Borrower prior to the date hereof, in either cause under clause (i) or (ii) which adversely affects or could reasonably be expected to adversely affect the value or collectability of the Accounts as determined by the Administrative Agent in its Permitted Discretion. In determining the amount to be included, Eligible Accounts shall be calculated net of unapplied cash, any and all returns, accrued rebates, discounts (which may, at the Administrative Agent’s option in its Permitted Discretion, be calculated on shortest terms), credits or allowances of any nature at any time issued, owing, claimed by Account Debtors, granted, outstanding or payable in connection with such Accounts at such time. Eligible Accounts shall not include the following:

(a) Accounts which either (x) are more than 90 days past due or (y) are unpaid more than 120 days after the original invoice date; provided that a Permitted Bank Financing Account shall not be eligible if it is (i) more than 30 days past due or (ii) unpaid more than 45 days after the original invoice date; provided further that an Account in respect of sales of Environmental Attributes shall not be eligible if (x) such Account (or a portion thereof) is more than 90 days past due or (y) such Account (or a portion thereof) is unpaid more than 150 days after the original invoice date;

(b) Accounts owed by an Account Debtor where 50% or more of the total amount of all Accounts owed by that Account Debtor are deemed ineligible under clause (a)(x) above or clause (i) of the proviso to clause (a) above;

(c) Accounts with respect to which the Account Debtor is (i) an Affiliate of any Credit Party (other than any Affiliate set forth on Schedule 1.01(e) to the Disclosure Letter) or (ii) an employee or agent (other than bona fide resellers) of any Credit Party;

(d) Accounts arising in a transaction wherein goods are placed on consignment or are sold pursuant to a guaranteed sale, a sale on return, a sale on approval, a bill and hold, or any other terms by reason of which the payment by the Account Debtor may be conditional (although the portion (if any) of the Accounts in excess of the amount at any time and from time to time subject to a Reserve for returns in the ordinary course of business may be deemed Eligible Accounts);

(e) Accounts that are not payable in U.S. Dollars, ~~provided that Eligible Accounts of any Dutch Borrower also may be payable in~~ or Euros;

(f) Accounts with respect to which the Account Debtor is a Person other than a Governmental Authority unless: (i) the Account Debtor (A) is a natural person with a billing address in the United States or an Acceptable Jurisdiction, (B) maintains its Chief Executive Office in the United States or an Acceptable Jurisdiction, or (C) is organized under the laws of the United States or an Acceptable Jurisdiction or any state, province, territory or other subdivision thereof; (ii) the Account is supported by an irrevocable letter of credit satisfactory to the Administrative Agent, in its Permitted Discretion (as to form, substance, and issuer or domestic confirming bank), that has been delivered to the Administrative Agent and is directly drawable by the Administrative Agent, or (iii) such Account is subject to credit insurance payable to the Administrative Agent issued by an insurer and on terms and in an amount (net of any applicable deductibles) deemed acceptable to the Administrative Agent in its Permitted Discretion; provided that this clause (f) shall not exclude any Accounts (other than Permitted Bank Financing Accounts) of a Permitted Foreign Account Debtor that would otherwise constitute Eligible Accounts;

(g) Accounts with respect to which the Account Debtor is the government of any country or sovereign state other than the United States, or of any state, province, municipality, or other political subdivision thereof, or of any department, agency, public corporation, or other instrumentality thereof, unless the Account is supported by an irrevocable letter of credit satisfactory to the Administrative Agent, in its Permitted Discretion (as to form, substance, and issuer or domestic confirming bank), that has been delivered to the Administrative Agent and is directly drawable by the Administrative Agent;

(h) Accounts with respect to which the Account Debtor is the federal government of the United States or any department, agency or instrumentality of the United States (exclusive of Accounts with respect to which the applicable Borrower has complied, to the reasonable satisfaction of the Administrative Agent, with the Assignment of Claims Act of 1940 (31 USC Section 3727));

(i) Accounts with respect to which the Account Debtor is any state government of the United States or any department, agency, municipality or political subdivision thereof (exclusive, however, of Accounts with respect to which the applicable Borrower has complied, to the reasonable satisfaction of the Administrative Agent, with the state law (if any) that is the substantial equivalent of the Assignment of Claims Act of 1940 (31 USC Section 3727)), unless the Account is supported by an irrevocable letter of credit satisfactory to the Administrative Agent, in its Permitted Discretion (as to form, substance, and issuer or domestic confirming bank), that has been delivered to the Administrative Agent and is directly drawable by the Administrative Agent;

(j) (i) Accounts with respect to which the Account Debtor is a creditor of any Credit Party or any Subsidiary of a Credit Party and such Account Debtor has asserted in writing a right

of setoff, or has disputed its obligation to pay all or any portion of the Account, to the extent of such claim, right of setoff, or dispute, (ii) Accounts which are subject to a rebate that has been earned but not taken or a chargeback, to the extent of such rebate or chargeback, (iii) that portion of Accounts that constitute service charges, late fees or finance charges and (iv) Accounts less than 120 days past the original invoice date related to invoices that have been partially paid unless the Company reasonably believes in good faith that such Accounts will be fully paid and such Accounts are not otherwise excluded from being Eligible Accounts;

(k) Accounts with respect to an Account Debtor (other than any Account Debtor that has an Investment Grade Rating) whose total obligations owing to the Borrowers exceed ~~20~~25% (such percentage, as applied to a particular Account Debtor, being subject to reduction or increase by the Administrative Agent, in each case in its Permitted Discretion, ~~if the creditworthiness of such Account Debtor deteriorates or is otherwise unacceptable to the Administrative Agent~~) of all Eligible Accounts, to the extent of the obligations owing by such Account Debtor in excess of such percentage; provided, however, that, in each case, the amount of Eligible Accounts that are excluded because they exceed the foregoing percentage shall be determined by the Administrative Agent based on all of the otherwise Eligible Accounts prior to giving effect to any eliminations based upon the foregoing concentration limit; provided that ~~the foregoing percentage shall be~~ (x) in respect of any Specified Account Debtor, the foregoing percentage shall be the percentage set forth on Schedule 1.01(c) to the Disclosure Letter with respect to such Specified Account Debtor (as such Schedule may be updated from time to time in the Permitted Discretion of the Administrative Agent with written notice to the Company) ~~and~~, (y) in respect of any Account Debtor that has an Investment Grade Rating, the foregoing percentage shall be 50% (with such percentage being subject to reduction by the Administrative Agent in its Permitted Discretion) and (z) in respect of any Account Debtor that has a rating equal to or between Ba3 to Ba1 (or the equivalent) by Moody's and BB- to BB+ (or the equivalent) by S&P (or the equivalent rating by any other securities rating organization nationally recognized in the United States), the foregoing percentage shall be 40% (with such percentage being subject to reduction by the Administrative Agent in its Permitted Discretion ~~as set forth in the immediately preceding parenthetical~~);

(l) Accounts (w) with respect to which (i) an Insolvency Proceeding has been commenced by or against the Account Debtor (or, to the knowledge of a Responsible Officer of any Borrower, a controlling Affiliate thereof) or (ii) the Account Debtor (or, to the knowledge of a Responsible Officer of any Borrower, such controlling Affiliate) has failed, has suspended or ceased doing business, or, to the knowledge of a Responsible Officer of any Borrower, is liquidating, dissolving or winding up its affairs or (iii) the applicable Borrower is not able to bring suit or enforce remedies against the Account Debtor through judicial process, (x) the collection of which the Administrative Agent, in its Permitted Discretion, believes to be doubtful by reason of the Account Debtor's financial condition, upon notice thereof to the Company, or (y) which have been placed with a collection agency;

(m) Accounts that are not subject to a valid and perfected First Priority Lien in favor of the Collateral Agent pursuant to a Security Document;

(n) Accounts with respect to which the services giving rise to such Account have not been performed, invoiced and/or billed to the Account Debtor; provided that the foregoing shall not exclude any Account in respect of the sale of a motor vehicle solely because a de minimis portion of such Account relates to future services to be provided in respect of such motor vehicle;

(o) Accounts that represent the right to receive progress payments or other advance billings that are due prior to the completion of performance by the applicable Borrower of the

subject contract for goods or services; provided that the foregoing shall not exclude any Account in respect of the sale of a motor vehicle solely because a de minimis portion of such Account relates to future services to be provided in respect of such motor vehicle;

(p) Accounts with respect to which any return, rejection or repression of any of the merchandise giving rise to such Account has occurred;

(q) Accounts with respect to which the sale to the respective Account Debtor is “cash on delivery”;

(r) Accounts that are evidenced by Chattel Paper or an instrument of any kind or have been reduced to a judgment;

(s) Accounts with respect to which the applicable Borrower has made any agreement with any Account Debtor for any deduction therefrom (but only to the extent of such deductions from time to time), except for discounts or allowances made in the ordinary course of business for prompt payment and except for volume discounts, all of which discounts or allowances are reflected in the calculation of the face value of each respective invoice related thereto and except for returns, rebates or credits reflected in the calculation of the face value of each such amount;

(t) Accounts that are not payable to a U.S. Borrower or a Dutch Borrower, as applicable;

(u) Accounts to the extent representing unapplied cash balances; or

(v) Accounts that are otherwise unacceptable to the Administrative Agent in its Permitted Discretion.

The Administrative Agent shall have the right to establish, modify or eliminate Reserves against Eligible Accounts (including for estimates, chargeback or other accrued liabilities or offsets to adjust for material claims, offsets, defenses or counterclaims or other material disputes with an Account Debtor) from time to time in its Permitted Discretion; provided that with respect to facts or events known to the Administrative Agent prior to the Effective Date, the Administrative Agent may impose new Reserves only to reflect a change in circumstances, events, conditions, contingencies or risks in respect of such facts or events.

“Eligible Cash and Cash Equivalents” shall mean currency consisting of U.S. Dollars or Euros or Sterling, or any other Cash Equivalents, in each case that is (a) Unrestricted, (b) deposited in a Deposit Account or securities account that is subject to a Cash Management Control Agreement in favor of the Administrative Agent, (c) subject to a First Priority Lien in favor of the Collateral Agent on behalf of the Secured Creditors and (d) subject to no other Liens other than Permitted Cash Management Liens.

“Eligible Dutch Accounts” shall mean the Eligible Accounts owned by any Dutch Borrower.

“Eligible Dutch Cash and Cash Equivalents” shall mean the Eligible Cash and Cash Equivalents owned by any Dutch Borrower that is reflected in the most recent Borrowing Base Certificate delivered to the Administrative Agent pursuant to Section 9.01(h).

“Eligible Dutch Finished Goods Inventory” shall mean the Eligible Finished Goods Inventory owned by any Dutch Borrower.

“Eligible Dutch In-Transit Inventory” shall mean the Eligible In-Transit Inventory owned by any Dutch Borrower.

“Eligible Dutch Inventory” shall mean Eligible Dutch Finished Goods Inventory, Eligible Dutch In-Transit Inventory, Eligible Dutch Raw Materials Inventory and Eligible Dutch WIP Inventory.

“Eligible Dutch Raw Materials Inventory” shall mean the Eligible Raw Materials Inventory owned by any Dutch Borrower.

“Eligible Dutch Service Parts Inventory” shall mean the Eligible Service Parts Inventory owned by any Dutch Borrower.

“Eligible Dutch Vendor In-Transit Inventory” shall mean the Eligible Vendor In-Transit Inventory owned by any Dutch Borrower.

“Eligible Dutch WIP Inventory” shall mean the Eligible WIP Inventory owned by any Dutch Borrower.

“Eligible Finished Goods Inventory” shall mean Eligible Inventory consisting of finished goods available for sale (as determined in a manner acceptable to the Administrative Agent in its Permitted Discretion and consistent with past practices).

“Eligible In-Transit Inventory” shall mean all Eligible Inventory (other than Eligible Raw Materials Inventory):

(a) for which title remains with the applicable Borrower,

(b) which is fully insured in such amounts, with insurance companies and subject to such deductibles as are reasonably satisfactory to the Administrative Agent in its Permitted Discretion,

(c) which is (i) with respect to Inventory owned by a U.S. Borrower, in-transit in the United States ~~and~~ (ii) with respect to Inventory owned by a Dutch Borrower, in-transit in the United States, in the Netherlands, in Belgium or from the United States to the Netherlands or Belgium; provided that any Inventory in Belgium or in-transit to Belgium shall only be Eligible Inventory if such Inventory is subject to a Perfected Belgian Lien ~~and~~, and (iii) with respect to Inventory owned by a UK Borrower, in-transit in the United States, in-transit in England and Wales or from the United States, the Netherlands or Belgium to England and Wales; provided that (x) any Inventory in Belgium or in-transit to Belgium shall only be Eligible Inventory if such Inventory is subject to a Perfected Belgian Lien, (y) any Inventory in the United States or in-transit from the United States shall only be Eligible Inventory if such Inventory is subject to a Perfected U.S. Lien and (z) any Inventory in-transit from the Netherlands shall only be Eligible Inventory if such Inventory is subject to a Perfected Dutch Lien, and

(d) which otherwise would constitute Eligible Inventory.

“Eligible Inventory” shall mean all of the Inventory owned by any of the Borrowers (and for which the applicable Borrower has good title to such Inventory) that is reflected in the most recent Borrowing Base Certificate delivered to the Administrative Agent pursuant to Section 9.01(h), except any Inventory as to which any of the exclusionary criteria set forth below applies. Eligible Inventory shall not include any Inventory of a Borrower that:

(a) is excess, obsolete, unsalable, shopworn, Used, seconds, damaged, unfit for sale or constitutes Material Review Board Inventory;

(b) is not subject to a First Priority Lien in favor of the Collateral Agent on behalf of the Secured Creditors;

(c) is not owned by a Borrower free and clear of all Liens and rights of any other Person (including the rights of a purchaser that has made progress payments and the rights of a surety that has issued a bond to assure the applicable Borrower's performance with respect to that Inventory), except the First Priority Lien in favor of the Collateral Agent, on behalf of the Secured Creditors, the junior Permitted Liens under Section 10.01(s) and First Priority Priming Liens (subject to Reserves established by the Administrative Agent in accordance with the provisions of this Agreement and in respect of such Permitted Liens);

(d) (i) is not located on premises owned, leased or rented by a Borrower, and in the case of leased or rented premises unless either (x) a reasonably satisfactory Landlord Personal Property Collateral Access Agreement has been delivered to the Administrative Agent or (y) Rent Reserves reasonably satisfactory to the Administrative Agent in its Permitted Discretion have been established with respect thereto or (ii) is stored with a bailee or warehouseman, unless either (x) a reasonably satisfactory and acknowledged bailee or warehouseman letter has been received by the Administrative Agent or (y) Reserves reasonably satisfactory to the Administrative Agent in its Permitted Discretion have been established with respect thereto, or (iii) is located at an owned location subject to a mortgage or other security interest in favor of a creditor other than the Collateral Agent or the junior Permitted Liens under Section 10.01(s) unless either (x) a Landlord Personal Property Collateral Access Agreement has been delivered to the Administrative Agent or (y) Reserves reasonably satisfactory to the Administrative Agent have been established with respect thereto; provided that the foregoing shall not exclude any Inventory of a Borrower that would otherwise constitute Eligible In-Transit Inventory or Eligible Vendor In-Transit Inventory;

(e) is placed on consignment unless Reserves reasonably satisfactory to the Administrative Agent have been established with respect thereto;

(f) is in transit; provided that the foregoing shall not exclude any Inventory of a Borrower that would otherwise constitute Eligible In-Transit Inventory or Eligible Vendor In-Transit Inventory;

(g) is covered by a negotiable document of title, unless, at the Administrative Agent's request, such document has been delivered to the Collateral Agent or an agent thereof and such Borrower takes such other actions as the Administrative Agent reasonably requests in order to create a perfected First Priority security interest in favor of the Collateral Agent in such Inventory with all necessary endorsements, free and clear of all Liens except those in favor of the Collateral Agent on behalf of the Secured Creditors, the junior Permitted Liens under Section 10.01(s) and First Priority Priming Liens (subject to Reserves established by the Administrative Agent in accordance with the provisions of this Agreement and in respect of such Permitted Liens and the amount of any shipping fees, costs and expenses shall be reflected in Reserves); provided that the foregoing shall not exclude any Inventory of a Borrower that would otherwise constitute Eligible In-Transit Inventory or Eligible Vendor In-Transit Inventory;

(h) consists of goods that constitute spare parts (not intended for sale or consumer use), packaging and shipping materials, Merchandise, or supplies used or consumed in a U.S. Borrower's business;



- (i) consists of any gross profit mark-up in connection with the sale and distribution thereof to any division of any Borrower or Subsidiary thereof;
- (j) is manufactured, assembled or otherwise produced in violation of the Fair Labor Standards Act and subject to the "hot goods" provisions contained in Title 25 U.S.C. 215(a)(i);
- (k) is not covered by casualty insurance required by the terms of this Agreement;
- (l) consists of goods which have been returned or rejected by the buyer and are not in salable condition;
- (m) breaches in any material respect any of the representations or warranties pertaining to such Inventory set forth in any Credit Document;
- (n) does not conform in all material respects to all standards imposed by any governmental agency, division or department thereof which has regulatory authority over such goods or the use or sale thereof;
- (o) is Commingled Inventory;
- (p) (i) with respect to any Inventory owned by a U.S. Borrower, is located outside of the United States ~~and~~, (ii) with respect to Inventory owned by a Dutch Borrower, is located outside of the United States, the Netherlands or Belgium; provided that the foregoing shall not exclude (x) any Inventory of a Dutch Borrower that is in transit from the United States to the Netherlands or Belgium that would otherwise constitute Eligible In-Transit Inventory and (y) any Inventory of a Borrower that is in transit to any Company Factory that would otherwise constitute Eligible Vendor In-Transit Inventory; provided further that any Inventory of a Dutch Borrower located in Belgium shall only be Eligible Inventory if it is subject to a Perfected Belgian Lien, and (iii) with respect to Inventory owned by a UK Borrower, is located outside of England and Wales, the United States, the Netherlands or Belgium; provided that the foregoing shall not exclude (x) any Inventory of a UK Borrower that is in transit from the United States, the Netherlands or Belgium to England and Wales that would otherwise constitute Eligible In-Transit Inventory and (y) any Inventory of a Borrower that is in transit to any Company Factory that would otherwise constitute Eligible Vendor In-Transit Inventory; provided further that any Inventory of a UK Borrower located in the United States, the Netherlands or Belgium shall only be Eligible Inventory if it is subject to a Perfected U.S. Lien, Perfected Dutch Lien or Perfected Belgian Lien, respectively;
- (q) is out for delivery to the purchaser thereof or has been delivered to a common carrier for delivery to the purchaser thereof;
- (r) is subject to a license agreement or other arrangement with a third party which, in the Administrative Agent's Permitted Discretion, restricts the ability of the Administrative Agent or the Collateral Agent to exercise its rights under the Credit Documents with respect to such Inventory unless such third party has entered into an agreement in form and substance reasonably satisfactory to the Administrative Agent permitting the Administrative Agent or the Collateral Agent to exercise its rights with respect to such Inventory or the Administrative Agent has otherwise agreed to allow such Inventory to be eligible in the Administrative Agent's Permitted Discretion;

- (s) consists of Hazardous Materials or goods that can be transported or sold only with licenses that are not readily available;
- (t) consists of goods for which a certificate of title has been issued;
- (u) is repriced down or the market value of which is lower than the cost thereof (to the extent of the amount of such write-down or reduction in market value);
- (v) is Inventory consisting of solar panels or solar shingles;
- (w) is Inventory in respect of which there is a related Eligible Account; ~~or~~
- (x) consists of Specified Tesla In-Transit Assets that were provided as collateral for Indebtedness incurred pursuant to Section 10.04(v);or
- ~~(y)~~ is otherwise unacceptable to the Administrative Agent in its Permitted Discretion.

The Administrative Agent shall have the right to establish, modify or eliminate Reserves against Eligible Inventory from time to time in its Permitted Discretion; provided that with respect to Reserves established on the Effective Date and facts or events known to the Administrative Agent prior to the Effective Date, the Administrative Agent may impose new Reserves only to reflect a change in circumstances, events, conditions, contingencies or risks in respect of such facts or events. The criteria for Eligible Inventory may only be revised or any new criteria for Eligible Inventory may only be established by the Administrative Agent in its Permitted Discretion based on either (i) an event, condition or other circumstance arising after the date hereof, or (ii) an event, condition or other circumstance existing on the date hereof to the extent the Administrative Agent has no notice thereof from a Borrower prior to the date hereof, in either cause under clause (i) or (ii) which adversely affects or could reasonably be expected to adversely affect the Inventory as determined by the Administrative Agent in its Permitted Discretion.

“Eligible Machinery and Equipment” shall mean all of the Equipment owned by any of the U.S. Borrowers (and for which the applicable Borrower has good title to such Equipment) that is reflected in the most recent Borrowing Base Certificate delivered to the Administrative Agent pursuant to Section 9.01(h), except any Equipment as to which any of the exclusionary criteria set forth below applies. Eligible Machinery and Equipment shall not include any Equipment of the U.S. Borrowers that:

- (a) is excess, obsolete, unsalable, shopworn, seconds, damaged or unfit for sale;
- (b) is not subject to a First Priority Lien in favor of the Collateral Agent on behalf of the Secured Creditors;
- (c) is not owned by a U.S. Borrower free and clear of all Liens and rights of any other Person, except the First Priority Lien in favor of the Collateral Agent, on behalf of the Secured Creditors, the junior Permitted Liens under Section 10.01(s) and First Priority Priming Liens (subject to Reserves established by the Administrative Agent in accordance with the provisions of this Agreement and in respect of such Permitted Liens);
- (d) (i) is not located on premises owned, leased or rented by a U.S. Borrower, and in the case of leased or rented premises unless either (x) a reasonably satisfactory Landlord Personal Property Collateral Access Agreement has been delivered to the Administrative Agent or (y) Rent

Reserves reasonably satisfactory to the Administrative Agent in its Permitted Discretion have been established with respect thereto or (ii) is stored with a bailee or warehouseman, unless either (x) a reasonably satisfactory and acknowledged bailee or warehouseman letter has been received by the Administrative Agent or (y) Reserves reasonably satisfactory to the Administrative Agent in its Permitted Discretion have been established with respect thereto, or (iii) is located at an owned location subject to a mortgage or other security interest in favor of a creditor other than the Collateral Agent or the junior Permitted Liens under Section 10.01(s) unless either (x) a Landlord Personal Property Collateral Access Agreement has been delivered to the Administrative Agent or (y) Reserves reasonably satisfactory to the Administrative Agent have been established with respect thereto;

(e) is in transit;

(f) is not covered by casualty insurance required by the terms of this Agreement;

(g) breaches in any material respect any of the representations or warranties pertaining to such Equipment set forth in any Credit Document;

(h) is subject to a license agreement or other arrangement with a third party which, in the Administrative Agent's Permitted Discretion, restricts the ability of the Administrative Agent or the Collateral Agent to exercise its rights under the Credit Documents with respect to such Equipment unless such third party has entered into an agreement in form and substance reasonably satisfactory to the Administrative Agent permitting the Administrative Agent or the Collateral Agent to exercise its rights with respect to such Equipment or the Administrative Agent has otherwise agreed to allow such Equipment to be eligible in the Administrative Agent's Permitted Discretion;

(i) is located outside of the United States; or

(j) is otherwise unacceptable to the Administrative Agent in its Permitted Discretion.

The Administrative Agent shall have the right to establish, modify or eliminate Reserves against Eligible Machinery and Equipment from time to time in its Permitted Discretion; provided that with respect to facts or events known to the Administrative Agent prior to the Effective Date, the Administrative Agent may impose new Reserves only to reflect a change in circumstances, events, conditions, contingencies or risks in respect of such facts or events. The criteria for Eligible Machinery and Equipment may only be revised or any new criteria for Eligible Machinery and Equipment may only be established by the Administrative Agent in its Permitted Discretion based on either (i) an event, condition or other circumstance arising after the date hereof, or (ii) an event, condition or other circumstance existing on the date hereof to the extent the Administrative Agent has no notice thereof from a Borrower prior to the date hereof, in either cause under clause (i) or (ii) which adversely affects or could reasonably be expected to adversely affect the Equipment as determined by the Administrative Agent in its Permitted Discretion.

"Eligible Raw Materials Inventory" shall mean all Eligible Inventory consisting of raw materials (as determined in a manner acceptable to the Administrative Agent in its Permitted Discretion and consistent with past practices).

"Eligible Real Property" shall mean the Fremont Real Property; provided such Real Property meets each of the following criteria:

- (a) such Real Property is acceptable in the reasonable discretion of the Administrative Agent for inclusion in the U.S. Borrowing Base (and the Administrative Agent acknowledges that the Fremont Real Property is acceptable);
- (b) such Real Property is wholly owned in fee simple by a U.S. Borrower free and clear of all Liens and rights of any other Person, except the First Priority Lien in favor of the Collateral Agent, on behalf of the Secured Creditors, the junior Permitted Liens under Section 10.01(s) and First Priority Priming Liens (subject to Reserves established by the Administrative Agent in accordance with the provisions of this Agreement and in respect of such Permitted Liens);
- (c) such Real Property is covered by all insurance required by Section 9.03 hereof; and
- (d) the Administrative Agent has received the following (collectively, the "Eligible Real Property Deliverables"):   
  - (i) a Mortgage encumbering such Real Property creating a First Priority Lien in favor of the Collateral Agent, for the benefit of the Secured Creditors, duly executed and acknowledged by each Credit Party that is the owner or holder of any interest in such Mortgaged Property, and otherwise in form for recording in the recording office of each applicable political subdivision where each such Mortgaged Property is situated, together with such certificates, affidavits, questionnaires or returns as shall be required in connection with the recording or filing thereof to create a Lien under applicable Requirements of Law, and such financing statements and any other instruments necessary to grant a mortgage Lien under the laws of any applicable jurisdiction, all of which shall be in form and substance reasonably satisfactory to Collateral Agent;
  - (ii) a lender's policy of title insurance (or marked up unconditional title insurance commitment having the effect of a policy of title insurance) issued by a nationally recognized and financially stable title insurance company reasonably acceptable to the Administrative Agent (the "Title Company") insuring the Lien of such Mortgage as a valid First Priority Lien on the Mortgaged Property and fixtures described therein in an amount not less than the Appraised Fair Market Value of such Mortgaged Property and fixtures, which policy (or such marked up unconditional title insurance commitment) shall (x) to the extent necessary or commercially reasonable, include such co-insurance or reinsurance arrangements (with provisions for direct access, if necessary) as shall be reasonably acceptable to the Collateral Agent, (y) have been supplemented by such endorsements as shall be reasonably requested by the Collateral Agent (including, to the extent available in the local jurisdiction on commercially reasonable terms and applicable to such Eligible Real Property, endorsements on matters relating to usury, first loss, revolving credit, zoning, contiguity, future advance, doing business, public road access (direct or indirect), same-as-survey, policy authentication, variable rate, environmental lien, subdivision, policy aggregation, mortgage recording tax, street address, separate tax lot, and so-called comprehensive coverage over covenants and restrictions), and (z) contain no exceptions to title other than Permitted Liens and Permitted Encumbrances (a "Title Policy");
  - (iii) a survey of the applicable Mortgaged Property for which all necessary fees (where applicable) have been paid (a) prepared by a licensed, insured and qualified

surveyor reasonably acceptable to the Collateral Agent, (b) dated or re-certificated not earlier than 60 days prior to the date of such delivery or such other date as may be reasonably satisfactory to the Collateral Agent in its reasonable discretion, (c) for Mortgaged Property situated in the United States, certified to the Administrative Agent, the Collateral Agent the Company, the applicable Credit Party (if any), and the Title Company issuing the Title Policy for such Mortgaged Property, which certification shall be the standard certification required by the Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, and may include additional parties reasonably acceptable to the Collateral Agent, (d) complying with current "Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys," jointly established and adopted by American Land Title Association, and the National Society of Professional Surveyors (except for such deviations as are acceptable to the Collateral Agent), and (e) depicting and describing all buildings and other improvements, any offsite improvements owned or utilized by the Company or applicable Credit Party which are material to use or operation of any facilities located on the Mortgaged Property, the location of any easements, parking spaces, rights of way, building setback lines and other dimensional regulations and the absence of encroachments, either by such improvements or on to the Mortgaged Property, and other defects, other than encroachments and other defects reasonably acceptable to the Administrative Agent (a "Real Property Survey");

(iv) an appraisal report in respect of such Real Property performed by a licensed, insured and qualified third-party real property appraiser certified to, and in form, scope and substance reasonably satisfactory to, the Administrative Agent and in compliance with FIRREA (a "Real Property Appraisal");

(v) (a) a "Life-of-Loan" Federal Emergency Management Agency Standard Flood Hazard Determination for the Mortgaged Property; and (b) in the event any such Mortgaged Property is located in an area identified by the Federal Emergency Management Agency (or any successor agency) as a Special Flood Hazard Area, (x) a notice about special flood hazard area status and flood disaster assistance, duly executed by the applicable U.S. Borrower, (y) evidence of flood insurance with a financially sound and reputable insurer, naming the Administrative Agent, as mortgagee, in an amount and with terms required by the Flood Insurance Laws and otherwise in form and substance reasonably satisfactory to the Administrative Agent, and (z) evidence of the payment of premiums in respect thereof in form and substance reasonably satisfactory to the Administrative Agent;

(vi) an environmental assessment report and any other required information regarding environmental matters in respect of such Mortgaged Property and such report and information shall be prepared by an environmental consultant acceptable to the Administrative Agent and shall be satisfactory in form, scope and substance to the Administrative Agent in its reasonable discretion;

(vii) if reasonably requested by the Administrative Agent, a seismic report in respect of such Mortgaged Property performed by a licensed, insured and qualified third-party consultant in form, scope and substance reasonably satisfactory to the Administrative Agent;

(viii) customary favorable written opinions, addressed to the Collateral Agent and the Secured Creditors, of local counsel to the Credit Parties in each jurisdiction (i) where a Mortgaged Property is located and (ii) where the applicable Credit Party granting

the Mortgage on said Mortgaged Property is organized, regarding the due authorization, execution, delivery, perfection and enforceability of each such Mortgage, the corporate formation, existence and good standing of the applicable Credit Party under the laws of its jurisdiction of formation, and such other matters as may be reasonably requested by the Administrative Agent, each in form and substance reasonably satisfactory to the Administrative Agent; and

(ix) such other documents as the Administrative Agent may reasonably request, in each case in form and substance reasonably satisfactory to the Administrative Agent.

The Administrative Agent shall have the right to establish, modify or eliminate Reserves against Eligible Real Property from time to time in its Permitted Discretion; provided that with respect to facts or events known to the Administrative Agent prior to the Ninth Amendment Effective Date, the Administrative Agent may impose new Reserves only to reflect a change in circumstances, events, conditions, contingencies or risks in respect of such facts or events. The criteria for Eligible Real Property may only be revised or any new criteria for Eligible Real Property may only be established by the Administrative Agent in its Permitted Discretion based on either (i) an event, condition or other circumstance arising after the Ninth Amendment Effective Date, or (ii) an event, condition or other circumstance existing on the Ninth Amendment Effective Date to the extent the Administrative Agent has no notice thereof from a Borrower prior to the date hereof, in either cause under clause (i) or (ii) which adversely affects or could reasonably be expected to adversely affect the Fair Market Value of the Real Property as determined by the Administrative Agent in its Permitted Discretion.

"Eligible Real Property Deliverables" shall have the meaning provided in the definition of "Eligible Real Property".

"Eligible Service Parts Inventory" shall mean all Eligible Inventory consisting of service parts (as determined in a manner acceptable to the Administrative Agent in its Permitted Discretion and consistent with past practices).

"Eligible Transferee" shall mean and include a commercial bank, an insurance company, a finance company, a financial institution, any fund that invests in loans or any other "accredited investor" (as defined in Regulation D of the Securities Act), but in any event excluding the Company and its Subsidiaries and Affiliates, any natural person and any person that at the time of determination is a Defaulting Lender.

"Eligible UK Finished Goods Inventory" shall mean the Eligible Finished Goods Inventory owned by any UK Borrower.

"Eligible UK In-Transit Inventory" shall mean the Eligible In-Transit Inventory owned by any UK Borrower.

"Eligible UK Inventory" shall mean Eligible UK Finished Goods Inventory, Eligible UK In-Transit Inventory, Eligible UK Raw Materials Inventory and Eligible UK WIP Inventory.

"Eligible UK Raw Materials Inventory" shall mean the Eligible Raw Materials Inventory owned by any UK Borrower.

"Eligible UK Service Parts Inventory" shall mean the Eligible Service Parts Inventory owned by any UK Borrower.

“Eligible UK Vendor In-Transit Inventory” shall mean the Eligible Vendor In-Transit Inventory owned by any UK Borrower.

“Eligible UK WIP Inventory” shall mean the Eligible WIP Inventory owned by any UK Borrower.

“Eligible U.S. Accounts” shall mean the Eligible Accounts owned by any U.S. Borrower.

“Eligible U.S. Cash and Cash Equivalents” shall mean the Eligible Cash and Cash Equivalents owned by any U.S. Borrower that is reflected in the most recent Borrowing Base Certificate delivered to the Administrative Agent pursuant to Section 9.01(h).

“Eligible U.S. Finished Goods Inventory” shall mean the Eligible Finished Goods Inventory owned by any U.S. Borrower.

“Eligible U.S. In-Transit Inventory” shall mean the Eligible In-Transit Inventory owned by any U.S. Borrower.

“Eligible U.S. Inventory” shall mean all Eligible U.S. Finished Goods Inventory, Eligible U.S. In-Transit Inventory, Eligible U.S. Raw Materials Inventory and Eligible U.S. WIP Inventory.

“Eligible U.S. Raw Materials Inventory” shall mean the Eligible Raw Materials Inventory owned by any U.S. Borrower.

“Eligible U.S. Service Parts Inventory” shall mean the Eligible Service Parts Inventory owned by any U.S. Borrower.

“Eligible U.S. Vendor In-Transit Inventory” shall mean the Eligible Vendor In-Transit Inventory owned by any U.S. Borrower.

“Eligible U.S. WIP Inventory” shall mean the Eligible WIP Inventory owned by any U.S. Borrower.

“Eligible Vendor In-Transit Inventory” shall mean all Eligible Raw Materials Inventory:

- (a) for which the purchase order is in the name of the applicable Borrower and title has passed to such Borrower,
- (b) which have been shipped by FOB shipment (seller’s location),
- (c) for which the applicable Borrower does not have actual possession,
- (d) which is fully insured in such amounts, with insurance companies and subject to such deductibles as are satisfactory to the Administrative Agent in its Permitted Discretion,
- (e) which is in-transit to any Company Factory and
- (f) which otherwise would constitute Eligible Inventory.

“Eligible WIP Inventory” shall mean all Eligible Inventory consisting of work-in-process (as determined in a manner acceptable to the Administrative Agent in its Permitted Discretion and consistent

with past practices); provided that Eligible WIP Inventory shall not include Eligible Inventory consisting of work-in-process related to the manufacturing of solar panels or solar shingles.

“Energy Environmental Attribute” shall mean any credit, benefit, reduction, offset or allowance (such as so-called renewable energy certificates, green tags, green certificates, and renewable energy credits), howsoever entitled or named, resulting from, attributable to or associated with the storage or generation of energy, other than the actual electric energy produced, and that is capable of being measured, verified or calculated and in any case may be lawfully marketed to third parties. By way of illustration, Energy Environmental Attributes may result from: the generation system’s use of a particular renewable energy source; avoided NOx, SOx, CO2 or greenhouse gas emissions and other carbon credits and offsets; avoided water use or as otherwise specified under any applicable energy-related private or governmental program. Notwithstanding any of the foregoing in this definition or any other provision of the ~~Fifth Amendment or the~~ Credit Agreement, Energy Environmental Attributes shall not in any case include: (i) any of the foregoing obtained by, provided to, used by or necessary for the Company or any of its Subsidiaries to conduct any of its operations at any location (and shall not include any water rights or other rights or credits obtained pursuant to requirements of applicable law in order to site and develop any facility); or (ii) any production tax credits.

“Energy Storage Agreement” shall mean a battery services contract, a battery sale contract, a battery installation contract, a battery dispatch contract, a market participation contract involving batteries, a shared revenue and cost avoidance contract, a capacity contract, a tolling contract, demand response contract or similar agreement, a software contract pertaining to the dispatch or other management of batteries, or any agreement similar to the foregoing.

“Energy Storage Assets” shall mean Energy Storage Systems, Host Customer Agreements and Projects and Equity Interests in Excluded Energy Storage Subsidiaries.

“Energy Storage Systems” shall mean all parts of an energy storage system, including batteries, solar panels, inverters, wiring and other electrical devices, conduit, housings, hardware, remote monitoring equipment, connectors, meters, disconnects and other related devices, including associated balance of plant.

“Energy Storage Working Capital Facility” shall mean a credit facility providing working capital or warehouse financing for the acquisition or development of Energy Storage Assets ~~prior to the sale or contribution of such Energy Storage Assets into a Permitted Securitization Facility.~~

“Environmental Attribute” shall mean an Energy Environmental Attribute or a Vehicle Environmental Attribute.

“Environmental Claims” shall mean any and all administrative, regulatory or judicial actions, suits, demands, demand letters, directives, claims, liens, notices of noncompliance or violation, investigations and/or proceedings relating in any way to any noncompliance with, or liability arising under, Environmental Law or to any permit issued, or any approval given, under any Environmental Law (hereafter, “Claims”), including (a) any and all Claims by governmental or regulatory authorities for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any Environmental Law, and (b) any and all Claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief arising out of or relating to an alleged injury or threat of injury to human health, safety or the environment due to the presence of Hazardous Materials.



“Environmental Law” shall mean any Federal, state, provincial, foreign or local statute, law (including principles of common law), rule, regulation, ordinance, code, directive, judgment, order or agreement, now or hereafter in effect and in each case as amended, and any judicial or administrative interpretation thereof, in each case having the force and effect of law and relating to the protection of the environment, or of human health (as it relates to the exposure to environmental hazards) or to the presence, Release or threatened Release, or the manufacture, use, transportation, treatment, storage, disposal or recycling of Hazardous Materials, or the arrangement for any such activities.

“Environmental Liability” shall mean any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Company or any of its Subsidiaries directly or indirectly resulting from or based upon (a) any violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) any exposure to any Hazardous Materials, (d) the Release or threatened Release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“Equipment” shall mean any “equipment” as such term is defined in the Uniform Commercial Code as in effect on the date hereof in the State of New York owned by any U.S. Borrower, and in any event, shall include, but shall not be limited to, all machinery, equipment, furnishings and fittings now or hereinafter owned by any U.S. Borrower and all additions, all accessions thereto, wherever located, together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto.

“Equity Interests” of any Person shall mean any and all shares, rights to purchase, warrants, options, participation or other equivalents of or interest in (however designated) equity of such Person, including any common stock, preferred stock, any limited or general partnership interest and any limited liability company membership interest, but excluding, for the avoidance of doubt, any Permitted Convertible Notes or any SolarCity Convertible Notes.

“ERISA” shall mean the United States Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated and rulings issued thereunder. Section references to ERISA are to ERISA, as in effect at the date of this Agreement and any subsequent provisions of ERISA, amendatory thereof, supplemental thereto or substituted therefor.

“ERISA Affiliate” shall mean any trade or business (whether or not incorporated) or Person that ~~for purposes of Section 302 of ERISA or Section 412 of the Code~~ would be deemed at any relevant time to be a single employer or otherwise aggregated with the Company or any of its Subsidiaries under Section 414 of the Code or Section 4001 of ERISA.

“ERISA Event” shall mean any one or more of the following:

- (a) any Reportable Event;
- (b) the filing of a notice of intent to terminate any Plan, if such termination would require material additional contributions in order to be considered a standard termination within the meaning of Section 4041(b) of ERISA, the filing under Section 4041(c) of ERISA of a notice of intent to terminate any Plan or the termination of any Plan under Section 4041(c) of ERISA;
- (c) institution of proceedings by the PBGC under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan;

(d) the failure to make a required contribution to any Plan that would result in the imposition of a lien or other encumbrance or the provision of security under Section 430 of the Code or Section 303 or 4068 of ERISA, or the arising of such a lien or encumbrance; the failure to satisfy the minimum funding standard under Section 412 of the Code or Section 302 of ERISA, whether or not waived; or the filing of any request for or receipt of a minimum funding waiver under Section 412 of the Code with respect to any Plan; or a determination that any Plan is considered an at-risk plan within the meaning of Section 430 of the Code or Section 303 of ERISA; the Company, any of its Subsidiaries or any ERISA Affiliate incurring any liability under Section 436 of the Code, or a violation of Section 436 of the Code with respect to a Plan; or the failure to make any required contribution to a Multiemployer Plan pursuant to Sections 431 or 432 of the Code;

(e) engaging in a non-exempt prohibited transaction within the meaning of Section 4975 of the Code or Section 406 of ERISA with respect to or relating to a Plan or assets of a Plan;

(f) the complete or partial withdrawal of the Company or any of its Subsidiaries or any ERISA Affiliate from a Multiemployer Plan, the insolvency under Title IV of ERISA of any Multiemployer Plan; or the receipt by the Company or any of its Subsidiaries or any ERISA Affiliate, of any notice, or the receipt by any Multiemployer Plan from any of the Company, any of its Subsidiaries or any ERISA Affiliate of any notice, that a Multiemployer Plan is in endangered or critical status under Section 432 of the Code or Section 305 of ERISA; or

(g) the Company, any of its Subsidiaries or any ERISA Affiliate incurring any liability under Title IV of ERISA with respect to any Plan (other than premiums due and not delinquent under Section 4007 of ERISA).

“EU Bail-In Legislation Schedule” shall mean the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

“Euro Denominated Loans” shall mean each Loan denominated in Euros at the time of the incurrence thereof.

“EURO Screen Rate” shall have the meaning provided in the definition of “LIBO Rate”.

“Euros” and the designation “€” shall mean the currency introduced on January 1, 1999 at the start of the third stage of European economic and monetary union pursuant to the Treaty on the European Union (expressed in euros).

“Event of Default” shall have the meaning provided in Section 11.

“Excess Availability” shall mean, as of any date of determination (but otherwise subject to Section 3.02(b)), the amount by which (a) Availability at such time exceeds (b) the Aggregate Exposure at such time.

“Excluded Accounts” shall mean all Deposit Accounts, securities accounts and commodities accounts established (or otherwise maintained) by the Company or any of its Subsidiaries other than Core Deposit Accounts, DB Accounts and Controlled Securities Accounts.

“Excluded Charging Subsidiaries” shall mean those direct or indirect subsidiaries of the Company (a) in which the Company owns, directly or indirectly, Equity Interests of less than fifty-one percent (51%), (b) that own, lease or finance (or own any Subsidiary that is formed for such purpose) no assets

other than Charging Assets, (c) whose sole assets consist of Equity Interests in Excluded Charging Subsidiaries of the type described in the foregoing clause (b), or (d) created for or encumbered by transactions involving monetization of Vehicle Environmental Attributes.

“Excluded Energy Storage Subsidiaries” shall mean those direct or indirect Subsidiaries of the Company (a) in which the Company owns, directly or indirectly, Equity Interests of less than fifty-one percent (51%), (b) that own, lease or finance (or own any Subsidiary that is formed for such purpose) no assets other than Energy Storage Assets, (c) whose sole assets consist of Equity Interests in Excluded Energy Storage Subsidiaries of the type described in the foregoing clause (b), or (d) created for or encumbered by transactions involving monetization of credits, certificates or incentives.

“Excluded Swap Obligation” shall mean, with respect to any Guarantor, any Swap Obligation if, and to the extent that, and only for so long as, all or a portion of the guarantee of such Guarantor of, or the grant by such Guarantor of a security interest to secure, as applicable, such Swap Obligation (or any guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation thereof) by virtue of such Guarantor’s failure to constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder (each, an “ECP”) at the time the guarantee of (or grant of such security interest by, as applicable) such Guarantor becomes or would become effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such guarantee or security interest is or becomes illegal.

“Excluded Taxes” shall have the meaning provided in Section 5.04(a).

“Existing Convertible Notes” shall mean, collectively, the ~~2018~~2021 Convertible Notes, the ~~2019 Convertible Notes, the 2021~~2022 Convertible Notes and the ~~2022~~2024 Convertible Notes.

“Existing Convertible Notes Documents” shall mean, collectively, the ~~2018~~2021 Convertible Notes Documents, the ~~2019 Convertible Notes Documents, the 2021~~2022 Convertible Notes Documents and the ~~2022~~2024 Convertible Notes Documents.

“Existing Convertible Notes Indentures” shall mean, collectively, the ~~2018~~2021 Convertible Notes Indenture, the ~~2019 Convertible Notes Indenture, the 2021~~2022 Convertible Notes Indenture and the ~~2022~~2024 Convertible Notes Indenture.

“Existing Indebtedness” shall ~~have the meaning provided in Section 8.20.~~mean the Indebtedness (including Contingent Obligations) of the Company and its Subsidiaries as of the Effective Date set forth on Schedule 8.20 to the Disclosure Letter and which is to remain outstanding after giving effect to the Transaction (excluding (i) the Obligations, (ii) the Existing Convertible Notes and (iii) any existing intercompany Indebtedness among the Company and its Subsidiaries).

“Expenses” shall mean all present and future reasonable and invoiced out of pocket expenses incurred by or on behalf of the Administrative Agent, the Collateral Agent or any Issuing Lender in connection with this Agreement, any other Credit Document or otherwise in its capacity as the Administrative Agent under this Agreement or the Collateral Agent under any Security Document or as an Issuing Lender under this Agreement, whether incurred heretofore or hereafter, which expenses shall include the expenses set forth in Section 13.01, the cost of record searches, the reasonable fees and expenses of attorneys and paralegals, all reasonable and invoiced costs and expenses incurred by the Administrative Agent and the Collateral Agent in opening bank accounts, depositing checks, electronically or otherwise receiving and transferring funds, and any other charges imposed on the

Administrative Agent and/or the Collateral Agent due to insufficient funds of deposited checks and the standard fee of the Administrative Agent and the Collateral Agent relating thereto, collateral examination fees and expenses required to be paid hereunder by the Borrowers, reasonable fees and expenses of accountants and appraisers, reasonable fees and expenses of other consultants, experts or advisors employed or retained by the Administrative Agent or the Collateral Agent, fees and taxes related to the filing of financing statements, costs of preparing and recording any other Credit Documents, all expenses, costs and fees set forth in this Agreement and the other Credit Documents, all other fees and expenses required to be paid pursuant to any other letter agreement and all fees and expenses incurred in connection with releasing Collateral and the amendment or termination of any of the Credit Documents.

“Extended Final Maturity Date” shall mean, with respect to any Extended Loan or Extended Revolving Loan Commitment, the agreed upon date occurring after the ~~2023-Extended~~Initial Maturity Date as specified in the applicable definitive documentation thereof.

“Extended Loan” shall mean each Revolving Loan and each Swingline Loan pursuant to an Extended Revolving Loan Commitment.

“Extended Revolving Loan” shall mean each Revolving Loan pursuant to an Extended Revolving Loan Commitment.

“Extended Revolving Loan Commitment” shall have the meaning provided in Section 2.19(c)(i).

“Extension” shall have the meaning provided in Section 2.19(a).

“Extension Offer” shall have the meaning provided in Section 2.19(a).

“Facing Fee” shall have the meaning provided in Section 4.01(c).

“Fair Market Value” shall mean, with respect to any asset (including any Equity Interests of any Person), (i) the price thereof to the extent that the same is readily available on an active trading market or (ii) if such price is not so readily available, the price at which a willing buyer, not an Affiliate of the seller, and a willing seller who does not have to sell, would agree to purchase and sell such asset, as determined in good faith by the board of directors or other governing body or, pursuant to a specific delegation of authority by such board of directors or governing body, a designated senior executive officer, of the Company or the Subsidiary of the Company selling such asset.

“FATCA” shall mean Sections 1471 through 1474 of the Code, as enacted on the Effective Date (or any amended or successor provision that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code, any intergovernmental agreements entered into in connection with the implementation of such Sections of the Code, and any fiscal or regulatory legislation or rules adopted pursuant to such intergovernmental agreements.

“Federal Funds Rate” shall mean, for any period, a fluctuating interest rate equal for each day during such period to the weighted average of the rates on overnight Federal Funds transactions with members of the Federal Reserve System arranged by Federal Funds brokers, as published for such day (or, if such day is not a Business Day, for the immediately preceding Business Day) by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations for such day on such transactions received by the Administrative Agent from three Federal Funds brokers of recognized standing selected by the Administrative Agent; provided that if

the Federal Funds Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“Fees” shall mean all amounts payable pursuant to or referred to in Section 4.01.

“Final Maturity Date” shall mean ~~(a) with respect to any Revolving Loan Commitments (other than the 2023 Extended Revolving Loan Commitments and the Extended Revolving Loan Commitments) the Initial Maturity Date, (b) with respect to the 2023 Extended Revolving Loan Commitments, the 2023 Extended Maturity Date and (c); provided that,~~ with respect to any Extended Revolving Loan Commitment, the Final Maturity Date with respect thereto instead shall be the Extended Final Maturity Date.

“FIRREA” shall mean the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended.

“First Amendment” shall mean the First Amendment to Amended and Restated ABL Credit Agreement, dated as of the First Amendment Effective Date, among the Company, Tesla B.V., Tesla UK, the lenders party thereto, the Collateral Agent and the Administrative Agent.

“First Amendment Effective Date” shall mean ~~Nov~~December ~~323, 2015~~2020.

“First Priority” shall mean, with respect to any Lien purported to be created on any Collateral pursuant to any Security Document, that such Lien is prior in right to any other Lien thereon, other than (i) in respect of any Collateral (other than cash or Cash Equivalents), any Permitted Liens (excluding Permitted Liens under Section 10.01(s)) applicable to such Collateral arising by operation of law and which as a matter of law (and giving effect to any actions taken pursuant to the last paragraph of Section 10.01) have priority over the respective Liens on such Collateral created pursuant to the relevant Security Document, (ii) any Lien on property that would otherwise constitute Eligible Inventory but is subject to a lease that grants to the landlord thereunder a first priority perfected security interest in such property, (iii) in respect of any Eligible Machinery and Equipment, Liens permitted by (x) Section 10.01(b)(i) so long as any such Lien does not secure amounts overdue by more than 30 days and (y) Section 10.01(b)(ii) so long as adequate reserves in respect of GAAP have been reserved in respect thereof and (iv) in respect of any Eligible Real Property, Liens permitted by Sections 10.01(a), (b)(i), (b)(ii) (so long as adequate reserves in respect of GAAP have been reserved in respect thereof), (e), (h) and (k) (such Liens described in clauses (i), (ii), and (iii) and (iv) above, “First Priority Priming Liens”).

“First Priority Priming Liens” shall have the meaning provided in the definition of First Priority.

~~“First Usage Date” shall mean the first date on which the Aggregate Exposure is greater than zero.~~

“Fixed Charge Coverage Ratio” shall mean, for any period, the ratio of (a)(i) Consolidated EBITDA for such period minus (ii) the aggregate amount of all Unfinanced Capital Expenditures made by the Company and its Consolidated Subsidiaries during such period minus (iii) the aggregate amount of all cash payments made by the Company and its Consolidated Subsidiaries in respect of income taxes or income tax liabilities (net of cash income tax refunds) during such period minus (iv) the aggregate amount of all cash Dividends paid by the Company or any of its Subsidiaries to any Person other than the Company or any of its Subsidiaries as permitted under Section 10.03 for such period to (b) Fixed Charges for such period.

“Fixed Charges” shall mean, for any period, the sum of (a) any amortization or other scheduled or mandatory principal payments made during such period on all Indebtedness of the Company and its Consolidated Subsidiaries for such period (including the principal component of all obligations in respect of all Capitalized Lease Obligations, but excluding ~~(xw)~~ the payment or Net Share Settlement of any Permitted Convertible Notes or any SolarCity Convertible Notes at their respective final maturity date or upon conversion thereof ~~and~~, ~~(yx)~~ customary mandatory repayments associated with customary excess cash flow provisions and with asset sales, casualty and condemnation events, the incurrence of Indebtedness for borrowed money and the issuance of Equity Interests (but only to the extent made with the net cash proceeds from such asset sales, casualty and condemnation events, incurrences of Indebtedness and issuance of Equity Interests) and (y) payments in connection with the refinancing of Indebtedness (for the avoidance of doubt, this clause (a) shall not apply to payments made under any working capital facility), plus (b) Consolidated Interest Expense of the Company and its Consolidated Subsidiaries for such period payable in cash, plus (c) the Net RVG Repurchase Amount for such period.

“Flood Insurance Laws” shall mean, collectively, (i) National Flood Insurance Reform Act of 1994 (which comprehensively revised the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973) as now or hereafter in effect or any successor statute thereto, (ii) the Flood Insurance Reform Act of 2004 as now or hereafter in effect or any successor statute thereto and (iii) the Biggert-Waters Flood Insurance Reform Act of 2012 as now or hereafter in effect or any successor statute thereto.

“Foreign Currency” shall mean any currency other than U.S. Dollars which is (a) readily available and freely transferable and convertible into U.S. Dollars and (b) available in the London interbank deposit market.

“Foreign Currency Denominated Loans” shall mean each Loan denominated in an Acceptable Foreign Currency at the time of the incurrence thereof.

“Foreign Lender” shall mean any Lender that is not a U.S. Person.

“Foreign Pension Plan” shall mean any plan, fund (including any superannuation fund) or other similar program established or maintained outside the United States by the Company or any one or more of its Subsidiaries primarily for the benefit of employees of the Company or such Subsidiaries residing outside the United States, which plan, fund or other similar program provides, or results in, retirement income, a deferral of income in contemplation of retirement or payments to be made upon termination of employment, and which plan is not subject to ERISA or the Code.

“Foreign Subsidiary” of any Person shall mean any Subsidiary of such Person that is not a Domestic Subsidiary of such Person.

“Foreign Taxes” shall mean any tax imposed by EC Directive 2006/112/EC on the Common System of value added tax, and any national legislation implementing that directive (including the United Kingdom’s Value Added Tax Act 1994), together with any legislation supplemental thereto, and any other tax of a similar nature and all penalties, costs and interest related thereto (including any Canadian harmonized sales tax, goods and service tax or any other sales tax imposed by Canada or any province or territory thereof).

“Fremont Factory” shall mean the Company’s factory located at 45500 Fremont Blvd., Fremont, California and ancillary supporting locations located in the United States and designated by the Company as a “Fremont ancillary location” in writing to the Administrative Agent.

"Fremont Real Property" shall mean the real property owned by the Company located at 45500 Fremont Boulevard, Fremont, California, and any other Real Property ancillary or related to the foregoing and owned by the Company or any Credit Party in Fremont, California.

"GAAP" shall mean generally accepted accounting principles in the United States as in effect from time to time; provided that determinations in accordance with GAAP for purposes of Section 10 and the calculation of the Fixed Charge Coverage Ratio and the Total Leverage Ratio, in each case including defined terms as used therein, are subject to Section ~~13.07~~13.08(a).

"Governmental Authority" shall mean the government of the United States, the Netherlands, Belgium, the United Kingdom, any other nation or any political subdivision thereof, whether state, provincial or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

"Guarantor" shall mean and include each U.S. Guarantor ~~and~~, each Dutch Guarantor and each UK Guarantor.

"Guaranty" shall mean the U.S. Guaranty ~~and~~, the Dutch Guaranty and the UK Guaranty.

"Hazardous Materials" shall mean any chemicals, materials, wastes, pollutants, contaminants, or substances in any form that is prohibited, limited or regulated pursuant to any Environmental Law by virtue of their toxic or otherwise deleterious characteristics, including any petroleum or petroleum products, radioactive materials, asbestos in any form that is or could become friable, urea formaldehyde foam insulation, dielectric fluid containing levels of polychlorinated biphenyls, and radon gas.

"Host Customer Agreements" shall mean the Energy Storage Agreements and Customer Lease Agreements.

"Immaterial Subsidiary" shall mean, as of any date of determination, any Wholly-Owned Domestic Subsidiary of the Company ~~or~~, any Wholly-Owned Dutch Subsidiary of Tesla B.V. (~~in either~~ or any Wholly Owned UK Subsidiary of Tesla UK (in each case, other than a Borrower) (x) that has not guaranteed any other Indebtedness of any Borrower other than a guarantee by any Subsidiary that was created to satisfy state dealer requirements, (y) whose consolidated total assets (as set forth in the most recent consolidated balance sheet of the Company and its Consolidated Subsidiaries delivered to the Lenders pursuant to this Agreement and computed in accordance with GAAP, but excluding intercompany assets), do not constitute more than 5.0% of the Consolidated Total Assets and (z) whose consolidated total revenues (as set forth in the most recent income statement of the Company and its Consolidated Subsidiaries delivered to the Lenders pursuant to this Agreement and computed in accordance with GAAP) do not constitute more than 5.0% of the consolidated total revenues of the Company and its Consolidated Subsidiaries (as set forth in the most recent income statement of the Company and its Consolidated Subsidiaries delivered to the Lenders pursuant to this Agreement and computed in accordance with GAAP).

"Impacted Lender" shall have the meaning provided in Section 2.10(~~e~~f).

"Impacted UK Lender" shall have the meaning provided in Section 2.10(~~e~~g).

"Incremental Commitment" shall mean, for any Lender, any Revolving Loan Commitment provided by such Lender after the Effective Date in an Incremental Commitment Agreement delivered

pursuant to Section 2.14; it being understood, however, that on each date upon which an Incremental Commitment of any Lender becomes effective, such Incremental Commitment of such Lender shall be added to (and thereafter become a part of) the Revolving Loan Commitment of such Lender for all purposes of this Agreement as contemplated by Section 2.14.

“Incremental Commitment Agreement” shall mean each Incremental Commitment Agreement in substantially the form of Exhibit F (appropriately completed, and with such modifications as may be reasonably satisfactory to the Administrative Agent) executed and delivered in accordance with Section 2.14.

“Incremental Commitment Date” shall mean each date upon which an Incremental Commitment under an Incremental Commitment Agreement becomes effective as provided in Section 2.14(b).

“Incremental Commitment Requirements” shall mean, with respect to any provision of an Incremental Commitment on a given Incremental Commitment Date, the satisfaction of each of the following conditions on the Incremental Commitment Date of the respective Incremental Commitment Agreement: (i) no Default or Event of Default exists or would exist after giving effect thereto; (ii) all of the representations and warranties contained in the Credit Documents shall be true and correct in all material respects at such time (unless stated to relate to a specific earlier date, in which case such representations and warranties shall have been true and correct in all material respects as of such earlier date) (it being understood that any representation or warranty that is qualified as to “materiality”, “Material Adverse Effect” or any similar language shall be true and correct in all respects as of such date); (iii) the delivery by the Company to the Administrative Agent of an acknowledgment, in form and substance reasonably satisfactory to the Administrative Agent and executed by each Credit Party, acknowledging that such Incremental Commitment and all Revolving Loans subsequently incurred, and Letters of Credit issued, as applicable, pursuant to such Incremental Commitment shall constitute Obligations and Guaranteed Obligations (as defined under each Guaranty) under the Credit Documents and secured on a *pari passu* basis with the applicable Obligations under the Security Documents; (iv) the delivery by each Credit Party to the Administrative Agent of such other officers’ certificates, board of director (or equivalent governing body) resolutions, evidence of good standing (to the extent available under applicable law) and opinions of counsel (which shall be substantially similar to such opinions of counsel delivered on the Effective Date) as the Administrative Agent shall reasonably request; (v) the Company shall have delivered a certificate executed by an Authorized Officer of the Company, certifying to such officer’s knowledge, compliance with the requirements of preceding clauses (i) and (ii); and (vi) the completion by each Credit Party of (x) such other conditions precedent that may be included in the respective Increased Commitment Agreement and (y) such other actions as the Administrative Agent may reasonably request in connection with such Incremental Commitment in order to create, continue or maintain the security interest of the Collateral Agent in the Collateral and the perfection thereof (including any amendments to the Security Documents and such other documents and assurances reasonably requested by the Administrative Agent to be delivered in connection therewith).

“Incremental Lender” shall have the meaning provided in Section 2.14(b).

“Incremental Security Documents” shall have the meaning provided in Section 2.14(b).

“Indebtedness” shall mean, as to any Person, without duplication, (i) all indebtedness of such Person for borrowed money, (ii) for the deferred purchase price of property or services, (iii) obligations evidenced by notes, bonds, debentures and similar instruments, (iv) the maximum amount available to be drawn or paid under all letters of credit, bankers’ acceptances and bank guarantees issued for the account of such Person and all unpaid drawings and unreimbursed payments in respect of such letters of credit, bankers’ acceptances and bank guarantees, (v) all Capitalized Lease Obligations of such Person and



purchase money indebtedness, (vi) all Contingent Obligations of such Person in respect of Indebtedness set forth in another clause of this definition, (vii) obligations arising in connection with any Permitted Securitization Facility to the extent reflected as liabilities on the balance sheet of such Person prepared in accordance with GAAP and (viii) all obligations of the kind referred to in another clause of this definition secured by (or for which the holder of such obligation has an existing right, contingent or otherwise, to be secured by any Lien on property (including accounts and contract rights) owned or acquired by such Person, whether or not such Person has assumed or become liable for the payment of such obligation. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is directly liable therefor pursuant to applicable law, contract or organizational documents as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor. Notwithstanding the foregoing, Indebtedness shall not include (i) trade payables (so long as they are not more than 180 days past due), accrued expenses and deferred tax and other credits incurred by any Person in accordance with customary practices and in the ordinary course of business of such Person, (ii) any earn-out obligations until such obligation is past due, (iii) obligations incurred among the Credit Parties and their respective Subsidiaries in the ordinary course of business for the purchase of goods and services ~~or~~, (iv) third party obligations included in the Company's financial statements as a result of variable interest entity accounting and (v) payments for property or services in the ordinary course of business that are payable over a period not to exceed one year and at 0% interest. For purposes solely of (x) Sections 10.04 and 11.04, all obligations under any Interest Rate Protection Agreement or any Other Hedging Agreement (and with the amount of any such obligations to be equal at any time to the termination value of such agreement or arrangement giving rise to such obligations that would be payable by such Person at such time) shall be deemed to be Indebtedness and (y) Section 11.04, Qualified Preferred Stock that contains restrictive or financial covenants shall be deemed to be Indebtedness.

"Indemnified Person" shall have the meaning provided in Section 13.01(c).

"Indemnified Taxes" shall have the meaning provided in Section 5.04(a).

"Individual Exposure" of any Lender shall mean, at any time, the sum of (a) the aggregate principal amount of all Revolving Loans made by such Lender and then outstanding (for this purpose, using the U.S. Dollar Equivalent of amounts denominated in Euros or any Acceptable Foreign Currency), (b) such Lender's RL Percentage of the aggregate principal amount of all Swingline Loans then outstanding, (c) such Lender's RL Percentage of the aggregate amount of all Letter of Credit Outstandings (for this purpose, using the U.S. Dollar Equivalent of amounts denominated in Euros or any Acceptable Foreign Currency) at such time and (d) such Lender's RL Percentage of the aggregate principal amount of all Agent Advances then outstanding.

"Initial Maturity Date" shall mean ~~June 10~~ July 1, 2020 ~~2023~~.

"Initial Revolving Loan Commitments" shall mean Revolving Loan Commitments that mature on the Initial Maturity Date.

"Insolvency Proceeding" shall mean any proceeding commenced by or against any Person under any provision of the Bankruptcy Code or under any state or foreign bankruptcy or insolvency law, assignments for the benefit of creditors, formal or informal moratoria, compositions, extensions generally with creditors, or proceedings seeking reorganization, arrangement, or other similar relief, including any proceeding commenced by or against any Person under any Dutch Insolvency Law or UK Insolvency Law.

“Insolvency Regulation” shall have the meaning provided in Section 8.01.

“Intercompany Debt” shall mean any Indebtedness, whether now existing or hereafter incurred, owed by the Company or any Subsidiary of the Company to the Company or any other Subsidiary of the Company.

“Intercompany Loans” shall mean any intercompany loans and advances between or among the Company and its Subsidiaries.

“Intercreditor Agreement” shall mean an intercreditor agreement, in form and substance reasonably satisfactory to the Administrative Agent, among the Collateral Agent, the U.S. Credit Parties, the Dutch Credit Parties (if applicable), the UK Credit Parties (if applicable) and each collateral agent or trustee for the holders of any Permitted Additional Secured Indebtedness, as amended, modified or supplemented from time to time in accordance with the terms hereof and thereof.

“Interest Determination Date” shall mean, with respect to any LIBOR Loan, the second Business Day prior to the commencement of any Interest Period relating to such LIBOR Loan.

“Interest Period” shall have the meaning provided in Section 2.09.

“Interest Rate Protection Agreement” shall mean any interest rate swap agreement, interest rate cap agreement, interest collar agreement, interest rate hedging agreement or other similar agreement or arrangement.

“Inventory” shall mean “inventory” as such term is defined in Article 9 of the UCC.

“Inventory Reserves” shall mean the Physical Inventory Adjustment Reserve and the Locations Reserve.

“Investment” shall mean, with respect to the Company or any of its Subsidiaries, any of the following: lending money or credit or making advances to any other Person, or purchasing or acquiring any stock, obligations or securities of, or any other Equity Interest in, or making any capital contribution to, any other Person, or purchasing or owning a futures contract or otherwise becoming liable for the purchase or sale of currency or other commodities at a future date in the nature of a futures contract, or holding any cash or Cash Equivalents.

“Investment Grade Rating” shall mean a rating equal to or higher than Baa3 (or the equivalent) by Moody’s and BBB- (or the equivalent) by S&P (or the equivalent investment grade rating by any other securities rating organization nationally recognized in the United States).

“ISDA Definitions” shall mean the 2006 ISDA Definitions published by the International Swaps and Derivatives Association, Inc. or any successor thereto, as amended or supplemented from time to time, or any successor definitional booklet for interest rate derivatives published from time to time by the International Swaps and Derivatives Association, Inc. or such successor thereto.

“Issuer Option” shall mean (a) any Note Hedge Option and (b) any Upper Strike Option.

“Issuing Lender” shall mean each of (i) DBNY (except as otherwise provided in Section 12.09), (ii) Morgan Stanley Senior Funding Inc., (iii) Bank of America, N.A., (iv) Wells Fargo Bank, National Association, (v) Citibank, N.A., (vi) Barclays Bank PLC and (vii) any other Lender reasonably acceptable to the Administrative Agent and the Company which agrees to issue Letters of Credit hereunder; provided

that, ~~(x) on the occurrence of the Initial Maturity Date, any Issuing Lender that does not have an Affiliate that is a Lender with 2023 Extended Revolving Loan Commitments shall have the right to resign as such on, or on any date within 20 Business Days after, the Initial Maturity Date and (y) if any Extension is effected in accordance with Section 2.19, then on the occurrence of the 2023 Extended~~Initial Maturity Date, each Issuing Lender shall have the right to resign as such on, or on any date within 20 Business Days after, the ~~2023 Extended~~Initial Maturity Date, ~~in each of the cases in clause (x) and clause (y);~~ upon not less than 30 days' prior written notice thereof to the Company and the Administrative Agent and, in the event of any such resignation and upon the effectiveness thereof, the resigning Issuing Lender shall retain all of its rights hereunder and under the other Credit Documents as Issuing Lender with respect to all Letters of Credit theretofore issued by it (which Letters of Credit shall remain outstanding in accordance with the terms hereof until their respective expirations) but shall not be required to issue any further Letters of Credit hereunder. If at any time and for any reason (including as a result of resignations as contemplated by the last proviso to the preceding sentence), an Issuing Lender has resigned in such capacity in accordance with the preceding sentence and no Issuing Lenders exist at such time, then no Person shall be an Issuing Lender hereunder obligated to issue Letters of Credit unless and until (and only for so long as) a Lender (or Affiliate of a Lender) reasonably satisfactory to the Administrative Agent and the Company agrees to act as Issuing Lender hereunder. Any Issuing Lender may, in its discretion, arrange for one or more Letters of Credit to be issued by one or more Affiliates of such Issuing Lender (and such Affiliate shall be deemed to be an "Issuing Lender" for all purposes of the Credit Documents). Notwithstanding anything to the contrary contained herein, Wells Fargo Bank, National Association shall be an Issuing Lender solely with respect to Letters of Credit denominated in U.S. Dollars and shall be under no obligation to issue (and the Borrowers shall not request Wells Fargo Bank, National Association to issue) any Letter of Credit denominated in a currency other than U.S. Dollars. Notwithstanding anything to the contrary contained herein, each of DBNY, Barclays Bank PLC and Morgan Stanley Senior Funding Inc. shall be an Issuing Lender solely with respect to standby Letters of Credit and shall be under no obligation to issue trade Letters of Credit (and the Borrowers shall not request any of DBNY, Barclays Bank PLC or Morgan Stanley Senior Funding Inc. to issue such trade Letters of Credit).

"Joinder Agreement" shall mean a Joinder Agreement substantially in the form of Exhibit N (appropriately completed).

"Judgment Currency" shall have the meaning provided in Section ~~13-20~~13.21.

"Judgment Currency Conversion Date" shall have the meaning provided in Section ~~13-20~~13.21.

"Landlord Personal Property Collateral Access Agreement" shall mean a Landlord Waiver and Consent Agreement substantially in the form of Exhibit M, with such amendments, modifications or supplements thereto, or such other form, in each case as may be reasonably acceptable to the Administrative Agent.

"L/C Supportable Obligations" shall mean (i) obligations (including Indebtedness) of the Company or any of its Subsidiaries with respect to workers compensation, surety bonds and other similar statutory obligations and (ii) such other obligations (including Indebtedness) of the Company or any of its Subsidiaries as are otherwise permitted to exist pursuant to the terms of this Agreement (other than obligations (including Indebtedness) in respect of (v) any Permitted Convertible Notes, (w) any Permitted Additional Indebtedness, (x) any Cash Flow Revolving Indebtedness, (y) any Indebtedness or other obligations that are contractually subordinated in right of payment to the Obligations and (z) any Equity Interests).

"Leaseholds" of any Person shall mean all the right, title and interest of such Person as lessee or licensee in, to and under leases or licenses of land (including all improvements and/or fixtures thereon).

“Lender” shall mean each financial institution listed on Schedule 1.01(a), as well as any Person that becomes a “Lender” hereunder pursuant to Section 2.13, Section 2.14 or Section ~~13.04~~13.05(b). The term “Lender” shall include the Swingline Lender and the Issuing Lenders where applicable.

“Lender Counterparty” shall mean any counterparty to an Interest Rate Protection Agreement and/or Other Hedging Agreement that is (a) the Administrative Agent, a Lender or an affiliate of the Administrative Agent or a Lender or (b) the Administrative Agent, a Lender or an affiliate of the Administrative Agent or a Lender at the time such Person enters into such Interest Rate Protection Agreement and/or Other Hedging Agreement (even if the Administrative Agent or such Lender subsequently ceases to be the Administrative Agent or a Lender, as the case may be, under this Agreement for any reason, together with the Administrative Agent’s, such Lender’s or such affiliate’s successor and assigns), so long as the Administrative Agent, such Lender, such affiliate or such successor or assign participates in such Interest Rate Protection Agreement and/or Other Hedging Agreement.

“Lender Party” shall mean the Administrative Agent, the Issuing Lenders, the Swingline Lender or any other Lender.

“Letter of Credit” shall have the meaning provided in Section 3.01(a).

“Letter of Credit Back-Stop Arrangements” shall have the meaning provided in Section 2.15(a)(ii).

“Letter of Credit Exposure” shall mean, at any time, the aggregate amount of all Letter of Credit Outstandings at such time in respect of Letters of Credit. The Letter of Credit Exposure of any Lender at any time shall be its RL Percentage of the aggregate Letter of Credit Exposure at such time.

“Letter of Credit Fee” shall have the meaning provided in Section 4.01(b).

“Letter of Credit Outstandings” shall mean, at any time, the sum of (i) the Stated Amount of all outstanding Letters of Credit at such time and (ii) the aggregate amount of all Unpaid Drawings in respect of all Letters of Credit at such time.

“Letter of Credit Request” shall have the meaning provided in Section 3.03(a).

“LIBO Rate” shall mean, with respect to any Borrowing of LIBOR Loans for any Interest Period, the rate per annum determined by the Administrative Agent (a)(i) with respect to any U.S. Dollar Denominated Revolving Loan or Foreign Currency Denominated Loan, by reference to the Reuters Screen LIBOR01 for deposits in the relevant currency (or such other comparable page as may, in the reasonable opinion of the Administrative Agent, replace such page for the purpose of displaying such rates) (the “LIBOR Screen Rate”) for a period equal to such Interest Period as of the Specified Time on the Quotation Day for such Interest Period and (ii) with respect to any Euro Denominated Loan, the interbank offered rate administered by the Banking Federation of the European Union (or any other Person which takes over the administration of such rate) for Euros for a period equal in length to such Interest Period as displayed on page EURIBOR01 of the Reuters screen (or such other comparable page as may, in the reasonable opinion of the Administrative Agent, replace such page for the purpose of displaying such rates) (the “EURO Screen Rate”) as of the Specified Time on the Quotation Day for such Interest Period; provided that, subject to ~~the last paragraph of~~ Section 2.10(ab), to the extent that an interest rate is not ascertainable pursuant to the foregoing provisions of this definition, the “LIBO Rate” shall be the interest rate per annum determined by the Administrative Agent to be the average of the rates per annum at which deposits in the relevant currency are offered for such relevant Interest Period to major banks in the London interbank market in London, England by the Administrative Agent as of the

Specified Time on the Quotation Day for such Interest Period, divided by (b) a percentage equal to 100% minus the then stated maximum rate of all reserve requirements (including any marginal, emergency, supplemental, special or other reserves required by applicable law) applicable to any member bank of the Federal Reserve System in respect of Eurocurrency funding or liabilities as defined in Regulation D (or any successor category of liabilities under Regulation D); provided, further, that if the LIBO Rate is less than zero, such rate shall be deemed to be zero for purposes hereof.

“LIBOR Loan” shall mean each (i) U.S. Dollar Denominated Revolving Loan designated as such by the applicable Borrower at the time of the incurrence thereof or conversion thereto and (ii) each Loan denominated in Euros or any Acceptable Foreign Currency.

“LIBOR Screen Rate” shall have the meaning provided in the definition of “LIBO Rate”.

“Lien” shall mean any mortgage, pledge, hypothecation, assignment for security, deposit arrangement, encumbrance, lien (statutory or other), charge, preference, priority or other security agreement of any kind or nature whatsoever (including any conditional sale or other title retention agreement and any lease having substantially the same effect as any of the foregoing).

“Liquidity Threshold” shall mean an amount equal to 50% of the Total Revolving Loan Commitment then in effect.

“Loan” shall mean each Revolving Loan and each Swingline Loan.

“Locations Reserve” shall mean a reserve established by the Administrative Agent in respect of Inventory located at locations with less than \$100,000 of total Inventory.

“LLC” means any Person that is a limited liability company under the laws of its jurisdiction of formation.

“Mandatory Borrowing” shall have the meaning provided in Section 2.01(c).

“Manufacturing Facility” shall mean any manufacturing facilities or Gigafactory facilities established by the Company or any of its Subsidiaries from time to time.

“Margin Stock” shall have the meaning provided in Regulation U.

“Material Acquisition” shall mean any Acquisition that involves the payment of consideration by the Company and its Subsidiaries in excess of the greater of \$75,000,000 and 1.0% of Consolidated Total Assets.

“Material Adverse Effect” shall mean (a) a material adverse change in, or a material adverse effect on, the business, operations, property, assets, liabilities (actual or contingent) or financial condition of the Company and its Subsidiaries taken as a whole or (b) a material adverse effect (i) on the rights or remedies of the Lenders, the Administrative Agent or the Collateral Agent hereunder or under any other Credit Document, (ii) on the ability of the Credit Parties taken as a whole to perform their payment obligations to the Lenders, the Administrative Agent or the Collateral Agent hereunder or under any other Credit Document, or (iii) upon the legality, validity, binding effect or enforceability against any Credit Party of any Credit Document to which it is a party.

“Material Disposition” shall mean any disposition of (i) all or substantially all of the assets of, or the assets constituting a business, division or product line of, the Company or any of its Subsidiaries or

(ii) 100% of the owned Equity Interests of any Subsidiary of the Company, which Subsidiary shall, as a result of such disposition of Equity Interests, cease to be a Subsidiary of the Company, in each case that yields gross proceeds to the Company and its Subsidiaries in excess of the greater of \$75,000,000 and 1.0% of Consolidated Total Assets.

“Material Review Board Inventory” shall mean Inventory of any Borrower that has not passed inspection by the Company’s material review board or that such board has determined requires reworking, needs to be scrapped or is otherwise unfit.

“Material Subsidiary” shall mean, as of any date of determination, any Subsidiary of the Company (a) whose consolidated total assets (as set forth in the most recent consolidated balance sheet of the Company and its Consolidated Subsidiaries delivered to the Lenders pursuant to this Agreement and computed in accordance with GAAP, but excluding intercompany assets) constitute 5.0% or more of the Consolidated Total Assets and (b) whose consolidated total revenues (as set forth in the most recent income statement of the Company and its Consolidated Subsidiaries delivered to the Lenders pursuant to this Agreement and computed in accordance with GAAP, but excluding intercompany revenues) constitute 5.0% or more of the consolidated total revenues of the Company and its Consolidated Subsidiaries (as set forth in the most recent income statement of the Company and its Consolidated Subsidiaries delivered to the Lenders pursuant to this Agreement and computed in accordance with GAAP).

“Maximum Letter of Credit Amount” shall have the meaning provided in Section 3.02(a).

“Maximum Rate” shall have the meaning provided in Section ~~13.22~~13.23.

“Maximum Swingline Amount” shall mean \$50,000,000.

“Merchandise” shall mean apparel, personal accessories and other promotional merchandise items outside of the core business of the Company and its Subsidiaries.

“Minimum Borrowing Amount” shall mean (i) for Base Rate Loans (other than Swingline Loans), \$500,000, (ii) for LIBOR Loans denominated in U.S. Dollars, \$1,000,000, (iii) for LIBOR Loans denominated in Euros or any Acceptable Foreign Currency, the smallest amount of such currency that is an integral multiple of 1,000,000 units of currency and has a U.S. Dollar Equivalent in excess of \$1,000,000, and (iv) for Swingline Loans, \$100,000; provided that during a Dominion Period there shall be no Minimum Borrowing Amount with respect to clause (iv) above.

“Moody’s” shall mean Moody’s Investors Service, Inc.

“Mortgage” shall mean any deed of trust, mortgage, deed to secure debt, or other document entered into by the owner of a Mortgaged Property in favor of the Collateral Agent for the benefit of the Secured Creditors creating a Lien on such Mortgaged Property in such form as reasonably agreed between the ~~Borrower~~Company and the Collateral Agent.

“Mortgaged Property” shall mean any Real Property owned or leased by any Credit Party which is encumbered (or required to be encumbered) pursuant to the terms of this Agreement or any Security Document.

“Multiemployer Plan” shall mean a multiemployer plan as defined in Section 4001(a)(3) of ERISA, which is contributed to (or to which there is or may be an obligation to contribute to) by the Company or any of its Subsidiaries or an ERISA Affiliate, and each such plan for the five-year period

immediately following the latest date on which the Company, any of its Subsidiaries or an ERISA Affiliate contributed to or had an obligation to contribute to such plan.

“NAIC” shall mean the National Association of Insurance Commissioners.

“Net Orderly Liquidation Value” shall mean (a) with respect to Inventory, the “net orderly liquidation value” expected to be realized in respect of such Inventory at an orderly, negotiated sale held within a reasonable period of time, less the amount estimated for marshalling, reconditioning, carrying, and sales expenses designated to maximize the resale value of such Inventory, with such net orderly liquidation value determined from the most recent Acceptable Appraisal in respect of such Inventory and expressed as a percentage of the net book value of such Inventory; provided that in calculating the Net Orderly Liquidation Value in respect of Eligible WIP Inventory, Eligible Service Parts Inventory and Eligible Finished Goods Inventory, the Administrative Agent may elect for such percentage to be determined on a blended, product-line or other basis as it determines in its Permitted Discretion and (b) with respect to Equipment, the “net orderly liquidation value” expected to be realized in respect of such Equipment at an orderly, negotiated sale held within a reasonable period of time, less the amount estimated for marshalling, reconditioning, carrying, and sales expenses designated to maximize the resale value of such Equipment, as determined from the most recent Acceptable Appraisal in respect of such Equipment and expressed as a percentage of the net book value of such Equipment.

“Net RVG Repurchase Amount” shall mean, for any period, an amount (not less than zero) equal to the excess of (a) cash paid by the Company and its Subsidiaries during such period to settle guarantee obligations under resale value guarantee programs over (b) cash received by the Company and its Subsidiaries during such period in respect of the resale of cars repurchased pursuant to resale value guarantee programs.

“Net Share Settlement” shall mean any settlement upon conversion of Permitted Convertible Notes or any SolarCity Convertible Notes consisting of Permitted Company Stock, cash or a combination of cash and Permitted Company Stock.

“New B.V.” means Tesla International B.V., a company organized under the laws of the Netherlands and that is (or will be when formed) a Wholly-Owned Subsidiary of Tesla Motors Netherlands Coöperatief U.A.

“Ninth Amendment Effective Date” shall mean May 3, 2018.

“Non-Defaulting Lender” shall mean and include each Lender, other than a Defaulting Lender.

“Non-Wholly-Owned Subsidiary” shall mean, as to any Person, each Subsidiary of such Person which is not a Wholly-Owned Subsidiary of such Person.

“Note” shall mean each Dutch Borrower Revolving Note, each U.S. Borrower Revolving Note, [each UK Borrower Revolving Note](#), the Dutch Borrower Swingline Note and the U.S. Borrower Swingline Note.

“Note Hedge Option” shall mean any hedging agreement (including, but not limited to, any bond hedge transaction or capped call transaction), entered into by the Company in connection with the issuance of Permitted Convertible Notes, pursuant to which the Company acquires an option requiring the counterparty thereto to deliver to the Company shares of Permitted Company Stock, the cash value of such shares or a combination thereof from time to time upon exercise of such option.

“Notice Date” shall have the meaning provided in Section 2.19(a).

“Notice of Borrowing” shall have the meaning provided in Section 2.03(a).

“Notice of Conversion/Continuation” shall have the meaning provided in Section 2.06.

“Notice Office” shall mean the office of the Administrative Agent located at 5022 Gate Parkway, Suite 100, Jacksonville, FL 32256 (or such other office or person as the Administrative Agent may hereafter designate in writing as such to the other parties hereto).

“NYFRB” shall mean the Federal Reserve Bank of New York.

“Obligation Currency” shall have the meaning provided in Section ~~13.20~~13.21.

“Obligations” shall mean (x) the principal of, premium, if any, and interest on the Notes issued by, and the Loans made to, each Borrower under this Agreement, and all reimbursement obligations and Unpaid Drawings with respect to Letters of Credit, and (y) all other payment obligations (including obligations which, but for the automatic stay under Section 362(a) of the Bankruptcy Code, would become due), liabilities and indebtedness owing by each Borrower and each other Credit Party to the Administrative Agent, the Collateral Agent, any Issuing Lender, the Swingline Lender or any Lender under this Agreement and each other Credit Document to which any Borrower or other Credit Party is a party (including all indemnities, expenses (including Expenses), Fees and interest thereon (including in each case any interest, Fees or expenses (including Expenses) accruing after the commencement of any bankruptcy, insolvency, receivership or similar proceeding at the rate provided for in this Agreement or in such other Credit Document, whether or not such interest, Fees or expenses (including Expenses) are an allowed claim in any such proceeding)), whether now existing or hereafter incurred under, arising out of or in connection with each such Credit Document, and all guarantees of the foregoing amounts. Notwithstanding anything to the contrary contained herein or in any other Credit Document, in no event will Obligations include any obligations in respect of any Issuer Option or, for any Guarantor, its Excluded Swap Obligations.

“Original Credit Agreement” shall mean this Agreement, as in effect immediately prior to the Amendment and Restatement Effective Date.

“Original Lender” shall have the meaning provided in Section 5.04(e)(iv).

“Orphan SPV” shall mean a special purpose vehicle, which is not a Subsidiary of the Company, established for the sole purpose of facilitating a financing under a limited recourse financing transaction and that shall not engage in any activities other than in connection with such financing.

“Other Hedging Agreements” shall mean any foreign exchange contracts (including foreign exchange forward contracts and foreign exchange option contracts), currency swap agreements, commodity agreements or other similar contracts or arrangements, or arrangements designed to protect against fluctuations in currency values or commodity prices. For the avoidance of doubt, “Other Hedging Agreements” shall not include any agreements, contracts or arrangements with respect to SRECs or the purchase, sale, transfer, assignment or other disposition thereof.

“Other Taxes” shall mean all present or future stamp, court or documentary, intangible, recording, filing, excise or similar taxes that arise from any payment made under, from the execution, delivery, performance, enforcement, or registration of, from the receipt or perfection of a security interest



under, or otherwise with respect to, any Credit Document, except any such taxes that are imposed pursuant to an assignment made under Section ~~13.04~~13.05(b).

“Participant” shall have the meaning provided in Section 3.04(a).

“Participant Register” shall have the meaning provided in Section ~~13.04~~13.05(e).

“Patriot Act” shall have the meaning provided in Section ~~13.18~~13.19.

“Payment Conditions” shall mean that either of the following conditions are satisfied at the time of each action or proposed action and immediately after giving effect thereto: (a) there is no Default or Event of Default existing immediately before or after the action or proposed action and Designated Cash is equal to or in excess of the Liquidity Threshold, or (b) there is no Default or Event of Default existing immediately before or after the action or proposed action and either (i) the Company shall be in compliance with a Fixed Charge Coverage Ratio of not less than 1.00:1.00 for the Calculation Period then most recently ended on a Pro Forma Basis as if such action or proposed action had occurred on the first day of such Calculation Period or (ii) 30-Day Excess Availability and Excess Availability on the date of the action or proposed action (calculated after giving effect to the Borrowing of any Loans or issuance of any Letters of Credit in connection with the action or proposed action (and assuming that such Loans and Letters of Credit had remained outstanding throughout the applicable 30-day period (or such shorter period, if applicable) for which 30-Day Excess Availability is to be determined)) exceed 15% of the Availability at such time; provided that the Company shall have delivered to the Administrative Agent a certificate of an Authorized Officer of the Company certifying as to (i) compliance with the preceding clauses (a) or (b) and (ii) demonstrating (in reasonable detail) the calculations required by the preceding clause (b).

“Payment Office” shall mean the office of the Administrative Agent located at 5022 Gate Parkway, Suite 100, Jacksonville, FL 32256 (or such other office as the Administrative Agent may hereafter designate in writing as such to the other parties hereto).

“PBGC” shall mean the U.S. Pension Benefit Guaranty Corporation.

“Perfected Belgian Liens” shall mean, with respect to any Inventory, that such Inventory is subject to a First Priority perfected Lien under Belgian law.

“Perfected Dutch Liens” shall mean, with respect to any Inventory, that such Inventory is subject to a First Priority perfected Lien under the law of the Netherlands.

“Perfected U.S. Liens” shall mean, with respect to any Inventory, that such Inventory is subject to a First Priority perfected Lien under New York law.

“Permitted Additional Indebtedness” shall mean Permitted Additional Unsecured Indebtedness and Permitted Additional Secured Indebtedness.

“Permitted Additional Indebtedness Documents” shall mean Permitted Additional Unsecured Indebtedness Documents and Permitted Additional Secured Indebtedness Documents.

“Permitted Additional Secured Indebtedness” shall have the meaning provided in Section 10.04(n).

“Permitted Additional Secured Indebtedness Documents” shall mean (a) on and after the execution and delivery thereof, each note, indenture, purchase agreement, loan agreement, credit agreement, guaranty, security agreement, pledge agreement, mortgage, other security document and other document relating to the incurrence or issuance of any Permitted Additional Secured Indebtedness, as the same may be amended, modified, restated, renewed, extended and/or supplemented from time to time in accordance with the terms hereof and thereof and (b) if secured, the Cash Flow Revolving Documents.

“Permitted Additional Secured Indebtedness Priority Collateral” shall mean all Collateral other than ABL Priority Collateral.

“Permitted Additional Unsecured Indebtedness” have the meaning provided in Section 10.04(n).

“Permitted Additional Unsecured Indebtedness Documents” shall mean, (a) on and after the execution and delivery thereof, each note, indenture, purchase agreement, loan agreement, credit agreement, guaranty and other document relating to the incurrence or issuance of any Permitted Additional Unsecured Indebtedness, as the same may be amended, modified, restated, renewed, extended and/or supplemented from time to time in accordance with the terms hereof and thereof and (b) if unsecured, the Cash Flow Revolving Documents.

“Permitted Bank Financing Account” shall have the meaning provided in the definition of Permitted Bank Financing.

“Permitted Bank Financing” shall mean a transaction in which (i) a bank or other financial institution finances the purchase of a motor vehicle by a customer from a Borrower, (ii) such bank or other financial institution becomes the Account Debtor in respect of the relevant Account (such Account, a “Permitted Bank Financing Account”) and (iii) such bank or other financial institution has no recourse to the Company or any of its Subsidiaries if the customer fails to pay the bank or other financial institution in respect of financing such purchase.

“Permitted Cash Management Liens” shall mean, with respect to any cash or Cash Equivalents credited to a Deposit Account or securities account, (a) Liens with respect to (i) all amounts due to the applicable depository bank or securities intermediary, as applicable, in respect of customary fees and expenses for the routine maintenance and operation of such Deposit Account or securities account, as applicable, (ii) the face amount of any checks which have been credited to such Deposit Account but are subsequently returned unpaid because of uncollected or insufficient funds, or (iii) other returned items or mistakes made in crediting such Deposit Account, (b) any other Liens permitted under the Cash Management Control Agreement for such Deposit Account or securities account, as applicable, (c) Liens created by the Security Documents and the other Credit Documents, (d) tax Liens permitted by Section 10.01(a)(i) and (e) the junior Permitted Liens under Section 10.01(s).

“Permitted Company Stock” shall mean Company Common Stock and Qualified Preferred Stock.

“Permitted Convertible Notes” shall mean, collectively, the ~~2018 Convertible Notes, the 2019 Convertible Notes, the~~ 2021 Convertible Notes, the 2022 Convertible Notes, the 2024 Convertible Notes and any Additional Convertible Notes.

“Permitted Convertible Notes Documents” shall mean, collectively, the ~~2018 Convertible Notes Documents, the 2019 Convertible Notes Documents, the~~ 2021 Convertible Notes Documents, the 2022 Convertible Notes Documents, the 2024 Convertible Notes and any Additional Convertible Notes Documents.

“Permitted Convertible Notes Indentures” shall mean, collectively, the ~~2018 Convertible Notes Indenture, the 2019 Convertible Notes Indenture, the~~ 2021 Convertible Notes Indenture, the 2022 Convertible Notes Indenture, the 2024 Convertible Notes Indenture and any Additional Convertible Notes Indenture.

“Permitted Discretion” shall mean the commercially reasonable judgment of the Administrative Agent exercised in good faith in accordance with customary business practices for comparable asset-based lending transactions, as to any factor which the Administrative Agent reasonably determines: (a) will or reasonably could be expected to adversely affect in any material respect the value of any Eligible Accounts, Eligible Cash and Cash Equivalents, Eligible Inventory, Eligible Machinery and Equipment or Eligible Real Property, the enforceability or priority of the Collateral Agent’s Liens thereon or the amount which any Agent, the Lenders or any Issuing Lender would be likely to receive (after giving consideration to delays in payment and costs of enforcement) in the liquidation of such Eligible Accounts, Eligible Cash and Cash Equivalents, Eligible Inventory, Eligible Machinery and Equipment or Eligible Real Property or (b) will or reasonably could be expected to result in any collateral report or financial information delivered to the Administrative Agent by any Person on behalf of any Borrower being incomplete, inaccurate or misleading in any material respect. In exercising such judgment, the Administrative Agent may consider, without duplication, such factors already included in or tested by the definitions of Eligible Accounts, Eligible Cash and Cash Equivalents, Eligible Inventory, Eligible Machinery and Equipment or Eligible Real Property, as well as any of the following: (i) changes after the Effective Date in any material respect in demand for, pricing of, or product mix of Inventory; (ii) changes after the Effective Date in any material respect in any concentration of risk with respect to Accounts; (iii) any other factors arising after the Effective Date that change in any material respect the credit risk of lending to the Borrowers on the security of the Eligible Accounts, Eligible Cash and Cash Equivalents, Eligible Inventory, Eligible Machinery and Equipment; and (iv) any other factors arising after the Ninth Amendment Effective Date that change in any material respect the credit risk of lending to the Borrowers on the security of the Eligible Real Property.

“Permitted Encumbrance” shall mean, with respect to any Mortgaged Property, such minor exceptions to title as are set forth in a final issued and accepted Title Policy delivered with respect thereto, all of which minor exceptions must be acceptable to the Administrative Agent in its reasonable discretion.

“Permitted Foreign Account Debtor” shall mean each of the Account Debtors listed on Schedule 1.01(b) to the Disclosure Letter, which Schedule may be updated from time to time in the Permitted Discretion of the Administrative Agent with written notice to the Company.

“Permitted Holder” shall mean each of Elon Musk and his estate, spouse, siblings, ancestors, heirs, and lineal descendants, and any spouses of such Persons, the legal representatives of any of the foregoing, and any bona fide trust of which one or more the foregoing are the principal beneficiaries or grantors, or any other Person that is controlled by any of the foregoing.

“Permitted Liens” shall have the meaning provided in Section 10.01.

“Permitted Non-Credit Party Indebtedness” has the meaning provided in Section 10.04(o).

“Permitted Securitization Facility” shall mean a financing facility established by a Securitization Subsidiary and or an Orphan SPV and one or more of the Company or its Subsidiaries, whereby the Company or its Subsidiaries shall have sold or transferred accounts receivable, payment intangibles, chattel paper, payments, rights to future ~~lease~~customer installment payments (including lease or loan) or residuals or similar rights to payment or Energy Storage Assets to a Securitization Subsidiary and/or an Orphan SPV; provided that (a) except as permitted in respect of indemnities by clause (b) of this proviso,

no portion of the Indebtedness or any other obligation (contingent or otherwise) under such Permitted Securitization Facility shall be guaranteed by the Company or any of its Subsidiaries (other than a Securitization Subsidiary), (b) there shall be no recourse or obligation to the Company or any of its Subsidiaries (other than a Securitization Subsidiary) whatsoever other than pursuant to representations, warranties, covenants (including risk retention requirements) and indemnities entered into in the ordinary course of business in connection with such Permitted Securitization Facility that in the reasonable opinion of the Company are customary for securitization transactions and (c) none of the Company nor any of its Subsidiaries (other than the Securitization Subsidiary) shall have provided, either directly or indirectly, any other credit support of any kind in connection with such Permitted Securitization Facility, other than as set forth in clause (b) of this definition or, to the extent titled to a Subsidiary, Rental Account Assets and other related assets, such as the related Vehicles and customer installment payments.

“Person” shall mean any individual, partnership, joint venture, firm, corporation, association, limited liability company, trust or other enterprise or any Governmental Authority.

“Physical Inventory Adjustment Reserve” shall mean a reserve established by the Administrative Agent in respect of discrepancies that arise pertaining to Inventory quantities on hand between a Credit Party’s perpetual accounting system and the results of the most-recent physical inventory count at the Fremont Factory.

“Plan” shall mean an “employee benefit plan” as defined in Section 3 of ERISA (other than a Multiemployer Plan) maintained or contributed to by the Company, any of its Subsidiaries, or any ERISA Affiliate or to which the Borrower, any of its Subsidiaries or an ERISA Affiliate has or may have an obligation to contribute, and each such plan is or has been subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA for the five-year period immediately following the latest date on which the Company, any of its Subsidiaries or an ERISA Affiliate maintained, contributed to or had an obligation to contribute to (or is deemed under Section 4069 of ERISA to have maintained or contributed to or to have had an obligation to contribute to, or otherwise to have liability with respect to) such plan.

“Pledged Equipment” shall mean all Equipment which is subject to a First Priority Lien in favor of the Collateral Agent on behalf of the Secured Creditors.

“Preferred Equity”, as applied to the Equity Interests of any Person, shall mean Equity Interests of such Person (other than common Equity Interests of such Person) of any class or classes (however designed) that ranks prior, as to the payment of dividends or as to the distribution of assets upon any voluntary or involuntary liquidation, dissolution or winding up of such Person, to shares of Equity Interests of any other class of such Person, and shall include any Qualified Preferred Stock, but shall exclude any Permitted Convertible Notes.

“Prime Lending Rate” shall mean the rate which the Administrative Agent announces from time to time as its prime lending rate, the Prime Lending Rate to change when and as such announced prime lending rate changes. The Prime Lending Rate is a reference rate and does not necessarily represent the lowest or best rate actually charged to any customer by the Administrative Agent, which may make commercial loans or other loans at rates of interest at, above or below the Prime Lending Rate.

“Professional Lender” shall mean any person who does not form part of the public within the meaning of the Capital Requirements Regulation (EU) No. 575/2013.

“Pro Forma Basis” shall mean, in connection with any calculation of compliance with any financial covenant or financial term, the calculation thereof after giving effect on a pro forma basis to

(w) the incurrence of any Indebtedness (other than revolving Indebtedness, except to the extent same is incurred to refinance or repay other outstanding Indebtedness, to finance an Acquisition or other Investment or to finance a Dividend) after the first day of the relevant Calculation Period or Test Period, as the case may be, as if such Indebtedness had been incurred (and the proceeds thereof applied) on the first day of such Test Period or Calculation Period, as the case may be, (x) the permanent repayment of any Indebtedness (other than revolving Indebtedness, except to the extent accompanied by a corresponding permanent commitment reduction) after the first day of the relevant Test Period or Calculation Period, as the case may be, as if such Indebtedness had been retired or repaid on the first day of such Test Period or Calculation Period, as the case may be, (y) any Material Acquisition then being consummated as well as any other Material Acquisition if consummated after the first day of the relevant Test Period or Calculation Period, as the case may be, and on or prior to the date of the respective Material Acquisition and (z) any Material Disposition then being consummated as well as any other Material Disposition if consummated after the first day of the relevant Test Period or Calculation Period, as the case may be, and on or prior to the date of the respective Material Disposition, as the case may be, then being effected, with the following rules to apply in connection therewith:

(ia) all Indebtedness (x) (other than revolving Indebtedness, except to the extent same is incurred to refinance or repay other outstanding Indebtedness, to finance Acquisitions or other Investments or to finance a Dividend) incurred or issued after the first day of the relevant Test Period or Calculation Period (whether incurred to finance an Acquisition, to refinance or repay Indebtedness or otherwise) shall be deemed to have been incurred or issued (and the proceeds thereof applied) on the first day of such Test Period or Calculation Period, as the case may be, and remain outstanding through the date of determination and (y) (other than revolving Indebtedness, except to the extent accompanied by a corresponding permanent commitment reduction) permanently retired or redeemed after the first day of the relevant Test Period or Calculation Period, as the case may be, shall be deemed to have been retired or redeemed on the first day of such Test Period or Calculation Period, as the case may be, and remain retired through the date of determination;

(ib) all Indebtedness assumed to be outstanding pursuant to preceding clause (i) shall be deemed to have borne interest at (x) the rate applicable thereto, in the case of fixed rate indebtedness, or (y) the rates which would have been applicable thereto during the respective period when same was deemed outstanding, in the case of floating rate Indebtedness (although interest expense with respect to any Indebtedness for periods while same was actually outstanding during the respective period shall be calculated using the actual rates applicable thereto while same was actually outstanding); provided that all Indebtedness (whether actually outstanding or deemed outstanding) bearing interest at a floating rate of interest shall be tested on the basis of the rates applicable at the time the determination is made pursuant to said provisions;

(ic) in making any determination of Consolidated EBITDA on a Pro Forma Basis, pro forma effect shall be given to any Material Acquisition if effected during the respective Calculation Period or Test Period as if same had occurred on the first day of the respective Calculation Period or Test Period, as the case may be, and taking into account, in the case of any Material Acquisition, factually supportable and identifiable cost savings and expenses which would otherwise be accounted for as an adjustment pursuant to Article 11 of Regulation S-X under the Securities Act, as if such cost savings or expenses were realized on the first day of the respective period; and

(id) in making any determination of Consolidated EBITDA on a Pro Forma Basis, pro forma effect shall be given to any Material Disposition if effected during the respective

Calculation Period or Test Period as if same had occurred on the first day of the respective Calculation Period or Test Period, as the case may be.

“Project” shall mean an Energy Storage System together with all associated real property rights, rights under the applicable Host Customer Agreement, and all other related rights to the extent applicable thereto, including without limitation, all parts and manufacturers’ warranties and rights to access customer data.

“PTE” shall mean a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

“QFC” shall have the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

“QFC Credit Support” shall have the meaning provided in Section 13.26.

“Qualified Preferred Stock” shall mean any Preferred Equity of the Company so long as the terms of any such Preferred Equity (and the terms of any Equity Interests into which such Preferred Equity is convertible or for which it is exchangeable, either mandatorily or at the option of the holder thereof) (x) do not contain any mandatory put, redemption, repayment, sinking fund or other similar provision requiring such action prior to the date that is 91 days after the ~~2023-Extended~~Initial Maturity Date (other than (i) upon payment in full of the Obligations (other than indemnification and other contingent obligations not yet due and owing) or (ii) upon a “change in control” or asset sale or casualty or condemnation event; provided that any payment required pursuant to this clause (ii) is subordinated in right of payment to the Obligations on terms reasonably satisfactory to the Administrative Agent), (y) do not require the cash payment of dividends or distributions that would otherwise be prohibited by the terms of this Agreement and (z) do not contain any covenants (other than periodic reporting requirements) that are more restrictive, taken as a whole, than the covenants contained in this Agreement (as reasonably determined by the Company in good faith).

“Qualifying Lender” shall mean:

Lender: (a) a Lender which is beneficially entitled to interest payable to that Lender under this Agreement and is a

(i) which is a bank (as defined for the purposes of Section 879 of the Income Tax Act 2007) making an advance under this Agreement and is within the charge to United Kingdom corporation tax as respects any payments of interest made in respect of that advance or would be within such charge as respects such payments apart from Section 18A of the Corporation Tax Act 2009; or

(ii) in respect of an advance made under this Agreement by a person that was a bank (as defined for the purposes of Section 879 of the Income Tax Act 2007) at the time that that advance was made, and is within the charge to United Kingdom corporation tax as respects any payments of interest made in respect of that advance; or

is: (b) a Lender which is beneficially entitled to interest payable to that Lender under this Agreement and which

(i) a company resident in the United Kingdom for United Kingdom tax purposes;

(ii) a partnership each member of which is (x) a company resident in the United Kingdom for United Kingdom tax purposes, or (y) a company not so resident which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of Section 19 of the Corporation Tax Act 2009) the whole of any share of such interest that is attributable to it because of Part 17 of the Corporation Tax Act 2009; or

(iii) a company not resident in the United Kingdom for United Kingdom tax purposes which carries on a trade in the United Kingdom through a permanent establishment and which brings into account such interest in computing the chargeable profits (within the meaning of Section 19 of the Corporation Tax Act 2009) of that company; or

(c) a Treaty Lender.

“Quarterly Payment Date” shall mean the last Business Day of each March, June, September and December occurring after the Effective Date.

“Quotation Day” shall mean, in respect of the determination of the LIBO Rate for any Interest Period for any LIBOR Loan that is (i) a U.S. Dollar Denominated Revolving Loan or Foreign Currency Denominated Loan, the day on which quotations would ordinarily be given by prime banks in the London interbank market for deposits in such currency for delivery on the first day of such Interest Period for such Interest Period or (ii) a Euro Denominated Loan, the day on which quotations would ordinarily be given by prime banks in the Brussels interbank market for deposits in Euros for delivery on the first day of such Interest Period for such Interest Period; provided, that in either case if quotations would ordinarily be given on more than one date, the Quotation Day for such Interest Period shall be the last of such dates. On the date hereof, the Quotation Day in respect of any Interest Period for Dollars or Euros is customarily the day which is two Business Days prior to the first day of such Interest Period.

“RCRA” shall have the meaning provided in Section 8.17(c).

“Ratio-Related Permitted Indebtedness” shall mean any Indebtedness incurred by the Company and its Subsidiaries (which Indebtedness may be guaranteed pursuant to a SolarCity Guarantee) if immediately after giving effect to the incurrence of such Indebtedness on the date of such incurrence the Company is in compliance, on a Pro Forma Basis, with a Total Leverage Ratio of less than 6.00:1.00 for the respective Calculation Period.

“Real Property” of any Person shall mean all the right, title and interest of such Person in and to land (including any improvements and fixtures thereon), including Leaseholds.

“Real Property Appraisal” shall have the meaning provided in the definition of “Eligible Real Property”.

“Real Property Survey” shall have the meaning provided in the definition of “Eligible Real Property”.

“Recovery Event” shall mean any event that gives rise to the receipt by the Company or any of its Subsidiaries of any cash insurance proceeds or condemnation awards payable (i) by reason of theft, loss, physical destruction, damage, taking or any other similar event with respect to any property or assets of the Company or any of its Subsidiaries or (ii) under any policy of insurance maintained by any of them.

~~“Reduced Availability Period” shall mean any period (a) commencing on the date on which (i) Designated Cash is less than the Liquidity Threshold and (ii) the Fixed Charge Coverage Ratio for the most recently ended Test Period for which financial statements are available is less than 1.00:1.00 and (b) ending on the first date thereafter on which (i) Designated Cash is equal to or greater than the Liquidity Threshold or (ii) the Fixed Charge Coverage Ratio for the most recently ended Test Period for which financial statements are available is equal to or greater than 1.00:1.00.~~

“Reference Time” with respect to any setting of the then-current Benchmark shall mean (1) if such Benchmark is the LIBO Rate, 11:00 a.m. (London time) on the day that is two London banking days preceding the date of such setting, and (2) if such Benchmark is not LIBO Rate, the time determined by the Administrative Agent in its reasonable discretion.

“Register” shall have the meaning provided in Section ~~13.15~~13.16.

“Regulation D” shall mean Regulation D of the Board as from time to time in effect and any successor to all or a portion thereof establishing reserve requirements.

“Regulation T” shall mean Regulation T of the Board as from time to time in effect and any successor to all or a portion thereof.

“Regulation U” shall mean Regulation U of the Board as from time to time in effect and any successor to all or a portion thereof.

“Regulation X” shall mean Regulation X of the Board as from time to time in effect and any successor to all or a portion thereof.

“Release” shall mean actively or passively disposing, discharging, injecting, spilling, pumping, leaking, leaching, dumping, emitting, escaping, emptying, pouring, seeping, migrating or the like, into or upon any land or water or air, or otherwise entering into the environment.

“Relevant Governmental Body” shall mean (a) with respect to a Benchmark Replacement in respect of Loans denominated in U.S. Dollars, the Federal Reserve Board and/or the NYFRB, or a committee officially endorsed or convened by the Federal Reserve Board and/or the NYFRB or, in each case, any successor thereto and (b) with respect to a Benchmark Replacement in respect of Loans denominated in any Available Currency (other than U.S. Dollars), (i) the central bank for the currency in which such Benchmark Replacement is denominated or any central bank or other supervisor which is responsible for supervising either (x) such Benchmark Replacement or (y) the administrator of such Benchmark Replacement or (ii) any working group or committee officially endorsed or convened by (w) the central bank for the currency in which such Benchmark Replacement is denominated, (x) any central bank or other supervisor that is responsible for supervising either (1) such Benchmark Replacement or (2) the administrator of such Benchmark Replacement, (y) a group of those central banks or other supervisors or (z) the Financial Stability Board or any part thereof.

“Relevant Rate” shall mean (a) with respect to any LIBOR Loan Borrowing denominated in an Available Currency (other than Euros), the LIBO Rate as determined pursuant to clause (a)(i) of the definition thereof or (b) with respect to any LIBOR Loan Borrowing denominated in Euros, the LIBO Rate as determined pursuant to clause (a)(ii) of the definition thereof, as applicable.

“Relevant Screen Rate” shall mean (a) with respect to any LIBOR Loan Borrowing denominated in an Available Currency (other than Euros), the LIBOR Screen Rate or (b) with respect to any LIBOR Loan Borrowing denominated in Euros, the EURO Screen Rate, as applicable.



“Rent Reserve” shall mean a reserve established by the Administrative Agent in respect of rent payments made by a Borrower for each location at which Eligible Inventory or Eligible Machinery and Equipment is located (other than any such locations owned by a Borrower), unless such location is subject to a Landlord Personal Property Collateral Access Agreement (as reported to the Administrative Agent by the Company from time to time as requested by the Administrative Agent), as adjusted from time to time by the Administrative Agent in its Permitted Discretion; provided that a Rent Reserve established in respect of any location shall not exceed three months’ rent for such location.

“Rental Account Assets” shall mean (i) Rental Accounts and related payment intangibles, chattel paper, electronic chattel paper, payments, rights to current and future lease or rental payments or residuals and similar rights to payment, in each case relating to Rental Accounts, together with interests in merchandise or goods the lease or rental of which give rise to such payment rights and proceeds, related contractual rights, guarantees, insurance proceeds, books and records, collections, proceeds of the foregoing and beneficial interests and the proceeds of beneficial interests in all of the foregoing, and (ii) Equity Interests in Tesla Finance Subsidiaries and the proceeds thereof.

“Rental Accounts” shall mean Accounts arising out of customer lease or rental agreements.

“Replaced Lender” shall have the meaning provided in Section 2.13(a).

“Replacement Lender” shall have the meaning provided in Section 2.13(a).

“Reportable Event” shall mean an event described in Section 4043(c) of ERISA with respect to a Plan other than those events as to which the 30-day notice period is waived under applicable regulations.

“Required Lenders” shall mean, at any time, Non-Defaulting Lenders the sum of whose outstanding Revolving Loan Commitments at such time (or, after the termination thereof, outstanding Revolving Loans (for this purpose, using the U.S. Dollar Equivalent of amounts denominated in Euros or any Acceptable Foreign Currency) and RL Percentages of (x) outstanding Swingline Loans at such time and (y) Letter of Credit Outstandings (for this purpose, using the U.S. Dollar Equivalent of amounts denominated in Euros or any Acceptable Foreign Currency) at such time) represents at least a majority of the sum of the Total Revolving Loan Commitment in effect at such time less the Revolving Loan Commitments of all Defaulting Lenders at such time (or, after the termination thereof, the sum of the total outstanding Revolving Loans (for this purpose, using the U.S. Dollar Equivalent of amounts denominated in Euros or any Acceptable Foreign Currency) of Non-Defaulting Lenders and the aggregate RL Percentages of all Non-Defaulting Lenders of the total outstanding Swingline Loans and Letter of Credit Outstandings (for this purpose, using the U.S. Dollar Equivalent of amounts denominated in Euros or any Acceptable Foreign Currency) at such time).

“Reserves” shall mean reserves, if any, established by the Administrative Agent from time to time hereunder in its Permitted Discretion against the applicable Borrowing Base, including (i) Rent Reserves, (ii) Dutch Priority Payables Reserve, (iii) Dutch Retention of Title Reserve, (iv) UK Priority Payables Reserve, (v) UK Retention of Title Reserve, (vi) Dilution Reserves, (vii) the Customer Deposit Reserve, (viii) reserves for Foreign Taxes, (ix) reserves for Sales Taxes, (x) the Vendor Liabilities Reserve, (xi) reserves for Secured Hedging Agreements, (xii) Cash Management Reserves, (xiii) reserves for customs charges and shipping charges related to any Inventory in transit, (xiv) reserves relating to Environmental Liabilities in respect of Eligible Real Property included in the U.S. Borrowing Base and (xv) such other events, conditions or contingencies as to which the Administrative Agent, in its Permitted Discretion, determines reserves should be established from time to time hereunder; provided, however, that the Administrative Agent may not implement reserves with respect to matters which are already specifically reflected as ineligible cash or Cash Equivalents, Accounts, Inventory or Equipment,

Inventory Reserves or criteria deducted in computing the Net Orderly Liquidation Value of Eligible Inventory or the Net Orderly Liquidation Value of Eligible Machinery and Equipment. The amount of any Reserves established by the Administrative Agent shall have a reasonable relationship to the event, condition or other matter which is the basis for such Reserves as determined by the Administrative Agent in its Permitted Discretion. The applicable Reserve shall be promptly adjusted or released at such time when the event, condition or circumstance that is the basis for such Reserve ceases to exist or is otherwise addressed, in each case, to the reasonable satisfaction of the Administrative Agent. The Administrative Agent shall notify the Company in writing at or before the time any such Reserve in a material amount is to be established or increased, but a non-willful failure of the Administrative Agent to so notify the Company shall not be a breach of this Agreement and shall not cause such establishment or increase of a Reserve to be ineffective.

“Responsible Officer” shall mean the chief executive officer, the president, the chief operating officer, the chief financial officer, the treasurer or any other senior or executive officer of a Person.

“Resolution Authority” shall mean an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

“Restricted” shall mean, when referring to cash or Cash Equivalents of the Company or any of its Subsidiaries, that such cash or Cash Equivalents (i) appears (or would be required to appear) as “restricted” on a consolidated balance sheet of the Company or of any such Subsidiary (unless such appearance is related to the Credit Documents or Liens created thereunder), (ii) are subject to any Lien in favor of any Person other than (x) the Collateral Agent for the benefit of the Secured Creditors and (y) Permitted Liens under Sections 10.01(a), (p) and (s) or (iii) are not otherwise generally available for use by the Company or such Subsidiary.

“Returns” shall have the meaning provided in Section 8.09.

“Revolving Loan” shall have the meaning provided in Section 2.01(a).

“Revolving Loan Commitment” shall mean, for each Lender, the amount set forth opposite such Lender’s name in Schedule 1.01(a) directly below the column entitled “Revolving Loan Commitment,” as same may be (x) reduced from time to time or terminated pursuant to Sections 4.02, 4.03 and/or 11, as applicable, (y) adjusted from time to time as a result of assignments to or from such Lender pursuant to Section 2.13 or Section ~~13.04~~13.05(b) or (z) increased from time to time pursuant to Section 2.14. In addition, the Revolving Loan Commitment of each Lender shall include any ~~2023 Extended Revolving Commitment and any~~ Extended Revolving Loan Commitment of such Lender.

“Revolving Note” shall have the meaning provided in Section 2.05.

“RL Percentage” of any Lender at any time shall mean a fraction (expressed as a percentage) the numerator of which is the Revolving Loan Commitment of such Lender at such time and the denominator of which is the Total Revolving Loan Commitment at such time, provided that if the RL Percentage of any Lender is to be determined after the Total Revolving Loan Commitment has been terminated, then the RL Percentages of such Lender shall be determined immediately prior (and without giving effect) to such termination.

“S&P” shall mean Standard & Poor’s Financial Services LLC.

“Sales Taxes” shall mean any amounts which are due and owing to any Governmental Authority of the United States or any state thereof in respect of sales taxes to the extent such amounts are collected

or required to be collected by any Borrower from such Borrower's customer to be remitted to such Governmental Authority.

"Sanctioned Country" shall mean a country or territory which is itself the subject or target of comprehensive countrywide or territory-wide Sanctions (as of the Effective Date, the Crimea region of Ukraine, Cuba, Iran, North Korea, Sudan and Syria).

"Sanctioned Person" shall mean (a) any Person that is the target or subject of Sanctions or listed in any Sanctions-related list of designated Persons maintained by the U.S. government (including the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State) or by the United Nations Security Council, the European Union or any European Union member state, (b) any Person operating, organized or resident in a Sanctioned Country or (c) any Person owned or controlled by any such Person or Persons described in the foregoing clauses (a) or (b).

"Sanctions" shall mean economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State, or (b) the United Nations Security Council, the European Union, any European Union member state, Her Majesty's Treasury of the United Kingdom or other relevant Governmental Authority.

"Screen Rate" shall mean the LIBOR Screen Rate and/or the EURO Screen Rate, as applicable.

"SEC" shall mean the U.S. Securities and Exchange Commission or any successor thereto.

~~"Second Amendment" means that certain Second Amendment, dated as of December 31, 2015, among the Company, Tesla B.V., the Administrative Agent and the Lenders party thereto.~~

"Second Priority" shall mean, with respect to any Lien purported to be created on any Collateral pursuant to the Security Documents, that such Lien is prior in right to any other Lien thereon, other than (x) Liens permitted pursuant to Section 10.01(s) and (y) First Priority Priming Liens; provided that in no event shall any such First Priority Priming Liens be permitted (on a consensual basis) to be junior and subordinate to any Permitted Liens as described in clause (x) above and senior in priority to the relevant Liens created pursuant to the Security Documents.

"Secured Creditors" shall have the meaning provided in the respective Security Documents.

"Secured Hedging Agreement" shall mean each Interest Rate Protection Agreement and/or Other Hedging Agreements entered into with a Lender Counterparty, provided that (i) such Interest Rate Protection Agreement and/or Other Hedging Agreement expressly states that it constitutes a "Secured Hedging Agreement" for purposes of the Credit Agreement and the other Credit Documents and (ii) the Company and the other parties thereto shall have delivered to the Collateral Agent a written notice specifying that such Interest Rate Protection Agreement and/or Other Hedging Agreement constitutes a "Secured Hedging Agreement" for purposes of the Credit Agreement and the other Credit Documents; provided no such notice shall be required in respect of any Interest Rate Protection Agreement or Other Hedging Agreement entered into with Deutsche Bank AG New York Branch or any of its Affiliates.

"Securities Act" shall mean the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"Securitization Related Assets" shall mean, collectively, accounts receivable, payment intangibles, chattel paper, payments, rights to future lease payments or residuals or similar rights to

payment, in each case relating to receivables subject to the Permitted Securitization Facility, including interests in merchandise or goods, the sale or lease of which gave rise to such receivables, related contractual rights, guarantees, insurance proceeds, collections and proceeds of all of the foregoing and any Equity Interests in a Securitization Subsidiary, Excluded [Charging Subsidiary](#), Excluded Energy Storage Subsidiary or Tesla Finance Subsidiary.

“[Securitization Subsidiary](#)” shall mean a Wholly-Owned Subsidiary of the Company that is a special purpose vehicle that has been established for the sole purpose of facilitating a financing under a Permitted Securitization Facility and that shall not engage in any activities other than in connection with the Permitted Securitization Facility. For the avoidance of doubt, an Excluded [Charging Subsidiary](#), an Excluded Energy Storage Subsidiary and any Tesla Finance Subsidiary may be a Securitization Subsidiary.

“[Security Agreement](#)” shall mean and include each of the U.S. Security Agreement ~~and~~ [the Dutch Security Agreements and the UK Security Agreement](#).

“[Security Agreement Collateral](#)” shall mean all “Collateral” as defined in any Security Agreement (or “Inventory” as defined in the Dutch Inventory Security Agreement).

“[Security Documents](#)” shall mean and include each Security Agreement and, after the execution and delivery thereof, each Additional Security Document, each Mortgage, each Incremental Security Document and any other related document, agreement or grant pursuant to which the Company or any of its Subsidiaries grants, perfects or continues a security interest in favor of the Collateral Agent for the benefit of the Secured Creditors (including any Belgian law register pledge agreement in relation to a Perfected Belgian Lien, any supplements, joinders or similar agreements to the U.S. Security Agreement and any of the Dutch Security Agreements [or UK Security Agreement](#) to add an additional Credit Party as a grantor or pledgor thereunder, and any agreement similar to a Dutch Security Agreement entered into by a Dutch Credit Party pursuant to which such Dutch Credit Party grants, perfects or continues a security interest in favor of the Collateral Agent for the benefit of the Secured Creditors or which is similar to a UK Security Agreement entered into by a UK Credit Party pursuant to which such UK Credit Party grants, perfects or continues a security interest in favor of the Collateral Agent for the benefit of the Secured Creditors); provided that any cash collateral or other agreements entered into pursuant to the Letter of Credit Back-Stop Arrangements shall constitute “Security Documents” solely for purposes of (x) Sections 8.03 and 10.01(d) and (y) the term “Credit Documents” as used in Sections 9.12(d), 10.04(a) and 13.01.

“[Sixth Amendment](#)” shall mean that certain Sixth Amendment to the Credit Agreement and First Amendment to the Security Agreements, dated as of June 19, 2017, among the Borrowers, the other Credit Parties parties thereto, the Lenders party thereto and the Administrative Agent.

“[Sixth Amendment Effective Date](#)” shall mean the date on which the conditions precedent to effectiveness of the Sixth Amendment are satisfied, which date is June 19, 2017.

“[SOFR](#)” shall mean, with respect to any Business Day, a rate per annum equal to the secured overnight financing rate for such Business Day published by the SOFR Administrator on the SOFR Administrator’s Website at approximately 8:00 a.m. (New York City time) on the immediately succeeding Business Day.

“[SOFR Administrator](#)” shall mean the NYFRB (or a successor administrator of the secured overnight financing rate).

“SOFR Administrator’s Website” shall mean the NYFRB’s website, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

“SolarCity” shall mean Tesla Energy Operations, Inc. (formerly known as SolarCity Corporation), a Delaware corporation.

~~“SolarCity Convertible Notes” shall mean the SolarCity 2019 Convertible Notes and the SolarCity 2020 Convertible Notes.~~

~~“SolarCity Convertible Notes Documents” shall mean the SolarCity 2019 Convertible Notes Documents and the SolarCity 2020 Convertible Notes Documents.~~

~~“SolarCity Convertible Notes Indentures” shall mean the SolarCity 2019 Convertible Notes Indenture and the SolarCity 2020 Convertible Notes Indenture.~~

~~“SolarCity 2019 Convertible Notes” shall mean SolarCity’s 1.625% convertible senior notes due November 1, 2019, issued pursuant to the SolarCity 2019 Convertible Notes Indenture.~~

~~“SolarCity 2019 Convertible Notes Documents” shall mean the SolarCity 2019 Convertible Notes and the SolarCity 2019 Convertible Notes Indenture.~~

~~“SolarCity 2019 Convertible Notes Indenture” shall mean the Indenture, dated as of September 30, 2014, by and between SolarCity and Wells Fargo Bank, National Association, as trustee, as amended, modified or supplemented from time to time in respect of the SolarCity 2019 Convertible Notes in accordance with the terms hereof and thereof.~~

“SolarCity 2020 Convertible Notes” shall mean SolarCity’s zero-coupon convertible senior notes due December 1, 2020, issued pursuant to the SolarCity 2020 Convertible Notes Indenture.

“SolarCity 2020 Convertible Notes Documents” shall mean the SolarCity 2020 Convertible Notes Documents and the SolarCity 2020 Convertible Notes Indenture Documents.

“SolarCity 2020 Convertible Notes Indenture” shall mean the Indenture, dated as of December 7, 2015, by and between SolarCity and Wells Fargo Bank, National Association, as trustee, as amended, modified or supplemented from time to time in respect of the SolarCity 2020 Convertible Notes in accordance with the terms hereof and thereof.

“SolarCity Guarantee” shall have the meaning provided in Section 10.14(b).

“Specified Account Debtor” shall mean each of the Account Debtors listed on Schedule 1.01(c) to the Disclosure Letter, which Schedule may be updated from time to time in the Permitted Discretion of the Administrative Agent with written notice to the Company.

“Specified Jurisdictions” shall mean the United States, the Netherlands, Belgium and England and Wales.

“Specified Tesla In-Transit Assets” shall have the meaning provided in Section 10.04(v).

“Specified Time” shall mean 11:00 a.m., London time.

“SRECs” shall mean renewable energy credits or certificates under any state renewable energy portfolio standard or federal renewable energy standard, pollution allowances, carbon credits and similar environmental allowances or credits and green tag or other reporting rights under Section 1605(b) of the Energy Policy Act of 1992 and any similar present or future federal, state, or local law or regulation, and international or foreign emissions trading program.

“Stated Amount” of each Letter of Credit shall mean, at any time, the maximum amount available to be drawn thereunder in each case determined (x) as if any future automatic increases in the maximum amount available that are provided for in any such Letter of Credit had in fact occurred at such time and (y) without regard to whether any conditions to drawing could then be met but after giving effect to all previous drawings made thereunder; provided that the “Stated Amount” of each Letter of Credit denominated in a currency other than U.S. Dollars shall be, on any date of calculation, the U.S. Dollar Equivalent of the maximum amount available to be drawn in the respective currency thereunder (determined without regard to whether any conditions to drawing could then be met).

“Sterling” and the designation “£” shall mean the lawful currency of the United Kingdom.

“Subsidiary” shall mean, as to any Person, (i) any corporation more than 50% of whose stock of any class or classes having by the terms thereof ordinary voting power to elect a majority of the directors of such corporation (irrespective of whether or not at the time stock of any class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time owned by such Person and/or one or more Subsidiaries of such Person or (ii) any partnership, limited liability company, association, joint venture or other entity in which such Person and/or one or more Subsidiaries of such Person has more than a 50% equity interest at the time; provided however, except as expressly provided herein, neither SolarCity nor any Subsidiary of SolarCity shall constitute a Subsidiary of the Company or any Subsidiaries of the Company, and neither SolarCity nor any Subsidiary of SolarCity shall be subject to the restrictions, terms or requirements applicable to Subsidiaries contained herein or in any other Credit Document. Unless otherwise qualified, all references to a “Subsidiary” or to “Subsidiaries” in this Agreement shall refer to a Subsidiary or Subsidiaries of the Company.

“Subsidiary Guarantor” shall mean each U.S. Subsidiary Guarantor ~~and~~ each Dutch Subsidiary Guarantor and each UK Subsidiary Guarantor.

“Supermajority Lenders” shall mean those Non-Defaulting Lenders which would constitute the Required Lenders under, and as defined in, this Agreement, if the reference to “a majority” contained therein were changed to “66⅔%”.

“Supported QFC” shall have the meaning provided in Section 13.26.

“Swap Obligation” shall mean, with respect to any Person, any Interest Rate Protection Agreement or Other Hedging Agreement that constitutes a “swap” within the meaning of Section 1a(47) of the Commodity Exchange Act.

“Swingline Expiry Date” shall mean that date which is five Business Days prior to the Final Maturity Date.

“Swingline Lender” shall mean the Administrative Agent, in its capacity as Swingline Lender hereunder.

“Swingline Loan” shall have the meaning provided in Section 2.01(b).

“Swingline Loan Exposure” shall mean, at any time, the aggregate principal amount of all Swingline Loans outstanding at such time. The Swingline Loan Exposure of any Lender at any time shall be its RL Percentage of the aggregate Swingline Loan Exposure at such time.

“Swingline Note” shall have the meaning provided in Section 2.05(a).

“Syndication Agent” shall mean JPMorgan Chase Bank, N.A., Goldman Sachs Bank USA, Morgan Stanley Senior Funding Inc. and Bank of America, N.A., in each case in its capacity as a syndication agent for the Lenders hereunder and under the other Credit Documents.

“TARGET Day” shall mean any day on which the Trans-European Automated Real-time Gross Settlement Express Transfer (TARGET) payment system (or, if such payment system ceases to be operative, such other payment system (if any) determined by the Administrative Agent to be a suitable replacement) is open for the settlement of payments in Euros.

~~“Tax Sharing Agreement” means a tax sharing agreement, entered into among New B.V., Tesla Motors Netherlands Coöperatief U.A., Tesla B.V. and any other Dutch Affiliates of Tesla B.V. who may become members of a fiscal unity (*fiscal eenheid*) with Tesla B.V. and the other Dutch Credit Parties from time to time party thereto.~~

“Tax Confirmation” shall have the meaning provided in Section 5.04(e)(v).

“Tax Sharing Agreement” means an agreement between the Dutch Credit Parties and other Dutch Affiliates of Tesla B.V. from time to time member to a fiscal unity (*fiscal eenheid*) for Dutch corporate income tax purposes, whereby the parties to such agreement agree that (a) the member who is head of the fiscal unity shall charge onto the other fiscal unity members their relative share in the portion of the yearly corporate income tax charge, and (b) each fiscal unity member shall record its full corporate income tax charge in its books, calculated as if it were a stand-alone taxpayer separate from the fiscal unity, while pursuant to Dutch tax law, any corporate income tax assessment for the fiscal unity is based on the combined taxable amount of the fiscal unity members and is issued to the head of the fiscal unity only.

“Taxes” shall have the meaning provided in Section 5.04(a).

~~“Tenth Amendment” shall mean that certain Tenth Amendment, dated as of December 10, 2018, among the Company, Tesla B.V., the Administrative Agent and the Lenders party thereto.~~

“Tenth Amendment Effective Date” shall mean December 10, 2018.

“Term SOFR” shall mean, for the applicable Corresponding Tenor as of the applicable Reference Time, the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

“Term SOFR Notice” shall mean a notification by the Administrative Agent to the Lenders and the U.S. Borrower of the occurrence of a Term SOFR Transition Event.

“Term SOFR Transition Event” shall mean the determination by the Administrative Agent that (a) Term SOFR has been recommended for use by the Relevant Governmental Body, (b) the administration of Term SOFR is administratively feasible for the Administrative Agent and (c) a Benchmark Transition Event has previously occurred resulting in a Benchmark Replacement in accordance with Section 2.10 that is not Term SOFR.

"Tesla B.V." shall have the meaning provided in the first paragraph of this Agreement.

"Tesla Finance Subsidiaries" shall mean (i) Tesla Finance, LLC and its Subsidiaries and (ii) Tesla Financial Services Holdings B.V. and its Subsidiaries, including Tesla Financial Services Limited and Tesla Financial Services GmbH.

"Tesla Lease Finance Subsidiary" shall mean any Tesla Finance Subsidiary that is a Non-Wholly Owned Subsidiary and was formed for the purpose of engaging in the financing of vehicle leases.

"Tesla UK" shall have the meaning provided in the first paragraph of this Agreement.

"Test Period" shall mean each period of four consecutive fiscal quarters of the Company then last ended, in each case taken as one accounting period.

~~"Third Amendment" shall mean the Third Amendment to Credit Agreement, dated as of the Third Amendment Effective Date, among the Company, Tesla B.V., the lenders party thereto, the Collateral Agent and the Administrative Agent.~~

~~"Third Amendment Effective Date" shall mean February 9, 2016.~~

"Threshold Amount" shall mean \$250,000,000.

"Title Company" shall have the meaning provided in the definition of "Eligible Real Property".

"Title Policy" shall have the meaning provided in the definition of "Eligible Real Property".

"Total Borrowing Base" shall mean, as of any date of determination, the sum of the Dutch Borrowing Base ~~and~~ the U.S. Borrowing Base and the UK Borrowing Base, in each case, at such date.

"Total Leverage Ratio" shall mean, on any date of determination, the ratio of (x) Consolidated Total Indebtedness on such date to (y) Consolidated EBITDA for the Test Period most recently ended on or prior to such date; provided that (i) for purposes of any calculation of the Total Leverage Ratio pursuant to this Agreement, Consolidated EBITDA shall be determined on a Pro Forma Basis in accordance with the requirements of the definition of "Pro Forma Basis" contained herein.

"Total Revolving Loan Commitment" shall mean, at any time, the sum of the Revolving Loan Commitments of each of the Lenders at such time. As of the First Amendment and Restatement Effective Date, the Total Revolving Loan Commitment is ~~\$2,425,000,000, of which \$2,227,500,000 are 2023 Extended Revolving Loan Commitments~~ 2,327,500,000.

"Transaction" shall mean, collectively, the execution and delivery by each Credit Party of the Credit Documents to which it is a party on the Effective Date, the incurrence of Loans (if any) on the Effective Date and the use of proceeds thereof.

"Treaty Lender" shall mean a Lender which:

(a) is treated as a resident (for the purposes of the applicable double taxation agreement) in a jurisdiction having a double taxation agreement with the United Kingdom which makes provision for full exemption from tax imposed by the United Kingdom on any payment of interest under this Agreement; and



(b) does not carry on a business in the United Kingdom through a permanent establishment with which such Lender's participation in any Loan is effectively connected.

"Type" shall mean the type of Loan determined with regard to the interest option applicable thereto, i.e., whether a Base Rate Loan or a LIBOR Loan.

"UCC" shall mean the Uniform Commercial Code as from time to time in effect in the relevant jurisdiction.

"UK Borrower" and "UK Borrowers" shall have the meaning provided in the first paragraph of this Agreement.

"UK Borrower Loans" shall mean each UK Borrower Revolving Loan.

"UK Borrower Obligations" shall mean all Obligations owing to the Administrative Agent, the Collateral Agent, any Issuing Lender or any Lender by any UK Borrower.

"UK Borrower Revolving Loan" shall have the meaning provided in Section 2.01(a).

"UK Borrower Revolving Note" shall have the meaning provided in Section 2.05.

"UK Borrowing Base" shall mean, as of any date of calculation, the amount calculated pursuant to the Borrowing Base Certificate most recently delivered to the Administrative Agent in accordance with Section 9.01(h) equal to, without duplication:

(a) the sum of:

(i) 85% of the then extant Net Orderly Liquidation Value of Eligible UK Vendor In-Transit Inventory,

(ii) 85% of the then extant Net Orderly Liquidation Value of Eligible UK Raw Materials Inventory (other than Eligible UK Vendor In-Transit Inventory),

(iii) 85% of the then extant Net Orderly Liquidation Value of Eligible UK WIP Inventory,

(iv) 85% of the then extant Net Orderly Liquidation Value of Eligible UK Service Parts Inventory,

(v) 85% of the then extant Net Orderly Liquidation Value of Eligible UK Finished Goods Inventory,

and

(vi) 85% of the then extant Net Orderly Liquidation Value of Eligible UK In-Transit Inventory; minus

(b) the sum (without duplication) of any Reserves (including the UK Priority Payables Reserve and without duplication of any Inventory Reserve) then established by the Administrative Agent with respect to the UK Borrowing Base;

provided, however, that (i) Eligible UK Inventory shall only be included in the UK Borrowing Base to the extent that the Administrative Agent shall have received an Acceptable Appraisal and, solely with respect to the first Borrowing Base including Eligible UK Inventory, an Acceptable Field Examination, in respect

of such Eligible UK Inventory and (ii) the Eligible Inventory included in the Borrowing Base pursuant to clauses (a)(i) through (vi) above shall be calculated net of any applicable Inventory Reserves. The Administrative Agent shall have the right (but no obligation) to review such computations and if, in its Permitted Discretion, such computations have not been calculated in accordance with the terms of this Agreement, the Administrative Agent shall have the right to correct any such errors in such manner as it shall determine in its Permitted Discretion and the Administrative Agent will notify the Company promptly after making any such correction.

"UK Collection Banks" shall have the meaning provided in Section 5.03(d).

"UK Credit Parties" shall mean each UK Borrower and each UK Subsidiary Guarantor.

"UK Guarantors" shall mean and include each UK Borrower (in its capacity as a guarantor under the UK Guaranty) and each UK Subsidiary Guarantor.

"UK Guaranty" shall mean the UK Guaranty, dated as of December 23, 2020, in the form of Exhibit P, as amended, modified, restated and/or supplemented from time to time in accordance with the terms hereof and thereof.

"UK Insolvency Law" shall mean the Insolvency Act 1986 and the Corporate Insolvency and Governance Act 2020, in each case, as now or hereafter in effect, or any successor thereto.

"UK Priority Payables" shall mean, at any time, with respect to any Credit Party which has employees in England and Wales or otherwise carries on business in England and Wales or which leases, sells or otherwise owns goods in England and Wales, the aggregate amount of any liabilities of such Credit Party which are secured by a security interest, pledge, lien, charge, right or claim on any Collateral or the holder of which enjoys a right, in each case, pursuant to any applicable law, rule or regulation and which trust, security interest, pledge, lien, charge, right or claim ranks or is capable of ranking in priority to or pari passu with one or more of the Liens granted in the Security Documents.

"UK Priority Payables Reserve" shall mean, on any date of determination for the UK Borrowing Base, a reserve established from time to time by the Administrative Agent in its Permitted Discretion in such amount as the Administrative Agent may reasonably determine in respect of UK Priority Payables of the UK Credit Parties.

"UK Retention of Title Reserve" shall mean, on any date of determination for the UK Borrowing Base, a reserve established from time to time by the Administrative Agent in its Permitted Discretion for amounts of any claims preferred by law which rank or are capable of ranking senior to the Obligations.

"UK Security Agreement" shall mean the security agreement, dated as of December 23, 2020, in the form of Exhibit Q, as amended, modified, restated and/or supplemented from time to time in accordance with the terms hereof and thereof.

"UK Subsidiary" of any Person shall mean any Subsidiary of such Person incorporated, organized, or established in England and Wales.

"UK Subsidiary Guarantors" shall mean each Wholly-Owned UK Subsidiary of Tesla UK (other than any UK Borrower, any Securitization Subsidiary, any Excluded Energy Storage Subsidiary, any Excluded Charging Subsidiary, any Tesla Finance Subsidiary and any Immaterial Subsidiary), whether existing on the Effective Date or established, created or acquired after the Effective Date, in each case unless and until such time as the respective Wholly-Owned UK Subsidiary is released from all of its

obligations under the Security Documents to which it is a party in accordance with the terms and provisions hereof and thereof.

"UK Financial Institutions" shall mean any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

"UK Resolution Authority" shall mean the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

"Unadjusted Benchmark Replacement" shall mean the Benchmark Replacement excluding the Benchmark Replacement Adjustment.

"Unfinanced Capital Expenditures" shall mean, for any period, Capital Expenditures made by the Company and its Consolidated Subsidiaries during such period other than Capital Expenditures to the extent financed with the proceeds of any sale or issuance of Equity Interests, the proceeds of any asset sale (other than the sale of inventory in the ordinary course of business), the proceeds of any Recovery Event or the proceeds of any incurrence of Indebtedness (other than the incurrence of any Loans).

"Unfunded Pension Liability" of any Plan shall mean the amount, if any, by which the value of the accumulated plan benefits under such Plan determined on a plan termination basis in accordance with actuarial assumptions at such time consistent with those prescribed by the PBGC for purposes of Section 4044 of ERISA, exceeds the Fair Market Value of all plan assets allocable to such liabilities under Title IV of ERISA (excluding any accrued but unpaid contributions).

"United States" and "U.S." shall each mean the United States of America.

"Unpaid Drawing" shall have the meaning provided in Section 3.05(a).

"Unrestricted" shall mean, when referring to cash or Cash Equivalents of the Company or any of its Subsidiaries, that such cash or Cash Equivalents are not Restricted.

"Unutilized Revolving Loan Commitment" shall mean, with respect to any Lender at any time, such Lender's Revolving Loan Commitment at such time less the sum of (a) the aggregate outstanding principal amount of all Revolving Loans (taking the U.S. Dollar Equivalent of any such Revolving Loans denominated in Euros or any Acceptable Foreign Currency) made by such Lender at such time and (b) such Lender's RL Percentage of the Letter of Credit Outstandings (for this purpose, using the U.S. Dollar Equivalent of amounts denominated in Euros or any Acceptable Foreign Currency) at such time. For the avoidance of doubt and solely for purposes of calculating the "Unutilized Revolving Loan Commitment", the Revolving Loan Commitment of any Lender shall not be reduced by outstanding Swingline Loans.

"Upper Strike Warrant" shall mean any hedging agreement, entered into by the Company in connection with the issuance of Permitted Convertible Notes, pursuant to which the Company issues to the counterparty thereto warrants to acquire shares of Permitted Company Stock (whether such warrant is settled in shares, cash or a combination thereof).

“U.S. Borrower” and “U.S. Borrowers” shall have the meaning provided in the first paragraph of this Agreement.

“U.S. Borrower Loans” shall mean each U.S. Borrower Revolving Loan and each U.S. Borrower Swingline Loan.

“U.S. Borrower Obligations” shall mean all Obligations owing to the Administrative Agent, the Collateral Agent, any Issuing Lender or any Lender by any U.S. Borrower.

“U.S. Borrower Revolving Loan” shall have the meaning provided in Section 2.01(a).

“U.S. Borrower Revolving Note” shall have the meaning provided in Section 2.05(a).

“U.S. Borrower Swingline Loan” shall have the meaning provided in Section 2.01(b).

“U.S. Borrower Swingline Note” shall have the meaning provided in Section 2.05(a).

“U.S. Borrowing Base” shall mean, as of any date of calculation, the amount calculated pursuant to the Borrowing Base Certificate most recently delivered to the Administrative Agent in accordance with Section 9.01(h) equal to, without duplication:

- (a) the sum of:
  - (i) 100% of the U.S. Dollar Equivalent of Eligible U.S. Cash and Cash Equivalents (the “U.S. Cash Contribution”),
  - (ii) 85% of the Eligible U.S. Accounts,
  - (iii) 85% of the then extant Net Orderly Liquidation Value of Eligible U.S. Vendor In-Transit Inventory,
  - (iv) 85% of the then extant Net Orderly Liquidation Value of Eligible U.S. Raw Materials Inventory (other than Eligible U.S. Vendor In-Transit Inventory),
  - (v) 85% of the then extant Net Orderly Liquidation Value of Eligible U.S. WIP Inventory,
  - (vi) 85% of the then extant Net Orderly Liquidation Value of Eligible U.S. Service Parts Inventory,
  - (vii) 85% of the then extant Net Orderly Liquidation Value of Eligible U.S. Finished Goods Inventory,
  - (viii) 85% of the then extant Net Orderly Liquidation Value of Eligible U.S. In-Transit Inventory,
  - (ix) 85% of the Applicable Value of Eligible Machinery and Equipment, and
  - (x) 75% of the Appraised Fair Market Value of Eligible Real Property; minus

(b) the sum (without duplication) of any Reserves then established by the Administrative Agent with respect to the U.S. Borrowing Base;

provided, however, that (i) Eligible U.S. Inventory shall only be included in the U.S. Borrowing Base to the extent that the Administrative Agent shall have received an Acceptable Appraisal in respect of such Eligible U.S. Inventory, (ii) Eligible Equipment and Machinery shall only be included in the U.S. Borrowing Base to the extent that the Administrative Agent shall have received an Acceptable Appraisal in respect of such Eligible Equipment and Machinery (provided that no appraisal shall be required in respect of Equipment for which the consideration therefor was less than or equal to \$1,500,000 and, at the Permitted Discretion of the Administrative Agent no appraisal shall be required in respect of any Equipment for which the consideration therefor was in excess of \$1,500,000, in each case to the extent there is an Acceptable Existing Appraisal in respect thereof, in which case the Applicable Value thereof shall be based on a "desktop appraisal" (it being understood that once there is no longer an Acceptable Existing Appraisal in respect of such Equipment, the Applicable Value thereof shall be determined pursuant to the definition of "Applicable Value", provided that to the extent the Applicable Value cannot be determined pursuant to clause (a) of such definition, then for purposes of determining the "Amortized Value" of such Equipment, the most recent Acceptable Appraisal shall be deemed to be the appraisal that was the most recent Acceptable Existing Appraisal in respect of such Equipment)), (iii) the Eligible Inventory included in the Borrowing Base pursuant to clauses (a)(iii) through (viii) above shall be calculated net of any applicable Inventory Reserves and (iv) the aggregate amount included in the U.S. Borrowing Base pursuant to clauses (a)(ix) and (a)(x) above shall not exceed 30% of the Total Borrowing Base. The Administrative Agent shall have the right (but not the obligation) to review such computations and if, in its Permitted Discretion, such computations have not been calculated in accordance with the terms of this Agreement, the Administrative Agent shall have the right to correct any such errors in such manner as it shall determine in its Permitted Discretion and the Administrative Agent will notify the Company promptly after making any such correction.

"U.S. Cash Contribution" shall have the meaning provided in the definition of U.S. Borrowing Base.

"U.S. Collection Banks" shall have the meaning provided in Section 5.03(b).

"U.S. Corresponding Debt" shall mean the Obligations of a U.S. Credit Party under or in connection with the Credit Documents.

"U.S. Credit Parties" shall mean the Company, each other U.S. Borrower and each U.S. Subsidiary Guarantor.

"U.S. Dollar Denominated Revolving Loans" shall mean each Revolving Loan denominated in U.S. Dollars at the time of the incurrence thereof.

"U.S. Dollar Equivalent" of an amount denominated in a currency other than U.S. Dollars shall mean, at any time for the determination thereof, the amount of U.S. Dollars which could be purchased with the amount of such currency involved in such computation at the spot exchange rate therefor as quoted by the Administrative Agent as of 11:00 A.M. (New York City time) on the date two Business Days prior to the date of any determination thereof (or, in the case of amount denominated in Sterling on the date of any determination thereof), for purchase on such date (or on the date of the respective unreimbursed payment under a Letter of Credit denominated in a currency other than U.S. Dollars as provided in Sections 3.04(c) and 3.05(a), as the case may be); provided that for purposes of (x) determining compliance with Sections 2.01(a), 2.01(b), 2.01(e), 3.02, 5.02(a), 7.01 and 7.03 and (y) calculating Fees pursuant to Section 4.01 (except Fees which are expressly required to be paid in a

currency other than U.S. Dollars pursuant to Section 4.01), the U.S. Dollar Equivalent of any amounts denominated in a currency other than U.S. Dollars shall be revalued on the date of each Credit Event using the spot exchange rates therefor as quoted on Bloomberg (or, if same does not provide such exchange rates, on such other basis as is reasonably satisfactory to the Administrative Agent) on the immediately preceding Business Day, provided, however, that at any time, if the Aggregate Exposure (for the purposes of the determination thereof, using the U.S. Dollar Equivalent as recalculated based on the spot exchange rate therefor as quoted on Bloomberg (or, if same does not provide such exchange rates, on such other basis as is reasonably satisfactory to the Administrative Agent) on the respective date of determination pursuant to this exception) would exceed 85% of the Total Revolving Loan Commitment or any, then in the sole discretion of the Administrative Agent or at the request of the Required Lenders, the U.S. Dollar Equivalent shall be reset based upon the spot exchange rates on such date as quoted on Bloomberg (or, if same does not provide such exchange rates, on such other basis as is reasonably satisfactory to the Administrative Agent), which rates shall remain in effect until the date of a Credit Event or such earlier date, if any, as the rate is reset pursuant to this proviso. Notwithstanding anything to the contrary contained in this definition, at any time that a Default or an Event of Default then exists, the Administrative Agent may revalue the U.S. Dollar Equivalent of any amounts outstanding under the Credit Documents in a currency other than U.S. Dollars on any date in its sole discretion in accordance with the foregoing methodology.

"U.S. Dollars" and the sign "\$" shall each mean freely transferable lawful money of the United States.

"U.S. Guarantors" shall mean and include each U.S. Borrower (in its capacity as a guarantor under the U.S. Guaranty) and each U.S. Subsidiary Guarantor.

"U.S. Guaranty" shall mean the U.S. Guaranty, dated as of the Effective Date, in the form of Exhibit G-2, as amended, modified, restated and/or supplemented from time to time in accordance with the terms hereof and thereof.

"U.S. Person" shall mean any Person that is a "United States person" as defined in Section 7701(a)(30) of the Code.

"U.S. Security Agreement" shall mean the U.S. Security Agreement, dated as of the Effective Date, in the form of Exhibit I-4, as amended, modified, restated and/or supplemented from time to time in accordance with the terms hereof and thereof.

"U.S. Special Resolution Regimes" shall have the meaning provided in Section 13.26.

"U.S. Subsidiary Guarantors" shall mean each Wholly-Owned Domestic Subsidiary of the Company (other than any U.S. Borrower, any Securitization Subsidiary, any Excluded Energy Storage Subsidiary, any Excluded Charging Subsidiary, any Tesla Finance Subsidiary and any Immaterial Subsidiary), whether existing on the Effective Date or established, created or acquired after the Effective Date, in each case unless and until such time as the respective Wholly-Owned Domestic Subsidiary is released from all of its obligations under the U.S. Guaranty and the Security Documents to which it is a party in accordance with the terms and provisions hereof and thereof.

"U.S. Tax Compliance Certificate" shall have the meaning provided in Section 5.04(e)(iii).

"Used" shall mean, with respect to any Inventory, that such Inventory was previously sold (other than to a Credit Party), excluding remanufactured items.

“Used Motor Vehicles” shall mean all Used motor vehicles owned by the Company or any of its Subsidiaries.

“Vehicle Environmental Attribute” shall mean any credit, benefit, reduction, offset or allowance, howsoever entitled or named, relating to the emissions or environmental impacts that result from, are attributable to, or are associated with a vehicle, a vehicle’s use, or a vehicle charging station that is capable of being measured, verified or calculated and in any case may be lawfully marketed to third parties. By way of illustration, Vehicle Environmental Attributes may result from: new energy vehicles; zero emission vehicles; fuel economy; avoided criteria air pollutants, CO2 or greenhouse gas emissions; low carbon, renewable or clean fuel; and other credits and offsets defined under any applicable vehicle and charging-related private or governmental program, including, without limitation, the following credits: California LEV III NMOG + NOx, US CAFE, US GHG, US Tier 3 NMOG + NOx, Canada GHG, Quebec ZEV, EU CO2 Pooling, ~~and~~ Switzerland GHG Credits and Low Carbon Fuel Standards credits. Notwithstanding any of the foregoing in this definition or any other provision of the ~~Tenth Amendment or the~~ Credit Agreement, Vehicle Environmental Attributes shall not include: (i) any of the foregoing obtained by, provided to, used by or necessary for the Company or any of its Subsidiaries to conduct any of its operations at any location; or (ii) any automotive tax credits.

“Vendor Liabilities Reserve” shall mean a reserve established by the Administrative Agent in connection with the accounts payable balance owed to third-party vendors where Inventory of the Borrowers is physically located with such vendor.

“Voting Stock” shall mean, as to any entity, all classes of Equity Interests of such entity then outstanding and normally entitled to vote in the election of directors of such entity.

“Weekly Borrowing Base Period” shall mean any period (a) commencing on the date on which (i) a Default or an Event of Default has occurred and is continuing or (ii) (A) Excess Availability is less than the greater of (1) 10% of Availability as then in effect and (2) \$80,000,000 for five consecutive Business Days and (B) Designated Cash is less than the Liquidity Threshold and (b) ending on the first date thereafter on which (i) no Default or Event of Default exists and (ii) Excess Availability has been equal to or greater than the greater of (A) 10% of Availability as then in effect and (B) \$80,000,000 for 30 consecutive days.

“Wholly-Owned Dutch Subsidiary” shall mean, as to any Person, any Dutch Subsidiary of such Person that is a Wholly-Owned Subsidiary.

“Wholly-Owned Domestic Subsidiary” shall mean, as to any Person, any Domestic Subsidiary of such Person that is a Wholly-Owned Subsidiary.

“Wholly-Owned Foreign Subsidiary” shall mean, as to any Person, any Foreign Subsidiary of such Person that is a Wholly-Owned Subsidiary.

“Wholly-Owned Subsidiary” shall mean, as to any Person, (i) any corporation 100% of whose capital stock is at the time owned by such Person and/or one or more Wholly-Owned Subsidiaries of such Person and (ii) any partnership, limited liability company, association, joint venture or other entity in which such Person and/or one or more Wholly-Owned Subsidiaries of such Person has a 100% equity interest at such time (other than, in the case of a Foreign Subsidiary of the Company with respect to the preceding clauses (i) and (ii), directors’ qualifying shares and/or other nominal amounts of shares required to be held by Persons other than the Company and its Subsidiaries under applicable law); provided, however, that notwithstanding anything herein to the contrary and other than as used in the

defined term “Consolidated Net Income”, neither SolarCity nor any Subsidiary of SolarCity shall constitute a Wholly-Owned Subsidiary of the Company or any Subsidiaries of the Company.

“Wholly-Owned UK Subsidiary” shall mean, as to any Person, any UK Subsidiary of such Person that is a Wholly-Owned Subsidiary.

“Write-Down and Conversion Powers” shall mean, (a) with respect to any EEA Resolution Authority, the Write-Down and Conversion Powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which Write-Down And Conversion Powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

1.02. Other Definitional Provisions. (a) Unless otherwise specified therein, all terms defined in this Agreement shall have the defined meanings when used in the other Credit Documents or any certificate or other document made or delivered pursuant hereto or thereto.

(b) As used herein and in the other Credit Documents, and any certificate or other document made or delivered pursuant hereto or thereto, (i) accounting terms not defined in Section 1.01 shall have the respective meanings given to them under GAAP, (ii) the words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”, (iii) the word “incur” shall be construed to mean incur, create, issue, assume or become liable in respect of (and the words “incurred” and “incurrence” shall have correlative meanings), (iv) unless the context otherwise requires, the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, Equity Interests, securities, revenues, accounts, leasehold interests and contract rights, (v) the word “will” shall be construed to have the same meaning and effect as the word “shall”, and (vi) unless the context otherwise requires, any reference herein (A) to any Person shall be construed to include such Person’s successors and assigns and (B) to the Company or any other Credit Party shall be construed to include the Company or such Credit Party as debtor and debtor-in-possession and any receiver or trustee for the Company or any other Credit Party, as the case may be, in any insolvency or liquidation proceeding.

(c) The words “hereof,” “herein” and “hereunder” and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and Section, Schedule and Exhibit references are to this Agreement unless otherwise specified.

(d) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms.

(e) Where the context so requires, all references herein to a financing statement, continuation statement, amendment or termination statement shall be deemed to refer also to the analogous documents used under applicable Dutch personal property security laws.

1.03. Rates. The Administrative Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, the administration, submission or any other matter related to the London interbank offered rate or other rates in the definition of “LIBOR Rate” or with respect to any



alternative or successor rate thereto, or replacement rate thereof including, without limitation, (i) any such alternative, successor or replacement rate implemented pursuant to Section 2.10, whether upon the occurrence of a Benchmark Transition Event, Term SOFR Transition Event or an Early Opt-in Election, and (ii) the implementation of any Benchmark Replacement Conforming Changes pursuant to Section 2.10, including whether the composition or characteristics of any such alternative, successor or replacement reference rate will be similar to, or produce the same value or economic equivalence of, the LIBO Rate or have the same volume or liquidity as did the London interbank offered rate or any other applicable rate prior to its discontinuance or unavailability.

SECTION 2. Amount and Terms of Credit.

2.01. The Commitments. (a) Subject to and upon the terms and conditions set forth herein, each Lender severally agrees to make, at any time and from time to time on or after the Effective Date and prior to the Final Maturity Date, (x) a revolving loan or revolving loans to any U.S. Borrower (on a joint and several basis with the other U.S. Borrowers) (each, a "U.S. Borrower Revolving Loan" and, collectively, the "U.S. Borrower Revolving Loans"), ~~and~~ (y) a revolving loan or revolving loans to any Dutch Borrower (on a joint and several basis with the other Dutch Borrowers) (each, a "Dutch Borrower Revolving Loan" and, collectively, the "Dutch Borrower Revolving Loans") and (z) a revolving loan or revolving loans to any UK Borrower (on a joint and several basis with the other UK Borrowers) (each, a "UK Borrower Revolving Loan" and, collectively, the "UK Borrower Revolving Loans" and, together with the U.S. Borrower Revolving Loans and the Dutch Borrower Revolving Loans, each, a "Revolving Loan" and, collectively, the "Revolving Loans"), which Revolving Loans:

(i) shall be made and maintained in an Available Currency;

(ii) except as hereafter provided, shall, at the option of the applicable Borrower, be incurred and maintained as, and/or converted into, Base Rate Loans (in the case of U.S. Dollar Denominated Revolving Loans only) or LIBOR Loans; provided that, except as otherwise specifically provided in Section 2.10(b)(c), all Revolving Loans comprising the same Borrowing shall at all times be of the same Type;

(iii) may be repaid and reborrowed in accordance with the provisions hereof;

(iv) shall not be made (and shall not be required to be made) by any Lender in any instance where the incurrence thereof (after giving effect to the use of the proceeds thereof on the date of the incurrence thereof to repay any amounts theretofore outstanding pursuant to this Agreement) would cause the Individual Exposure of such Lender to exceed the amount of its Revolving Loan Commitment at such time;

(v) shall not be made (and shall not be required to be made) by any Lender in any instance where the incurrence thereof (after giving effect to the use of the proceeds thereof on the date of the incurrence thereof to repay any amounts theretofore outstanding pursuant to this Agreement) would cause the Aggregate Exposure to exceed the Total Revolving Loan Commitment as then in effect;

(vi) except as otherwise provided in Section 2.01(e), in the case of U.S. Borrower Revolving Loans, shall not be made (and shall not be required to be made) by any Lender in any instance where the incurrence thereof (after giving effect to the use of the proceeds thereof on the date of incurrence thereof to repay any amounts theretofore outstanding pursuant to this Agreement) would cause the Aggregate U.S. Borrower Exposure to exceed the U.S. Borrowing Base at such time;

(vii) except as otherwise provided in Section 2.01(e), in the case of Dutch Borrower Revolving Loans, shall not be made (and shall not be required to be made) by any Lender in any instance where the incurrence thereof (after giving effect to the use of the proceeds thereof on the date of incurrence thereof to repay any amounts theretofore outstanding pursuant to this Agreement) would cause the Aggregate Dutch Borrower Exposure to exceed the Dutch Borrowing Base at such time; and

(viii) except as otherwise provided in Section 2.01(e), in the case of UK Borrower Revolving Loans, shall not be made (and shall not be required to be made) by any Lender ~~during a Reduced Availability Period~~ in any instance where the incurrence thereof (after giving effect to the use of the proceeds thereof on the date of incurrence thereof to repay any amounts theretofore outstanding pursuant to this Agreement) would cause ~~Excess Availability to be less than 10% of Availability~~ the Aggregate UK Borrower Exposure to exceed the UK Borrowing Base at such time.

(b) Subject to and upon the terms and conditions set forth herein, the Swingline Lender agrees to make, at any time and from time to time on or after the Effective Date and prior to the Swingline Expiry Date, (x) a revolving loan or revolving loans to any U.S. Borrower (on a joint and several basis with the other U.S. Borrowers) (each, a "U.S. Borrower Swingline Loan" and, collectively, the "U.S. Borrower Swingline Loans") and (y) a revolving loan or revolving loans to any Dutch Borrower (on a joint and several basis with the other Dutch Borrowers) (each, a "Dutch Borrower Swingline Loan" and, collectively, the "Dutch Borrower Swingline Loans" and, together with the U.S. Borrower Swingline Loans, each, a "Swingline Loan" and, collectively, the "Swingline Loans"), which Swingline Loans:

(i) shall be made and maintained in U.S. Dollars;

(ii) shall be incurred and maintained as Base Rate Loans;

(iii) may be repaid and reborrowed in accordance with the provisions hereof;

(iv) shall not be made (and shall not be required to be made) by the Swingline Lender in any instance where the incurrence thereof (after giving effect to the use of the proceeds thereof on the date of the incurrence thereof to repay any amounts theretofore outstanding pursuant to this Agreement) would cause the Aggregate Exposure to exceed the Total Revolving Loan Commitment as then in effect;

(v) in the case of U.S. Borrower Swingline Loans, shall not be made (and shall not be required to be made) by the Swingline Lender in any instance where the incurrence thereof (after giving effect to the use of the proceeds thereof on the date of incurrence thereof to repay any amounts theretofore outstanding pursuant to this Agreement) would cause the Aggregate U.S. Borrower Exposure to exceed the U.S. Borrowing Base at such time;

(vi) in the case of Dutch Borrower Swingline Loans, shall not be made (and shall not be required to be made) by the Swingline Lender in any instance where the incurrence thereof (after giving effect to the use of the proceeds thereof on the date of incurrence thereof to repay any amounts theretofore outstanding pursuant to this Agreement) would cause the Aggregate Dutch Borrower Exposure to exceed the Dutch Borrowing Base at such time; and

(vii) shall not exceed in aggregate principal amount at any time outstanding the Maximum Swingline Amount; and

~~(viii) shall not be made (and shall not be required to be made) by the Swingline Lender during a Reduced Availability Period in any instance where the incurrence thereof (after giving effect to the use of the proceeds thereof on the date of incurrence thereof to repay any amounts theretofore outstanding pursuant to this Agreement) would cause Excess Availability to be less than 10% of Availability at such time.~~

Notwithstanding anything to the contrary contained in this Section 2.01(b), the Swingline Lender shall not make any Swingline Loan after it has received written notice from any Borrower, any other Credit Party or the Required Lenders stating that a Default or an Event of Default exists and is continuing until such time as the Swingline Lender shall have received written notice (A) of rescission of all such notices from the party or parties originally delivering such notice or notices or (B) of the waiver of such Default or Event of Default by the Required Lenders.

(c) On any Business Day, the Swingline Lender or the Administrative Agent, as the case may be, may, in its sole discretion give notice to the Lenders that the Swingline Lender's outstanding Swingline Loans or the Administrative Agent's outstanding Agent Advances, as the case may be, shall be funded with one or more Borrowings of Revolving Loans to be made to, and maintained by, the relevant Borrower of the outstanding Swingline Loan or Agent Advance being funded by such Revolving Loan in U.S. Dollars (provided that such notice shall be deemed to have been given no later than the fifth Business Day after the making of any Swingline Loan (if not given earlier) and shall be deemed to have been automatically given upon the occurrence of a Default or an Event of Default under Section 11.05 or upon the exercise of any of the remedies provided in the last paragraph of Section 11), in which case one or more Borrowings of Revolving Loans in U.S. Dollars constituting Base Rate Loans (any such Borrowing, a "Mandatory Borrowing") shall be made on the immediately succeeding Business Day by all Lenders pro rata based on each such Lender's RL Percentage (determined before giving effect to any termination of the Revolving Loan Commitments pursuant to the last paragraph of Section 11) and the proceeds thereof shall be applied directly by the Swingline Lender or the Administrative Agent, as the case may be, to repay the Swingline Lender or the Administrative Agent, as the case may be, for such outstanding Swingline Loans or Agent Advances. Each Lender hereby irrevocably agrees to make Revolving Loans upon one Business Day's notice pursuant to each Mandatory Borrowing in the amount and in the manner specified in the preceding sentence and on the date specified in writing by the Swingline Lender or the Administrative Agent, as the case may be, notwithstanding (i) the amount of the Mandatory Borrowing may not comply with the Minimum Borrowing Amount otherwise required hereunder, (ii) whether any conditions specified in Section 7 are then satisfied, (iii) whether a Default or an Event of Default then exists, (iv) the date of such Mandatory Borrowing, and (v) the amount of any Borrowing Base or the Total Revolving Loan Commitment at such time ~~and (vi) during a Reduced Availability Period, Excess Availability after giving effect to such Loans~~. In the event that any Mandatory Borrowing cannot for any reason be made on the date otherwise required above (including as a result of the commencement of a proceeding under the Bankruptcy Code with respect to any Borrower (including under any Dutch Insolvency Law)), then each Lender hereby agrees that it shall forthwith purchase (as of the date the Mandatory Borrowing would otherwise have occurred, but adjusted for any payments received from any Borrower on or after such date and prior to such purchase) from the Swingline Lender or the Administrative Agent, as the case may be, such participations in the outstanding Swingline Loans or Agent Advances, as the case may be, as shall be necessary to cause the Lenders to share in such Swingline Loans or Agent Advances, as the case may be, ratably based upon their respective RL Percentages (determined before giving effect to any termination of the Revolving Loan Commitments pursuant to the last paragraph of Section 11), provided that (x) all interest payable on the Swingline Loans or Agent Advances, as the case may be, shall be for the account of the Swingline Lender or the Administrative Agent, as the case may be, until the date as of which the respective participation is required to be purchased and, to the extent attributable to the purchased participation, shall be payable to the participant from and after such date and (y) at the time any purchase of participations pursuant to this

sentence is actually made, the purchasing Lender shall be required to pay the Swingline Lender or the Administrative Agent, as the case may be, interest on the principal amount of the participation purchased for each day from and including the day upon which the Mandatory Borrowing would otherwise have occurred to but excluding the date of payment for such participation at the overnight Federal Funds Rate for the first three days and at the interest rate otherwise applicable to such Revolving Loans denominated in U.S. Dollars, in each case maintained as Base Rate Loans hereunder for each day thereafter.

(d) Notwithstanding anything to the contrary in Section 2.01(a) or (b) or elsewhere in this Agreement, the Administrative Agent shall have the right to establish Reserves in such amounts, and with respect to such matters, but subject to the limitations contained in the definitions of "Reserves", "Eligible Accounts", "Eligible Inventory", "Eligible Machinery and Equipment" and "Eligible Real Property" herein, as the Administrative Agent in its Permitted Discretion shall deem necessary or appropriate, against the U.S. Borrowing Base or the Dutch Borrowing Base or the UK Borrowing Base (as the case may be) (which Reserves shall reduce the then existing applicable Borrowing Base in an amount equal to such Reserves).

(e) (i) In the event that the Borrowers are unable to comply with any Borrowing Base limitations set forth in Section 2.01(a) or (b) or (ii) the Borrowers are unable to satisfy the conditions precedent to the making of Revolving Loans set forth in Section 7, in either case, the Lenders, subject to the immediately succeeding proviso, hereby authorize the Administrative Agent, for the account of the Lenders, to make U.S. Borrower Revolving Loans to any U.S. Borrower (on a joint and several basis with the other U.S. Borrowers) or Dutch Borrower Revolving Loans to any Dutch Borrower (on a joint and several basis with the other Dutch Borrowers) or UK Borrower Revolving Loans to any UK Borrower (on a joint and several basis with the other UK Borrowers) solely in the event that the Administrative Agent in its Permitted Discretion deems necessary or desirable (A) to preserve or protect the Collateral, or any portion thereof, (B) to enhance the likelihood of repayment of the Obligations, or (C) to pay any other amount chargeable to the Borrowers pursuant to the terms of this Agreement and then due, including Expenses and Fees, which Revolving Loans may only be made in U.S. Dollars as Base Rate Loans (each, an "Agent Advance") for a period commencing on the date the Administrative Agent first receives a Notice of Borrowing requesting an Agent Advance until the earliest of (x) the 30th Business Day after such date, (y) the date the respective Borrowers are again able to comply with the applicable Borrowing Base limitations and the conditions precedent to the making of Revolving Loans, or obtain an amendment or waiver with respect thereto and (z) the date the Required Lenders instruct the Administrative Agent to cease making Agent Advances (in each case, the "Agent Advance Period"); provided that the Administrative Agent shall not make any Agent Advance to any U.S. Borrower ~~or~~, Dutch Borrower or UK Borrower to the extent that at the time of the making of such Agent Advance, the amount of such Agent Advance (I) when added to the aggregate outstanding amount of all other Agent Advances made to (x) the U.S. Borrowers at such time, would exceed 5% of the U.S. Borrowing Base at such time ~~or~~, (y) the Dutch Borrowers at such time, would exceed 5% of the Dutch Borrowing Base at such time or (z) the UK Borrowers at such time, would exceed 5% of the UK Borrowing Base at such time or (II) when added to the Aggregate Exposure as then in effect (immediately prior to the incurrence of such Agent Advance), would exceed the Total Revolving Loan Commitment at such time. Agent Advances may be made by the Administrative Agent in its sole discretion and no Borrower shall have any right whatsoever to require that any Agent Advances be made. Agent Advances will be subject to periodic settlement with the Lenders pursuant to Section 2.01(c).

(f) If the Initial Maturity Date shall have occurred at a time when ~~2023 Extended Revolving Loan Commitments or~~ Extended Revolving Loan Commitments are in effect, then on the Initial Maturity Date all then outstanding Swingline Loans shall be repaid in full on such date (and there shall be no adjustment to the participations in such Swingline Loans as a result of the occurrence of such Initial Maturity Date) or refinanced with a borrowing of ~~a 2023 Extended Revolving Loan or~~ an Extended

Revolving Loan; provided that, if on the occurrence of the Initial Maturity Date (after giving effect to any repayments of Revolving Loans and any reallocation of Letter of Credit participations as contemplated in Section 3.07), there shall exist sufficient unutilized ~~2023 Extended Revolving Loan Commitments and~~ Extended Revolving Loan Commitments so that the respective outstanding Swingline Loans could be incurred pursuant to the ~~2023-Extended Revolving Loan Commitments and Extended Revolving Loan~~ Commitments which will remain in effect after the occurrence of the Initial Maturity Date, then there shall be an automatic adjustment on such date of the participations in such Swingline Loans and same shall be deemed to have been incurred solely pursuant to the ~~2023-Extended Revolving Loan Commitments and the~~ Extended Revolving Loan Commitments and such Swingline Loans shall not be so required to be repaid in full on the Initial Maturity Date.

~~(g) If the 2023 Extended Maturity Date shall have occurred at a time when Extended Revolving Loan Commitments are in effect, then on the 2023 Extended Maturity Date all then outstanding Swingline Loans shall be repaid in full on such date (and there shall be no adjustment to the participations in such Swingline Loans as a result of the occurrence of the 2023 Extended Maturity Date) or refinanced with a borrowing of an Extended Revolving Loan; provided that, if on the occurrence of the 2023 Extended Maturity Date (after giving effect to any repayments of Revolving Loans and any reallocation of Letter of Credit participations as contemplated in Section 3.07), there shall exist sufficient unutilized Extended Revolving Loan Commitments so that the respective outstanding Swingline Loans could be incurred pursuant the Extended Revolving Loan Commitments which will remain in effect after the occurrence of the 2023 Extended Maturity Date, then there shall be an automatic adjustment on such date of the participations in such Swingline Loans and same shall be deemed to have been incurred solely pursuant to the Extended Revolving Loan Commitments and such Swingline Loans shall not be so required to be repaid in full on the 2023 Extended Maturity Date.~~

2.02. Minimum Amount of Each Borrowing. The aggregate principal amount of each Borrowing of Loans of a specific Type and currency shall not be less than the Minimum Borrowing Amount applicable to Loans made in such currency and of such Type. More than one Borrowing may occur on the same date, but at no time shall there be outstanding more than ~~ten~~fifteen Borrowings of LIBOR Loans (or such greater number of Borrowings of LIBOR Loans as may be agreed to from time to time by the Administrative Agent) in the aggregate for all LIBOR Loans.

2.03. Notice of Borrowing. (a) Whenever a Borrower desires to incur (x) LIBOR Loans hereunder, such Borrower shall give the Administrative Agent written notice or telephonic notice promptly confirmed in writing to the Notice Office, which notice must be received by the Administrative Agent prior to 2:00 P.M. (New York City time) at least three Business Days' (or four Business Days' in the case of Loans denominated in Euros or an Acceptable Foreign Currency) prior to the requested date of Borrowing of each such LIBOR Loan to be incurred hereunder, and (y) Base Rate Loans hereunder (including Agent Advances, but excluding Swingline Loans and Revolving Loans made pursuant to a Mandatory Borrowing), such Borrower shall give the Administrative Agent written notice or telephonic notice promptly confirmed in writing to the Notice Office, which notice must be received by the Administrative Agent prior to 2:00 P.M. (New York City time) at least one Business Day prior to the requested date of Borrowing of each such Base Rate Loan to be incurred hereunder. Each such notice (each, a "Notice of Borrowing"), except as otherwise expressly provided in Section 2.10, shall be irrevocable and shall be in writing, or by telephone promptly confirmed in writing, in the form of Exhibit A-1, appropriately completed to specify: (i) the aggregate principal amount of the Revolving Loans to be incurred pursuant to such Borrowing (stated in the Available Currency in which such Revolving Loan is to be made), (ii) the date of such Borrowing (which shall be a Business Day), (iii) whether the Revolving Loans made pursuant to such Borrowing constitute Agent Advances (it being understood that the Administrative Agent shall be under no obligation to make such Agent Advance), (iv) in the case of U.S. Dollar Denominated Revolving Loans, whether the Revolving Loans being

incurred pursuant to such Borrowing are to be initially maintained as Base Rate Loans or, to the extent permitted hereunder, LIBOR Loans and, if LIBOR Loans, the initial Interest Period to be applicable thereto and (v) the applicable Borrowing Base at such time. Except in the case of Agent Advances, the Administrative Agent shall promptly give each Lender notice of such proposed Borrowing, of such Lender's proportionate share thereof and of the other matters required by the immediately preceding sentence to be specified in the Notice of Borrowing.

(b) (i) Whenever a Borrower desires to incur Swingline Loans hereunder, such Borrower shall give the Swingline Lender no later than 2:00 P.M. (New York City time) on the date that a Swingline Loan is to be incurred, written notice or telephonic notice promptly confirmed in writing of each Swingline Loan to be incurred hereunder. Each such notice shall be irrevocable and specify in each case (A) the date of Borrowing (which shall be a Business Day) and (B) the aggregate principal amount of the Swingline Loans to be incurred pursuant to such Borrowing.

(ii) Mandatory Borrowings shall be made upon the notice specified in Section 2.01(c), with each Borrower irrevocably agreeing, by its incurrence of any Swingline Loan or Agent Advance, to the making of the Mandatory Borrowings as set forth in Section 2.01(c).

(c) Without in any way limiting the obligation of any Borrower to confirm in writing any telephonic notice of any Borrowing or prepayment of Loans, the Administrative Agent or the Swingline Lender, as the case may be, may act without liability upon the basis of telephonic notice of such Borrowing or prepayment, as the case may be, believed by the Administrative Agent or the Swingline Lender, as the case may be, in good faith to be from an Authorized Officer of such Borrower, prior to receipt of written confirmation. In each such case, such Borrower hereby waives the right to dispute the Administrative Agent's or the Swingline Lender's record of the terms of such telephonic notice of such Borrowing or prepayment of Loans, as the case may be, absent manifest error.

2.04. Disbursement of Funds. No later than 3:00 P.M. (New York City time) on the date specified in each Notice of Borrowing (or (x) in the case of Swingline Loans, no later than 4:00 P.M. (New York City time) on the date specified pursuant to Section 2.03(b) or (y) in the case of Mandatory Borrowings, no later than 3:00 P.M. (New York City time) on the date specified in Section 2.01(c)), each Lender will make available its pro rata portion (determined in accordance with Section 2.07) of each such Borrowing requested to be made on such date (or in the case of Swingline Loans, the Swingline Lender will make available the full amount thereof). All such amounts will be made available in U.S. Dollars (in the case of Loans denominated in U.S. Dollars), in Euros (in the case of Euro Denominated Loans) or in the applicable Acceptable Foreign Currency (in the case of Foreign Currency Denominated Loans), as the case may be, and in immediately available funds at the Payment Office, and the Administrative Agent will, except in the case of Revolving Loans made pursuant to a Mandatory Borrowing or as otherwise provided in the last sentence of Section 3.05(a), make available to the relevant Borrower or Borrowers to such account as the applicable Borrower or Borrowers may specify in writing to the Administrative Agent prior to the requested Borrowing date, the aggregate of the amounts so made available by the Lenders; provided that, if, on the date of a Borrowing of Revolving Loans (other than a Mandatory Borrowing), there are Unpaid Drawings or Swingline Loans then outstanding, then the proceeds of such Borrowing shall be applied, first, to the payment in full of any such Unpaid Drawings with respect to Letters of Credit, second, to the payment in full of any such Swingline Loans, and third, to the relevant Borrower as otherwise provided above. Unless the Administrative Agent shall have been notified by any Lender prior to the date of Borrowing that such Lender does not intend to make available to the Administrative Agent such Lender's portion of any Borrowing to be made on such date, the Administrative Agent may assume that such Lender has made such amount available to the Administrative Agent on such date of Borrowing and the Administrative Agent may (but shall not be obligated to), in reliance upon such assumption, make

available to the relevant Borrower or Borrowers a corresponding amount. If such corresponding amount is not in fact made available to the Administrative Agent by such Lender, the Administrative Agent shall be entitled to recover such corresponding amount on demand from such Lender. If such Lender does not pay such corresponding amount forthwith upon the Administrative Agent's demand therefor, the Administrative Agent shall promptly notify the relevant Borrower or Borrowers, and the relevant Borrower or Borrowers shall promptly (but in any event within one Business Day) pay such corresponding amount to the Administrative Agent. The Administrative Agent also shall be entitled to recover on demand from such Lender or the relevant Borrower or Borrowers, as the case may be, interest on such corresponding amount in respect of each day from the date such corresponding amount was made available by the Administrative Agent to the relevant Borrower or Borrowers until the date such corresponding amount is recovered by the Administrative Agent, at a rate per annum equal to (i) if recovered from such Lender, the overnight Federal Funds Rate (or, in the case of Euro Denominated Loans or Foreign Currency Denominated Loans, the cost to the Administrative Agent of acquiring overnight funds in the applicable Foreign Currency) for the first three days and at the interest rate otherwise applicable to such Loans for each day thereafter and (ii) if recovered from the relevant Borrower or Borrowers, the rate of interest applicable to the respective Borrowing, as determined pursuant to Section 2.08. Nothing in this Section 2.04 shall be deemed to relieve any Lender from its obligation to make Loans hereunder or to prejudice any rights which any Borrower may have against any Lender as a result of any failure by such Lender to make Loans hereunder.

2.05. Notes. Each Borrower's obligation to pay the principal of, and interest on, the Loans made by each Lender shall be evidenced in the Register maintained by the Administrative Agent pursuant to Section ~~13.15~~13.16 and shall, if requested by such Lender, also be evidenced (i) in the case of U.S. Borrower Revolving Loans, by a promissory note duly executed and delivered by each U.S. Borrower substantially in the form of Exhibit B-1, with blanks appropriately completed in conformity herewith (each, a "U.S. Borrower Revolving Note" and, collectively, the "U.S. Borrower Revolving Notes"), (ii) in the case of Dutch Borrower Revolving Loans, by a promissory note duly executed and delivered by each Dutch Borrower substantially in the form of Exhibit B-2, with blanks appropriately completed in conformity herewith (each, a "Dutch Borrower Revolving Note" and, collectively, the "Dutch Borrower Revolving Notes") (iii) in the case of UK Borrower Revolving Loans, by a promissory note duly executed and delivered by each UK Borrower substantially in the form of Exhibit B-5, with blanks appropriately completed in conformity herewith (each, a "UK Borrower Revolving Note" and, collectively, the "UK Borrower Revolving Notes" and, together with the Dutch Borrower Revolving Notes and the U.S. Borrower Revolving Notes, the "Revolving Notes"), (iii) in the case of U.S. Borrower Swingline Loans, by a promissory note duly executed and delivered by each U.S. Borrower substantially in the form of Exhibit B-3, with blanks appropriately completed in conformity herewith (the "U.S. Borrower Swingline Note"), and (iv) in the case of Dutch Borrower Swingline Loans, by a promissory note duly executed and delivered by each Dutch Borrower substantially in the form of Exhibit B-4, with blanks appropriately completed in conformity herewith (each, a "Dutch Borrower Swingline Note" and, together with the U.S. Borrower Swingline Note, the "Swingline Notes").

(a) Each Lender will note on its internal records the amount of each Loan made by it and each payment in respect thereof and prior to any transfer of any of its Notes will endorse on the reverse side thereof the outstanding principal amount of Loans evidenced thereby. Failure to make any such notation or any error in such notation shall not affect any Borrower's obligations in respect of such Loans.

(b) Notwithstanding anything to the contrary contained above in this Section 2.05 or elsewhere in this Agreement, Notes shall only be delivered to Lenders which at any time specifically request the delivery of such Notes. No failure of any Lender to request, obtain, maintain or produce a Note evidencing its Loans to any Borrower shall affect, or in any manner impair, the obligations of any Borrower to pay the Loans (and all related Obligations) incurred by such Borrower which would

otherwise be evidenced thereby in accordance with the requirements of this Agreement, and shall not in any way affect the security or guaranties therefor provided pursuant to any Credit Document. Any Lender which does not have a Note evidencing its outstanding Loans shall in no event be required to make the notations otherwise described in preceding clause (b). At any time when any Lender requests the delivery of a Note to evidence any of its Loans, each respective Borrower shall promptly execute and deliver to the respective Lender, at such Borrower's expense, the requested Note in the appropriate amount or amounts to evidence such Loans.

2.06. Conversions. Each Borrower shall have the option to convert, on any Business Day, all or a portion equal to at least the Minimum Borrowing Amount of the outstanding principal amount of U.S. Dollar Denominated Revolving Loans made to it pursuant to one or more Borrowings of one or more Types of U.S. Dollar Denominated Revolving Loans into a Borrowing of another Type of U.S. Dollar Denominated Revolving Loan; provided that, (a) except as otherwise provided in Section 2.10(b)(c), LIBOR Loans may be converted into Base Rate Loans only on the last day of an Interest Period applicable to the Revolving Loans being converted unless the Borrowers pay any amounts due to the Lenders pursuant to Section 2.11 as a result of such conversion and no such partial conversion of LIBOR Loans shall reduce the outstanding principal amount of such LIBOR Loans made pursuant to a single Borrowing to less than the Minimum Borrowing Amount applicable thereto, (b) Base Rate Loans may not be converted into LIBOR Loans if any Event of Default is in existence on the proposed date of conversion and either the Administrative Agent or the Required Lenders have elected, upon notice to the Borrowers, to not permit such conversion in its or their sole discretion, and (c) no conversion pursuant to this Section 2.06 shall result in a greater number of Borrowings of LIBOR Loans than is permitted under Section 2.02. Each such conversion shall be effected by the relevant Borrower by giving the Administrative Agent at the Notice Office prior to 2:00 P.M. (New York City time) at least (i) in the case of conversions of Base Rate Loans into LIBOR Loans, three Business Days' (or, with respect to Loans denominated in Euros or an Acceptable Foreign Currency, four Business Days') prior written notice or telephonic notice promptly confirmed in writing and (ii) in the case of conversions of LIBOR Loans into Base Rate Loans, one Business Day's prior written notice or telephonic notice promptly confirmed in writing (each, a "Notice of Conversion/Continuation"), in each case in the form of Exhibit A-2, appropriately completed to specify the U.S. Dollar Denominated Revolving Loans to be so converted, the Borrowing or Borrowings pursuant to which such U.S. Dollar Denominated Revolving Loans were incurred and, if to be converted into LIBOR Loans, the Interest Period to be initially applicable thereto. The Administrative Agent shall give each Lender prompt notice of any such proposed conversion affecting any of its U.S. Dollar Denominated Revolving Loans.

2.07. Pro Rata Borrowings. Except to the extent otherwise provided herein, all Borrowings of Revolving Loans under this Agreement shall be incurred from the Lenders pro rata on the basis of their Revolving Loan Commitments in effect on the date of such Borrowing, provided that all Mandatory Borrowings shall be incurred from the Lenders pro rata on the basis of their RL Percentages. It is understood that no Lender shall be responsible for any default by any other Lender of its obligation to make Loans hereunder and that each Lender shall be obligated to make the Loans provided to be made by it hereunder, regardless of the failure of any other Lender to make its Loans hereunder.

2.08. Interest. (a) The U.S. Borrowers jointly and severally agree to pay interest in respect of the unpaid principal amount of each U.S. Borrower Loan ~~and~~ (y) the Dutch Borrowers jointly and severally agree to pay interest in respect of the unpaid principal amount of each Dutch Borrower Loan and (z) the UK Borrowers jointly and severally agree to pay interest in respect of the unpaid principal amount of each UK Borrower Loan, in each case as follows:

(A) in the case of a Base Rate Loan, from the date of Borrowing thereof until the earlier of (i) the maturity thereof (whether by acceleration or otherwise), repayment or



prepayment and (ii) the conversion of such Base Rate Loan to a LIBOR Loan pursuant to Section 2.06 or 2.09, as applicable, at a rate per annum which shall be equal to the sum of the relevant Applicable Margin plus the Base Rate, each as in effect from time to time; and

(B) in the case of a LIBOR Loan, from the date of Borrowing thereof until the earlier of (i) the maturity thereof (whether by acceleration or otherwise), repayment or prepayment and (ii) the conversion of such LIBOR Loan to a Base Rate Loan pursuant to Section 2.06, 2.09 or 2.10, as applicable, at a rate per annum which shall, during each Interest Period applicable thereto, be equal to the sum of the relevant Applicable Margin as in effect from time to time during such Interest Period plus the LIBO Rate for such Interest Period.

(b) Notwithstanding the foregoing, if any principal or interest on any Loan, any Letter of Credit fee or any other amount payable by a Borrower hereunder is not paid when due, whether at stated maturity, upon acceleration or otherwise, such overdue amount shall bear interest, after as well as before judgment, at a rate per annum equal to 2% in excess of the rate applicable to Base Rate Loans from time to time. Interest that accrues under this Section 2.08(b) shall be payable on demand.

(c) Accrued (and theretofore unpaid) interest shall be payable (i) in respect of each Base Rate Loan, (x) quarterly in arrears on each Quarterly Payment Date, (y) on the date of any repayment or prepayment in full of all outstanding Base Rate Loans or upon the termination of the Total Revolving Loan Commitment, and (z) at maturity (whether by acceleration or otherwise) and, after such maturity, on demand and (ii) in respect of each LIBOR Loan, (x) on the last day of each Interest Period applicable thereto and, in the case of an Interest Period in excess of three months, on each date occurring at three month intervals after the first day of such Interest Period, (y) on the date of any repayment or prepayment (on the amount repaid or prepaid), or upon the termination of the Total Revolving Loan Commitment, and (z) at maturity (whether by acceleration or otherwise) and, after such maturity, on demand.

(d) Upon each Interest Determination Date, the Administrative Agent shall determine the LIBO Rate for each Interest Period applicable to the respective LIBOR Loans and shall promptly notify the respective Borrowers and the Lenders thereof. Each such determination shall, absent manifest error, be final and conclusive and binding on all parties hereto.

2.09. Interest Periods. At the time any Borrower gives any Notice of Borrowing or Notice of Conversion/Continuation in respect of the making of, or conversion into, any LIBOR Loan (in the case of the initial Interest Period applicable thereto) or prior to 2:00 P.M. (New York City time) on the third Business Day (or with respect to any Loan denominated in Euros or an Acceptable Foreign Currency, the fourth Business Day) prior to the expiration of an Interest Period applicable to such LIBOR Loan (in the case of any subsequent Interest Period), such Borrower shall have the right to elect the interest period (each, an "Interest Period") applicable to such LIBOR Loan, which Interest Period shall, at the option of such Borrower, be (x) a one, two, three or six month period, or (y) with the consent of the Administrative Agent in its sole discretion, a period of less than one month or (z) to the extent agreed to by all Lenders, such other period; provided that (in each case):

(a) all LIBOR Loans comprising a Borrowing shall at all times have the same Interest Period;

(b) the initial Interest Period for any LIBOR Loan shall commence on the date of Borrowing of such LIBOR Loan (including the date of any conversion thereto from a Base Rate Loan) and each Interest Period occurring thereafter in respect of such LIBOR Loan shall commence on the day on which the immediately preceding Interest Period applicable thereto expires;

(c) if any Interest Period for a LIBOR Loan begins on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period, such Interest Period shall end on the last Business Day of such calendar month;

(d) if any Interest Period for a LIBOR Loan would otherwise expire on a day which is not a Business Day, such Interest Period shall expire on the next succeeding Business Day; provided, however, that if any Interest Period for a LIBOR Loan would otherwise expire on a day which is not a Business Day but is a day of the month after which no further Business Day occurs in such month, such Interest Period shall expire on the immediately preceding Business Day;

(e) no Interest Period may be selected at any time when an Event of Default is then in existence if either the Administrative Agent or the Required Lenders have elected, upon notice to the Borrowers, to not permit such selection in its or their sole discretion; and

(f) no Interest Period in respect of any Borrowing shall be selected which extends beyond the Final Maturity Date.

If by 2:00 P.M. (New York City time) on the third Business Day (or with respect to any Loan denominated in Euros or an Acceptable Foreign Currency, the fourth Business Day) prior to the expiration of any Interest Period applicable to a Borrowing of LIBOR Loans, any Borrower has failed to elect, or is not permitted to elect, a new Interest Period to be applicable to such LIBOR Loans as provided above, such Borrower shall be deemed to have elected (i) in respect of U.S. Dollar Denominated Revolving Loans to convert such LIBOR Loans into Base Rate Loans effective as of the expiration date of such current Interest Period and (ii) in respect of Loans denominated in Euros or an Acceptable Foreign Currency, a one-month Interest Period (provided that with respect to this clause (ii), if the Administrative Agent or the Required Lenders have elected not to permit the selection of an Interest Period pursuant to clause (e) above, then on the expiration of the then-applicable Interest Period, such Loans shall be repaid).

2.10. Increased Costs, Illegality, etc. (a) In the event that any Lender shall have determined (which determination shall, absent manifest error, be final and conclusive and binding upon all parties hereto but, with respect to clause (i) below, may be made only by the Administrative Agent):

(i) on any Interest Determination Date that, by reason of any changes arising after the date of this Agreement affecting the London interbank market, adequate and fair means do not exist for ascertaining the applicable interest rate on the basis provided for in the definition of LIBO Rate (including because the applicable Screen Rate is not published on a current basis); or

(ii) at any time, that such Lender shall incur increased costs or reductions in the amounts received or receivable hereunder with respect to any LIBOR Loan because of any change since the Effective Date in any applicable law or governmental rule, regulation, order, guideline or request (whether or not having the force of law) or in the interpretation or administration thereof and including the introduction of any new law or governmental rule, regulation, order, guideline or request, such as, but not limited to: (A) any change that would subject the Administrative Agent or any Lender to any taxes (except for Indemnified Taxes and Excluded Taxes) on its loans, loan principal, letters of credit, commitments or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto, (B) a change in official reserve requirements, but, in all events, excluding reserves required under Regulation D to the extent included in the computation of the LIBO Rate or (C) any change that imposes on any Lender or the London interbank market any other condition, cost or expense (other than taxes)

affecting this Agreement or Loans made by such Lender or any Letter of Credit or participation therein; or

(iii) at any time, that the making or continuance of any LIBOR Loan has been made (A) unlawful by any law or governmental rule, regulation or order, (B) impossible by compliance by any Lender in good faith with any governmental request (whether or not having force of law) or (C) impracticable as a result of a contingency occurring after the Effective Date which materially and adversely affects the London interbank market.

then, and in any such event, such Lender (or the Administrative Agent, in the case of clause (i) above) shall promptly give notice (by telephone promptly confirmed in writing) to the affected Borrowers and, except in the case of clause (i) above, to the Administrative Agent of such determination (which notice the Administrative Agent shall promptly transmit to each of the other Lenders). Thereafter (w) in the case of clause (i) above, LIBOR Loans in the affected currency shall no longer be available until such time as the Administrative Agent notifies the Company and the Lenders that the circumstances giving rise to such notice by the Administrative Agent no longer exist, and any Notice of Borrowing or Notice of Conversion/Continuation given by any Borrower to borrow, continue or convert to LIBOR Loans in the affected currency shall be deemed rescinded by such Borrower and (1) in respect of Loans in Dollars, (x) any such Loans shall be made solely as Base Rate Loans and (y) any outstanding LIBOR Loans shall convert at the end of the Interest Period applicable thereto to Base Rate Loans and (2) in respect of Loans in any currency other than Dollars, (x) any such new Loans shall not be made and (y) any outstanding Loans shall be repaid at the end of the Interest Period applicable thereto, (x) in the case of clause (ii) above, the U.S. Borrowers (jointly and severally with respect to U.S. Borrower Obligations) ~~and~~, the Dutch Borrowers (jointly and severally with respect to Dutch Borrower Obligations) and the UK Borrowers (jointly and severally with respect to UK Borrower Obligations) agree to pay to such Lender, within 10 days after the Company's receipt of such Lender's written request therefor, such additional amounts (in the form of an increased rate of, or a different method of calculating, interest or otherwise as such Lender in its reasonable discretion shall determine) as shall be required to compensate such Lender for such increased costs or reductions in amounts received or receivable hereunder (a written notice as to the additional amounts owed to such Lender, showing in reasonable detail the basis for the calculation thereof, submitted to the respective Borrower by such Lender shall, absent manifest error, be final and conclusive and binding on all the parties hereto); provided that the Borrowers shall not be required to compensate any Lender pursuant to Section 2.10(a)(ii) for any increased costs or reductions incurred more than 180 days prior to the date that such Lender notifies the Company of the change giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor; provided, further, that, if the change giving rise to such increased costs or reductions is retroactive, then the 180 day period referred to above shall be extended to include the period of retroactive effect thereof and (y) in the case of clause (iii) above, the respective Borrower or Borrowers shall take one of the actions specified in Section 2.10(b)(c) as promptly as possible and, in any event, within the time period required by law.

(b) (i) Notwithstanding anything to the contrary herein or in any other Credit Document, if a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then (x) if a Benchmark Replacement is determined in accordance with clause (a) or (b) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Credit Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Credit Document and (y) if a Benchmark Replacement is determined in accordance with clause (c) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such

Benchmark for all purposes hereunder and under any Credit Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth Business Day after the date notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Credit Document so long as the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders.

(ii) Notwithstanding anything to the contrary herein or in any other Credit Document and subject to the proviso below in this paragraph, solely with respect to a US Dollar Loan, if a Term SOFR Transition Event and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then the applicable Benchmark Replacement will replace the then-current Benchmark for all purposes hereunder or under any Credit Document in respect of such Benchmark setting and subsequent Benchmark settings, without any amendment to, or further action or consent of any other party to, this Agreement or any other Credit Document; provided that, this clause (ii) shall not be effective unless the Administrative Agent has delivered to the Lenders and the U.S. Borrower a Term SOFR Notice.

(iii) In connection with the implementation of a Benchmark Replacement, the Administrative Agent will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Credit Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Credit Document.

~~If at any time the Administrative Agent determines (which determination shall be conclusive absent manifest error) that (i) the circumstances set forth in clause (a)(i) have arisen and such circumstances are unlikely to be temporary or (ii) the circumstances set forth in clause (a)(i) have not arisen but any of (v) a prevailing market convention is emerging in respect of syndicated loans currently being executed, or existing syndicated loans with provisions similar to this paragraph are being amended, to incorporate or adopt a new benchmark interest rate to replace LIBO Rate (including the Screen Rates included in such definition), (w) the supervisor for the administrator of the applicable Screen Rate has made a public statement that the administrator of such Screen Rate is insolvent (and there is no successor administrator that will continue publication of such Screen Rate), (x) the administrator of such Screen Rate has made a public statement identifying a specific date after which such Screen Rate will permanently or indefinitely cease to be published by it (and there is no successor administrator that will continue publication of such Screen Rate), (y) the supervisor for the administrator of such Screen Rate has made a public statement identifying a specific date after which such Screen Rate will permanently or indefinitely cease to be published or (z) the supervisor for the administrator of such Screen Rate or a Governmental Authority having jurisdiction over the Administrative Agent has made a public statement identifying a specific date after which such Screen Rate may no longer be used for determining interest rates for loans, the Administrative Agent and the respective Borrower or Borrowers shall endeavor to establish an alternate rate of interest to such Screen Rate that gives due consideration to the then prevailing market convention for determining a rate of interest for syndicated loans in the United States in the applicable currency at such time, and shall enter into an amendment to this Agreement to reflect such alternate rate of interest (including any mathematical or other adjustments to the benchmark (if any) incorporated therein, but for the avoidance of doubt, such changes shall not include a reduction of the Applicable Margin (it being understood and agreed that amendments to the definition of LIBO Rate and its component definitions in accordance with the foregoing that do not have the effect of reducing the Applicable Margin shall not constitute a reduction in the Applicable Margin)); provided that, if such alternate rate of interest as so determined would be less than zero, such rate shall be deemed to be zero for the purposes of this~~

~~Agreement. Notwithstanding anything to the contrary in Section 13.12, such amendment shall become effective without any further action or consent of any other party to this Agreement so long as the Administrative Agent shall not have received, within five Business Days of the date that the Administrative Agent shall have posted such proposed amendment to all Lenders, a written notice from the Required Lenders stating that such Required Lenders object to such amendment. Until an alternate rate of interest shall be determined in accordance with this paragraph, (x) in the case of clause (i) of the first sentence of this paragraph, clause (w) of the immediately preceding paragraph shall govern and (y) in the case of clause (ii) of this paragraph (but only to the extent the applicable Screen Rate for the applicable currency and Interest Period is not available or published at such time on a current basis), the LIBO Rate shall be determined in accordance with the first proviso to the definition of LIBO Rate.~~

(iv) The Administrative Agent will promptly notify the U.S. Borrower and the Lenders of (v) any occurrence of a Benchmark Transition Event, a Term SOFR Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date, (w) the implementation of any Benchmark Replacement, (x) the effectiveness of any Benchmark Replacement Conforming Changes, (y) the removal or reinstatement of any tenor of a Benchmark pursuant to clause (b)(v) below and (z) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 2.10, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Credit Document, except, in each case, as expressly required pursuant to this Section 2.10.

(v) Notwithstanding anything to the contrary herein or in any other Credit Document, at any time (including in connection with the implementation of a Benchmark Replacement), (x) if the then-current Benchmark is a term rate (including Term SOFR or LIBO Rate) and either (1) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion or (2) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is or will be no longer representative, then the Administrative Agent may modify the definition of "Interest Period" for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (y) if a tenor that was removed pursuant to clause (x) above either (1) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (2) is not, or is no longer, subject to an announcement that it is or will no longer be representative for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may modify the definition of "Interest Period" for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(vi) Upon the U.S. Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, any Borrower may revoke any request for a Borrowing of, conversion to or continuation of LIBOR Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, either (x) the U.S. Borrower will be deemed to have converted any request for a LIBOR Loan denominated in U.S. Dollars into a request for a Borrowing of or conversion to Base Rate Loans or (y) any LIBOR Loan Borrowing denominated in any currency other than U.S. Dollars shall be ineffective. During any Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of the Base Rate based upon the then-current Benchmark or such

tenor for such Benchmark, as applicable, will not be used in any determination of the Base Rate. Furthermore, if any LIBOR Loan in any Available Currency is outstanding on the date of the U.S. Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period with respect to a Relevant Rate applicable to such LIBOR Loan, then (1) if such LIBOR Loan is denominated in U.S. Dollars, then on the last day of the Interest Period applicable to such Loan (or the next succeeding Business Day if such day is not a Business Day), such Loan shall be converted by the Administrative Agent to, and shall constitute, a Base Rate Loan denominated in U.S. Dollars on such day or (2) if such LIBOR Loan is denominated in any Available Currency (other than U.S. Dollars), then such Loan shall, on the last day of the Interest Period applicable to such Loan (or the next succeeding Business Day if such day is not a Business Day), at the applicable Borrower's election prior to such day: (A) be prepaid by such Borrower on such day or (B) be converted by the Administrative Agent to, and (subject to the remainder of this subclause (B)) shall constitute, a Base Rate Loan denominated in U.S. Dollars (in an amount equal to the U.S. Dollar Equivalent of such Available Currency) on such day (it being understood and agreed that if the applicable Borrower does not so prepay such Loan on such day by 12:00 noon, local time, the Administrative Agent is authorized to effect such conversion of such LIBOR Loan into a Base Rate Loan denominated in U.S. Dollars), and, in the case of such subclause (B), upon any subsequent implementation of a Benchmark Replacement in respect of such Available Currency pursuant to this Section 2.10, such Base Rate Loan denominated in U.S. Dollars shall then be converted by the Administrative Agent to, and shall constitute, a LIBOR Loan denominated in such original Available Currency (in an amount equal to the Available Currency Equivalent of such Available Currency) on the day of such implementation, giving effect to such Benchmark Replacement in respect of such Available Currency.

(bc) At any time that any LIBOR Loan is affected by the circumstances described in Section 2.10(a)(ii), the affected Borrower may, and in the case of a LIBOR Loan affected by the circumstances described in Section 2.10(a)(iii), such Borrower shall, either (i) if the affected LIBOR Loan is then being made initially or pursuant to a conversion, cancel such Borrowing by giving the Administrative Agent telephonic notice (confirmed in writing) on the same date that such Borrower was notified by the affected Lender or the Administrative Agent pursuant to Section 2.10(a)(ii) or (iii), (ii) in respect of a LIBOR Loan denominated in U.S. Dollars where the affected LIBOR Loan is then outstanding, upon at least three Business Days' written notice to the Administrative Agent, require the affected Lender to convert such LIBOR Loan into a Base Rate Loan; provided that, if more than one Lender is affected at any time, then all affected Lenders must be treated the same pursuant to this Section 2.10(bc) or (iii) in respect of a LIBOR Loan denominated in Euros or an Acceptable Foreign Currency, repay such Loan upon the expiration of the then-applicable Interest Period (or such earlier period as required by applicable law).

(ed) If any Lender determines that after the Effective Date the introduction of or any change in any applicable law or governmental rule, regulation, order, guideline, directive or request (whether or not having the force of law) concerning capital adequacy or liquidity, or any change in interpretation or administration thereof by the NAIC or any Governmental Authority, central bank or comparable agency, will have the effect of increasing the amount of capital or liquidity required or expected to be maintained by such Lender or any corporation controlling such Lender based on the existence of such Lender's Revolving Loan Commitment hereunder or its obligations hereunder, then the U.S. Borrowers (jointly and severally with respect to U.S. Borrower Obligations) ~~and~~ the Dutch Borrowers (jointly and severally with respect to Dutch Borrower Obligations) and the UK Borrowers (jointly and severally with respect to UK Borrower Obligations) agree to pay to such Lender, within 10 days after the Company's receipt of such Lender's written request therefor, such additional amounts as shall be required to compensate such Lender or such other corporation for the increased cost to such Lender or such other corporation or the reduction in the rate of return to such Lender or such other corporation as a result of such increase of

capital or required liquidity. In determining such additional amounts, each Lender will act reasonably and in good faith and will use averaging and attribution methods which are reasonable; provided that such Lender's determination of compensation owing under this Section 2.10(ed) shall, absent manifest error, be final and conclusive and binding on all the parties hereto. Each Lender, upon determining that any additional amounts will be payable pursuant to this Section 2.10(ed), will give prompt written notice thereof to the Company, which notice shall show in reasonable detail the basis for calculation of such additional amounts, although the failure to give any such notice shall not release or diminish the Borrowers' obligations to pay additional amounts pursuant to this Section 2.10(ed) upon the subsequent receipt of such notice; provided that the Borrowers shall not be required to compensate any Lender pursuant to this Section 2.10(ed) for any increased costs or reductions incurred more than 180 days prior to the date that such Lender notifies the Company of the change giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor; provided further, that, if the change giving rise to such increased costs or reductions is retroactive, then the 180 day period referred to above shall be extended to include the period of retroactive effect thereof.

(de) Notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, requirements and directives thereunder, issued in connection therewith or in implementation thereof, and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, in each case shall be deemed to be a change after the Effective Date in a requirement of law or governmental rule, regulation or order, regardless of the date enacted, adopted, issued or implemented (including for purposes of this Section 2.10 and Section 3.06).

(ef) Notwithstanding anything herein to the contrary, if the introduction of or any change in any applicable law or governmental rule, regulation or order shall make it unlawful for any Lender to issue, make, maintain, fund or charge interest with respect to any extension of credit to a Dutch Borrower or to give effect to its obligations as contemplated by this Agreement with respect to any extension of credit to a Dutch Borrower, then, upon written notice by such Lender (each such Lender providing such notice, an "Impacted Lender") to the Company and the Administrative Agent:

(i) the obligations of the Lenders hereunder to make extensions of credit to such Dutch Borrower shall forthwith be (x) suspended until each Impacted Lender notifies the Company and the Administrative Agent in writing that it is no longer unlawful for such Lender to issue, make, maintain, fund or charge interest with respect to any extension of credit to such Dutch Borrower or (y) to the extent required by law, cancelled;

(ii) if it shall be unlawful for any Impacted Lender to maintain or charge interest with respect to any outstanding Loan to such Dutch Borrower, such Dutch Borrower shall repay (or at its option and to the extent permitted by law, assign to the Company) (x) all outstanding Base Rate Loans made to such Dutch Borrower within three Business Days or such earlier period as required by law and (y) all outstanding LIBOR Loans made to such Dutch Borrower on the last day of the then current Interest Periods with respect to such LIBOR Loans or within such earlier period as required by law; and

(iii) if it shall be unlawful for any Impacted Lender to maintain, charge interest or hold any participation with respect to any Letter of Credit issued on behalf of such Dutch Borrower, such Dutch Borrower shall cash collateralize in a manner reasonably satisfactory to the Administrative Agent and the applicable Issuing Lender such Letter of Credit in an amount equal to 102% of such Lender's RL Percentage of the Letter of Credit Outstandings (for this purpose, using the U.S. Dollar Equivalent of amounts denominated in Euros or any Acceptable Foreign

Currency) with respect to such Letter of Credit within three Business Days or within such earlier period as required by law.

(g) Notwithstanding anything herein to the contrary, if the introduction of or any change in any applicable law or governmental rule, regulation or order shall make it unlawful for any Lender to issue, make, maintain, fund or charge interest with respect to any extension of credit to a UK Borrower or to give effect to its obligations as contemplated by this Agreement with respect to any extension of credit to a UK Borrower, then, upon written notice by such Lender (each such Lender providing such notice, an "Impacted UK Lender") to the Company and the Administrative Agent:

(i) the obligations of the Lenders hereunder to make extensions of credit to such UK Borrower shall forthwith be (x) suspended until each Impacted UK Lender notifies the Company and the Administrative Agent in writing that it is no longer unlawful for such Lender to issue, make, maintain, fund or charge interest with respect to any extension of credit to such UK Borrower or (y) to the extent required by law, cancelled;

(ii) if it shall be unlawful for any Impacted UK Lender to maintain or charge interest with respect to any outstanding Loan to such UK Borrower, such UK Borrower shall repay (or at its option and to the extent permitted by law, assign to the Company) (x) all outstanding Base Rate Loans made to such UK Borrower within three Business Days or such earlier period as required by law and (y) all outstanding LIBOR Loans made to such UK Borrower on the last day of the then current Interest Periods with respect to such LIBOR Loans or within such earlier period as required by law; and

(iii) if it shall be unlawful for any Impacted UK Lender to maintain, charge interest or hold any participation with respect to any Letter of Credit issued on behalf of such UK Borrower, such UK Borrower shall cash collateralize in a manner reasonably satisfactory to the Administrative Agent and the applicable Issuing Lender such Letter of Credit in an amount equal to 102% of such Lender's RL Percentage of the Letter of Credit Outstandings (for this purpose, using the U.S. Dollar Equivalent of amounts denominated in Euros or any Acceptable Foreign Currency) with respect to such Letter of Credit within three Business Days or within such earlier period as required by law.

(h) Notwithstanding anything herein to the contrary, if, as at December 23, 2020 this Agreement provides that the rate of interest for a Loan in Sterling is to be determined by reference to the LIBO Rate, then the Administrative Agent (acting on the instructions of the Required Lenders) and the Borrowers shall enter into negotiations in good faith with a view to agreeing the use of a replacement benchmark in relation to Sterling in place of the LIBO Rate from and including a date no later than August 13, 2021.

2.11. Compensation. The U.S. Borrowers (on a joint and several basis with respect to U.S. Borrower Obligations) ~~or~~ the Dutch Borrowers (on a joint and several basis with respect to Dutch Borrower Obligations) or the UK Borrowers (on a joint and several basis with respect to UK Borrower Obligations), as the case may be, agree to compensate each Lender, upon its written request (which request shall set forth in reasonable detail the basis for requesting such compensation), for all losses, expenses and liabilities (including any loss, expense or liability incurred by reason of the liquidation or reemployment of deposits or other funds required by such Lender to fund its LIBOR Loans but excluding loss of anticipated profits) which such Lender may sustain: (a) if for any reason (other than a default by such Lender or the Administrative Agent) a Borrowing of, or conversion from or into, LIBOR Loans by the applicable Borrower does not occur on a date specified therefor in a Notice of Borrowing or Notice of Conversion/Continuation (whether or not withdrawn by the respective Borrower or Borrowers or deemed



withdrawn pursuant to Section 2.10(a)); (b) if any prepayment or repayment (including any prepayment or repayment made pursuant to Section 2.10(~~bc~~), 2.10(~~ef~~), Section 5.01, Section 5.02 or as a result of an acceleration of the Loans pursuant to Section 11 or an assignment pursuant to Section 2.13) or conversion of any of its LIBOR Loans occurs on a date which is not the last day of an Interest Period or maturity date, as applicable, with respect thereto; (c) if any prepayment of any of its LIBOR Loans by the applicable Borrower is not made on any date specified in a notice of prepayment given by the respective Borrower or Borrowers; or (d) as a consequence of (i) any other default by the respective Borrower or Borrowers to repay LIBOR Loans when required by the terms of this Agreement or any Note held by such Lender or (ii) any election made pursuant to Section 2.10(~~bc~~).

2.12. Lending Offices and Affiliate Lenders for Loans in Available Currency.

(a) Each Lender may at any time or from time to time designate, by written notice to the Administrative Agent to the extent not already reflected on Schedule 13.03, one or more lending offices (which, for this purpose, may include Affiliates of the respective Lender) for the various Loans in the Available Currency made, and Letters of Credit participated in, by such Lender (including by designating a separate lending office (or Affiliate) to act as such with respect to such Loans and Letter of Credit Outstandings); provided that, for designations made after the Effective Date, to the extent such designation shall result in increased costs or taxes under Section 2.10, 3.06 or 5.04 in excess of those which would be charged in the absence of the designation of a different lending office (including a different Affiliate of the respective Lender), then the Borrowers shall not be obligated to pay such excess increased costs or taxes (although if such designation results in increased costs or taxes, the Borrowers shall be obligated to pay the costs and taxes which would have applied in the absence of such designation and any subsequent increased costs and taxes of the type described above resulting from changes after the date of the respective designation). Except as provided in the immediately preceding sentence, each lending office and Affiliate of any Lender designated as provided above shall, for all purposes of this Agreement and the other Credit Documents, be treated in the same manner as the respective designating Lender (and shall be entitled to all indemnities and similar provisions in respect of its acting as such hereunder).

(b) Each Lender agrees that on the occurrence of any event giving rise to the operation of Section 2.10(a)(ii) or (iii), Section 2.10(~~ed~~), Section 3.06 or Section 5.04 with respect to such Lender, it will, if requested by the Company, use reasonable efforts (subject to overall policy considerations of such Lender) to designate another lending office for any Loans or Letters of Credit affected by such event; provided that such designation is made on such terms that such Lender and its lending office suffer no economic, legal or regulatory disadvantage, with the object of avoiding the consequence of the event giving rise to the operation of such Section. Nothing in this Section 2.12(b) shall affect or postpone any of the obligations of any Borrower or the right of any Lender provided in Sections 2.10, 3.06 and 5.04.

2.13. Replacement of Lenders. (a) If any Lender becomes a Defaulting Lender or an Impacted Lender, (b) upon the occurrence of any event giving rise to the operation of Section 2.10(a)(ii) or (iii), Section 2.10(~~ed~~), Section 3.06 or Section 5.04 with respect to any Lender which results in such Lender requesting additional amounts from the Borrowers pursuant to any such Sections, (c) in the case of a refusal by a Lender to consent to a proposed change, waiver, discharge or termination with respect to this Agreement which has been approved by the Required Lenders as (and to the extent) provided in Section ~~13.12~~13.13(b) or (d) in the circumstances provided in Section 2.19(b), the Borrowers shall have the right, in accordance with Section ~~13.04~~13.05(b), to replace such Lender (the "Replaced Lender") with one or more other Eligible Transferees (collectively, the "Replacement Lender") and each of which shall be reasonably acceptable to the Administrative Agent, the Swingline Lender and each Issuing Lender; provided that:

(i) at the time of any replacement pursuant to this Section 2.13, the Replacement Lender shall enter into one or more Assignment and Assumption Agreements pursuant to Section ~~13.04~~13.05(b) (and with all fees payable pursuant to said Section ~~13.04~~13.05(b) to be paid by the Borrowers) pursuant to which the Replacement Lender shall acquire at par the entire Revolving Loan Commitment and all outstanding Revolving Loans of, and all participations in Letters of Credit and Swingline Loans by, the Replaced Lender and, in connection therewith, shall pay to (i) the Replaced Lender in respect thereof an amount equal to the sum of (A) an amount equal to the principal of, and all accrued interest on, all outstanding Revolving Loans of the respective Replaced Lender, (B) an amount equal to all Unpaid Drawings that have been funded by (and not reimbursed to) such Replaced Lender, together with all then unpaid interest with respect thereto at such time and (C) an amount equal to all accrued, but theretofore unpaid, Fees owing to the Replaced Lender pursuant to Section 4.01, (ii) each Issuing Lender an amount equal to such Replaced Lender's RL Percentage of any Unpaid Drawing relating to Letters of Credit issued by such Issuing Lender (which at such time remains an Unpaid Drawing) to the extent such amount was not theretofore funded by such Replaced Lender and (iii) the Swingline Lender an amount equal to such Replaced Lender's RL Percentage of any Mandatory Borrowing to the extent such amount was not theretofore funded by such Replaced Lender to the Swingline Lender; and

(ii) all obligations of the Borrowers then owing to the Replaced Lender (other than those specifically described in clause (i) above in respect of which the assignment purchase price has been, or is concurrently being, paid, but including all amounts, if any, owing under Section 2.11) shall be paid in full to such Replaced Lender concurrently with such replacement.

(b) Upon receipt by the Replaced Lender of all amounts required to be paid to it pursuant to this Section 2.13, if the Replaced Lender does not execute and deliver to the Administrative Agent a duly completed Assignment and Assumption Agreement necessary to reflect such replacement by the later of (a) the date on which the assignee Lender executes and delivers such Assignment and Assumption Agreement and (b) the date as of which all obligations of the Borrowers owing to such Replaced Lender relating to the Loans and participations so assigned shall be paid in full by the assignee Lender and/or the Borrowers to such Replaced Lender, then the Replaced Lender shall be deemed to have executed and delivered such Assignment and Assumption Agreement as of such later date, and any such Assignment and Assumption Agreement so executed by the Replaced Lender shall be effective for purposes of this Section 2.13 and Section ~~13.04~~13.05. Upon the execution (or deemed execution, as the case may be) of the respective Assignment and Assumption Agreement by the parties thereto, the payment of amounts referred to in clauses (i) and (ii) above, recordation of the assignment on the Register by the Administrative Agent pursuant to Section ~~13.15~~13.16 and, if so requested by the Replacement Lender, delivery to the Replacement Lender of the appropriate Note or Notes executed by the relevant Borrowers, (x) the Replacement Lender shall become a Lender hereunder and the Replaced Lender shall cease to constitute a Lender hereunder, except with respect to indemnification provisions under this Agreement (including Sections 2.10, 2.11, 3.06, 5.04, 12.06, 13.01 and ~~13.06~~13.07), which shall survive as to such Replaced Lender and (y) the RL Percentages of the Lenders shall be automatically adjusted at such time to give effect to such replacement.

(c) The benefit of the Collateral and of the Security Documents shall automatically transfer to any assignee or transferee (by way of novation or otherwise) of part or all of the obligations expressed to be secured by the Collateral. For the purpose of Article 1278 and Article 1281 of the Belgian Civil Code (and, to the extent applicable, any similar provisions of foreign law), the Administrative Agent, the Collateral Agent and the other Secured Creditors and each of the Credit Parties hereby expressly reserve the preservation of the Collateral and of the Security Documents in case of assignment, novation, amendment or any other transfer or change of the obligations expressed to be secured by the Collateral

(including, without limitation, an extension of the term or an increase of the amount of such obligations or the granting of additional credit) or of any change of any of the parties to this Agreement or any other Credit Document.

2.14. Incremental Commitments. (a) The Company shall have the right, in consultation and coordination with the Administrative Agent as to all of the matters set forth below in this Section 2.14, but without requiring the consent of the Administrative Agent or the Lenders (except, in either case, as otherwise provided in this Section 2.14), to request at any time and from time to time after the Effective Date and prior to the Final Maturity Date that one or more Lenders (and/or one or more other Persons which are Eligible Transferees and which will become Lenders) provide Incremental Commitments and, subject to the applicable terms and conditions contained in this Agreement and the relevant Incremental Commitment Agreement, make Revolving Loans and participate in Letters of Credit and Swingline Loans pursuant thereto; provided that (i) no Lender shall be obligated to provide an Incremental Commitment, and until such time, if any, as such Lender has agreed in its sole discretion to provide an Incremental Commitment and executed and delivered to the Administrative Agent, the Company and the other Borrowers an Incremental Commitment Agreement as provided in clause (b) of this Section 2.14, such Lender shall not be obligated to fund any Revolving Loans in excess of its Revolving Loan Commitment (if any) or participate in any Letters of Credit or Swingline Loans in excess of its RL Percentage, in each case, as in effect prior to giving effect to such Incremental Commitment provided pursuant to this Section 2.14 (it being understood and agreed that any Lender that does not agree to provide any such Incremental Commitment within ten Business Days after a request therefor (or such shorter period as may be provided in any such request for Incremental Commitments) shall be deemed to have declined to provide any such Incremental Commitment except to the extent such Lender thereafter executes and delivers an Incremental Commitment Agreement in accordance with the terms hereof), (ii) any Lender (including any Person which is an Eligible Transferee who will become a Lender) may so provide an Incremental Commitment without the consent of any other Lender; provided that any Lender (or Person who is an Eligible Transferee who will become a Lender) providing Incremental Commitments shall require the consent of the Administrative Agent, each Issuing Lender and the Swingline Lender (which consents shall not be unreasonably withheld, conditioned or delayed), (iii) the aggregate amount of each request (and provision therefor) for Incremental Commitments shall be in a minimum aggregate amount for all Lenders which provide an Incremental Commitment pursuant to a given Incremental Commitment Agreement pursuant to this Section 2.14 (including Persons who are Eligible Transferees and will become Lenders) of at least \$50,000,000 (or such lesser amount that is acceptable to the Administrative Agent), (iv) the aggregate amount of all Incremental Commitments permitted to be provided pursuant to this Section 2.14 after the First Amendment and Restatement Effective Date shall not exceed in the aggregate ~~\$200,000,000~~ 100,000,000, (or, if at the time of the making of Incremental Commitments pursuant to this Section 2.14, the excess of (x) the Borrowing Base at such time, minus (y) the Cash Contribution to the Borrowing Base at such time, minus (z) the Total Revolving Loan Commitments at such time (prior to giving effect to such Incremental Commitments) is greater than the amount that would otherwise be permitted by this clause (iv) at such time, such greater amount), (v) all Revolving Loans incurred pursuant to an Incremental Commitment (and all interest, fees and other amounts payable thereon) shall be Obligations under this Agreement and the other applicable Credit Documents and shall be secured by the relevant Security Documents, and guaranteed under the relevant Guaranties, on a *pari passu* basis with all other Loans (and related Obligations) secured by each relevant Security Document and guaranteed under each relevant Guaranty, and (vi) each Lender (including any Person which is an Eligible Transferee who will become a Lender) agreeing to provide an Incremental Commitment pursuant to an Incremental Commitment Agreement shall, subject to the satisfaction of the relevant conditions set forth in this Agreement, participate in Swingline Loans and Letters of Credit pursuant to Sections 2.01(b) and 3.04, respectively, and make Revolving Loans as provided in Section 2.01(a) and such Revolving Loans shall constitute Revolving Loans for all purposes of this Agreement and the other applicable Credit

Documents. The effectiveness of any Incremental Commitments shall be subject to the provisions of Section ~~13.23~~13.24.

(b) At the time of the provision of Incremental Commitments pursuant to this Section 2.14, (I) the Company, each other Borrower, each Subsidiary Guarantor, the Administrative Agent, the Swingline Lender and each Issuing Lender (if the consent of the Swingline Lender and each Issuing Lender is required pursuant to Section 2.14(a)(ii)) and each such Lender or other Eligible Transferee which agrees to provide an Incremental Commitment (each, an "Incremental Lender") shall execute and deliver to the Borrowers and the Administrative Agent an Incremental Commitment Agreement, appropriately completed (with the effectiveness of the Incremental Commitment provided therein to occur on the date set forth in such Incremental Commitment Agreement, which date in any event shall be no earlier than the date on which (i) all fees required to be paid in connection therewith at the time of such effectiveness shall have been paid, (ii) all Incremental Commitment Requirements have been satisfied, (iii) all conditions set forth in this Section 2.14 shall have been satisfied and (iv) all other conditions precedent that may be set forth in such Incremental Commitment Agreement shall have been satisfied) and (II) the Company, each other Borrower, each Subsidiary Guarantor, the Collateral Agent and each Incremental Lender (as applicable) shall execute and deliver to the Administrative Agent and the Collateral Agent such additional Security Documents and/or amendments to the Security Documents which are necessary to ensure that all Loans incurred pursuant to the Incremental Commitments are secured by each relevant Security Document (the "Incremental Security Documents"). The Administrative Agent shall promptly notify each Lender as to the effectiveness of each Incremental Commitment Agreement and, at such time, Schedule 1.01(a) shall be deemed modified to reflect the Incremental Commitments of such Incremental Lenders.

(c) It is understood and agreed that the Incremental Commitments provided by an Incremental Lender or Incremental Lenders, as the case may be, pursuant to each Incremental Commitment Agreement shall constitute part of, and be added to, the Total Revolving Loan Commitment and each Incremental Lender shall constitute a Lender for all purposes of this Agreement and each other applicable Credit Document.

(d) At the time of any provision of Incremental Commitments pursuant to this Section 2.14, each Borrower shall, in coordination with the Administrative Agent, repay outstanding Revolving Loans of certain of the Lenders, and incur additional Revolving Loans from certain other Lenders (including the Incremental Lenders), in each case to the extent necessary so that all of the Lenders participate in each outstanding Borrowing of Revolving Loans pro rata on the basis of their respective Revolving Loan Commitments (after giving effect to any increase in the Total Revolving Loan Commitment pursuant to this Section 2.14) and with the Borrowers being obligated to pay to the respective Lenders any costs of the type referred to in Section 2.11 in connection with any such repayment and/or Borrowing.

(e) At the time of any provision of Incremental Commitments pursuant to this Section 2.14, all dollar thresholds included in any determination made with respect to Excess Availability ~~and the dollar amount of the Liquidity Threshold~~ shall be increased automatically in an amount equal to the percentage by which the Incremental Commitments increase the Total Revolving Loan Commitment; ~~provided that the foregoing clause (e) shall not apply (including in respect of any Incremental Commitments incurred prior to the First Amendment Effective Date) to the dollar thresholds set forth in the definition of "Convertible Notes Maturity Default".~~

2.15. Defaulting Lenders. (a) Notwithstanding any provision of this Agreement or in the other Credit Documents to the contrary, if any Lender becomes a Defaulting Lender, then the following provisions shall apply for so long as such Lender is a Defaulting Lender and if any Swingline Loan Exposure or Letter of Credit Exposure exists at the time a Lender becomes a Defaulting Lender then:

(i) all or any part of such Swingline Loan Exposure and Letter of Credit Exposure shall be reallocated among the Lenders that are Non-Defaulting Lenders in accordance with their respective RL Percentages (calculated without regard to any Defaulting Lender's Revolving Loan Commitment) but only to the extent (x) the sum of the Individual Exposures of all Lenders that are Non-Defaulting Lenders plus such Defaulting Lender's Swingline Loan Exposure and Letter of Credit Exposure does not exceed the aggregate amount of all Non-Defaulting Lenders' Revolving Loan Commitments and (y) immediately following the reallocation to a Lender that is a Non-Defaulting Lender, the Individual Exposure of such Lender does not exceed its Revolving Loan Commitment at such time;

(ii) if the reallocation described in clause (i) above cannot, or can only partially, be effected, the applicable Borrowers shall within one Business Day following notice by the Administrative Agent (x) first, prepay such Swingline Loan Exposure and (y) second, cash collateralize in a manner reasonably satisfactory to the Administrative Agent and each applicable Issuing Lender such Defaulting Lender's Letter of Credit Exposure (after giving effect to any partial reallocation pursuant to clause (i) above) in an aggregate amount equal to 102% of such Defaulting Lender's Letter of Credit Exposure for so long as such Letter of Credit Exposure is outstanding (the "Letter of Credit Back-Stop Arrangements") (it being understood that, for purposes of clarity, (x) such requirement shall terminate as to any Defaulting Lender upon the termination of Defaulting Lender status of the applicable Lender and (y) at the request of the Company, upon a determination by the Administrative Agent or the respective Issuing Lender that there exists cash collateral in excess of 102% of such Defaulting Lender's Letter of Credit Exposure, such excess cash collateral may be returned to the applicable Borrowers so long as no Default or Event of Default then exists or would result therefrom);

(iii) if any portion of such Defaulting Lender's Letter of Credit Exposure is cash collateralized pursuant to clause (ii) above, the applicable Borrowers shall not be required to pay the Letter of Credit Fees for participation with respect to such portion of such Defaulting Lender's Letter of Credit Exposure so long as it is cash collateralized;

(iv) if the Letter of Credit Exposure of the Non-Defaulting Lenders is reallocated pursuant to this Section 2.15(a), then the Letter of Credit Fees payable to the Lenders pursuant to Section 4.01(b) shall be adjusted in accordance with such Non-Defaulting Lenders' RL Percentages (calculated without regard to any Defaulting Lender's Revolving Loan Commitment) and the Defaulting Lender shall not be entitled to any Letter of Credit Fee; and

(v) if any Defaulting Lender's Letter of Credit Exposure is neither cash collateralized nor reallocated pursuant to this Section 2.15(a), then, without prejudice to any rights or remedies of any Issuing Lender or any Lender hereunder, all Letter of Credit Fees payable under Section 4.01(b) with respect to such Defaulting Lender's Letter of Credit Exposure shall be payable to the applicable Issuing Lender until such Letter of Credit Exposure is cash collateralized and/or reallocated.

(b) Notwithstanding anything to the contrary contained in Section 2.01(a) or Section 3, so long as any Lender is a Defaulting Lender (i) the Swingline Lender shall not be required to fund any Swingline Loan and no Issuing Lender shall be required to issue, amend or increase any Letter of Credit, unless it is satisfied that the related exposure will be 100% covered by the Revolving Loan Commitments of the Non-Defaulting Lenders and/or cash collateral has been provided by the applicable Borrowers in accordance with Section 2.15(a), and (ii) participating interests in any such newly issued or increased Letter of Credit or newly made Swingline Loan shall be allocated among Lenders that are Non-Defaulting

Lenders in a manner consistent with Section 2.15(a)(i) (and Defaulting Lenders shall not participate therein).

(c) Notwithstanding anything to the contrary contained herein, in Section 5.4 of the U.S. Security Agreement, Section 5.4 of the Dutch General Security Agreement, Section 5.3 of the Dutch Inventory Security Agreement or Section 6.3 of the Dutch Receivables Security Agreement or Section 17.1 of the UK Security Agreement, any amount payable to a Defaulting Lender hereunder (whether on account of principal, interest, fees or otherwise and including any amount that would otherwise be payable to such Defaulting Lender pursuant to Section 13.02) may, in lieu of being distributed to such Defaulting Lender, be retained by the Administrative Agent in a segregated non-interest bearing account and, subject to any requirements of applicable law, be applied at such time or times as may be determined by the Administrative Agent (i) first, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder, (ii) second, pro rata, to the payment of any amounts owing by such Defaulting Lender to the Issuing Lenders or the Swingline Lender hereunder, (iii) third, to the funding of any Loan or the funding or cash collateralization of any participation in any Swingline Loan or Letter of Credit in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent, (iv) fourth, if so determined by the Administrative Agent, held in such account as cash collateral for future funding obligations of the Defaulting Lender under this Agreement, (v) fifth, to the payment of any amounts owing to the Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement, (vi) sixth, so long as no Default or Event of Default has occurred and is continuing, to the payment of any amounts owing to any Borrower as a result of any judgment of a court of competent jurisdiction obtained by the such Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement, and (vii) seventh, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if such payment is (x) a prepayment of the principal amount of any Loans or repayments of Unpaid Drawings in respect of which a Defaulting Lender has funded its participation obligations and (y) made at a time when the conditions set forth in Section 7 are satisfied or waived, such payment shall be applied solely to prepay the Loans of, and reimbursement obligations owed to, all Non-Defaulting Lenders pro rata prior to being applied to the prepayment of any Loans, or Unpaid Drawings owed to, any Defaulting Lender. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post cash collateral pursuant to this clause (c) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(d) In the event that the Administrative Agent, the Company, each Issuing Lender and the Swingline Lender each agrees that a Defaulting Lender has adequately remedied all matters that caused such Lender to be a Defaulting Lender, then (i) the Swingline Loan Exposure and Letter of Credit Exposure of the Lenders shall be readjusted to reflect the inclusion of such Lender's Revolving Loan Commitments and on such date such Lender shall purchase at par such of the Revolving Loans of the other Lenders (other than Swingline Loans) as the Administrative Agent shall determine may be necessary in order for such Lender to hold such Revolving Loans in accordance with its RL Percentage and (ii) so long as no Default or Event of Default then exists, all funds held as cash collateral pursuant to the Letter of Credit Back-Stop Arrangements shall thereafter be promptly returned to the applicable Borrowers; provided that, except to the extent otherwise expressly agreed to by the affected parties and subject to Section ~~9-15~~13.25, no change hereunder from a Defaulting Lender to a Non-Defaulting Lender will constitute a waiver or release of any claim of any party hereunder against such Defaulting Lender arising from that Lender having been a Defaulting Lender. If the Revolving Loan Commitments have been terminated, all Obligations have been paid in full and no Letters of Credit are outstanding, then all funds held as cash collateral pursuant to the Letter of Credit Back-Stop Arrangements shall thereafter be promptly returned to the applicable Borrowers.

2.16. [Reserved].

2.17. [Reserved].

2.18. The Company as Agent for Borrowers. Each Borrower hereby irrevocably appoints the Company as its agent and attorney-in-fact for all purposes under this Agreement and each other Credit Document, which appointment shall remain in full force and effect unless and until the Administrative Agent shall have received prior written notice signed by the respective appointing Borrower that such appointment has been revoked. Each Borrower hereby irrevocably appoints and authorizes the Company (i) to provide the Administrative Agent with all notices with respect to Loans and Letters of Credit obtained for the benefit of any Borrower and all other notices and instructions under this Agreement or any other Credit Document and (ii) to take such action as the Company deems appropriate on its behalf to exercise such other powers as are reasonably incidental thereto to carry out the purposes of this Agreement and the other Credit Documents. It is understood that the handling of the Credit Account and the Collateral of the respective Borrowers in a combined fashion (i.e., the U.S. Borrowers in a combined fashion ~~and~~ the Dutch Borrowers in a combined fashion and the UK Borrowers in a combined fashion), as more fully set forth herein, is done solely as an accommodation to the Borrowers in order to utilize the collective borrowing powers of the Borrowers in the most efficient and economical manner and at their request, and that the Lenders shall not incur liability to any Borrower as a result hereof. Each Borrower expects to derive benefit, directly or indirectly, from the handling of the Credit Account and the Collateral in a combined fashion since the successful operation of each Borrower is dependent on the continued successful performance of the consolidated group.

2.19. Extension of Revolving Loan Commitments. (a) Notwithstanding anything to the contrary in this Agreement, subject to the terms of this Section 2.19, the Company may extend the maturity date, and otherwise modify the terms of the Total Revolving Loan Commitment, or any portion thereof (including by increasing the interest rate or fees payable in respect of any Loans and/or Revolving Loan Commitments or any portion thereof (and related outstandings) (the "Extension") pursuant to a written offer (the "Extension Offer") made by the Company to all Lenders, in each case on a pro rata basis (based on the aggregate outstanding principal amount of the respective outstanding Revolving Loans and unfunded Revolving Loan Commitments) and on the same terms to each such Lender; ~~provided, that an Extension Offer to extend Initial Revolving Loan Commitments may be made only to Lenders holding Initial Revolving Loan Commitments to enable them to extend such commitments to the 2023 Extended Maturity Date and the provisions of this Section 2.19 shall apply to any such Extension Offer accordingly.~~ In connection with the Extension, (i) the Company will provide notification to the Administrative Agent (for distribution to the Lenders), (ii) the Swingline Lender and (iii) each Lender, acting in its sole and individual discretion, wishing to participate in the Extension shall, prior to the date (the "Notice Date") specified in the notice (which shall be at least 10 Business Days after delivery of the notice) given by the Administrative Agent to such Lender, provide the Administrative Agent with a written notice thereof in a form reasonably satisfactory to the Administrative Agent. Any Lender that does not respond to the Extension Offer by the Notice Date shall be deemed to have rejected such Extension. The Administrative Agent shall promptly notify the Company of each Lender's determination under this Section 2.19(a). The election of any Lender to agree to the Extension shall not obligate any other Lender to so agree. After giving effect to the Extension, the Revolving Loan Commitments so extended shall cease to be a part of the tranche of the Revolving Loan Commitments they were a part of immediately prior to the Extension and shall be a new tranche of Extended Revolving Loan Commitments hereunder.

(b) The Company shall have the right to replace each Lender that shall have rejected (or be deemed to have rejected) the Extension under Section 2.19(a) with, and add as "Lenders" under this Agreement in place thereof, one or more Replacement Lenders as provided in Section 2.13; provided that

each of such Replacement Lenders shall enter into an Assignment and Assumption Agreement pursuant to which such Replacement Lender shall, effective as of a closing date selected by the Administrative Agent in consultation with the Company (which shall occur on the same date as the effectiveness of the Extension as to the Lenders which have consented thereto pursuant to Section 2.19(a)), undertake the Revolving Loan Commitment of such Replaced Lender (and, if any such Replacement Lender is already a Lender, its Revolving Loan Commitment shall be in addition to such Lender's Revolving Loan Commitment hereunder on such date). Notwithstanding anything herein to the contrary, each party hereto agrees that any assignment pursuant to the terms of this Section 2.19 may be effected pursuant to an Assignment and Assumption Agreement executed by the Company, the Administrative Agent and the assignee and that the Lender making such assignment need not be a party thereto.

(c) The Extension shall be subject to the following:

(i) except as to interest rates, utilization fees, unused fees and final maturity, the Revolving Loan Commitment of any Lender extended pursuant to the Extension (the "Extended Revolving Loan Commitment"), and the related outstandings, shall be a Revolving Loan Commitment (or related outstandings, as the case may be) with the same terms as the original Revolving Loan Commitments (and related outstandings); provided that, subject to the provisions of Sections 3.07; and 2.01(f) and 2.01(g) to the extent dealing with Swingline Loans and Letters of Credit which mature or expire after the Initial ~~Maturity Date or the 2023 Extended~~ Maturity Date, all Swingline Loans and Letters of Credit shall be participated in on a pro rata basis by all Lenders with Revolving Loan Commitments and/or Extended Revolving Loan Commitments in accordance with their RL Percentages (and except as provided in Sections 3.07; and 2.01(f) and 2.01(g), without giving effect to changes thereto on the Initial Maturity Date ~~or the 2023 Extended Maturity Date, as applicable,~~ with respect to Swingline Loans and Letters of Credit theretofore incurred or issued) and all borrowings under Revolving Loan Commitments and Extended Revolving Loan Commitments and repayments thereunder shall be made on a pro rata basis (except for (x) payments of interest and fees at different rates on Extended Revolving Loan Commitments (and related outstandings) and (y) repayments required upon any Final Maturity Date of any tranche of Revolving Loan Commitments or Extended Revolving Loan Commitments);

(ii) if the aggregate principal amount of Revolving Loan Commitments in respect of which Lenders shall have accepted the Extension Offer shall exceed the maximum aggregate principal amount of Revolving Loan Commitments offered to be extended by the Company pursuant to the Extension Offer, then the Revolving Loan Commitments of such Lenders shall be extended ratably up to such maximum amount based on the respective principal amounts (but not to exceed actual holdings of record) with respect to which such Lenders have accepted the Extension Offer;

(iii) all documentation in respect of the Extension shall be consistent with the foregoing, and all written communications by the Company generally directed to the Lenders in connection therewith shall be in form consistent with the foregoing and otherwise reasonably satisfactory to the Administrative Agent; and

(iv) the Extension shall not become effective unless, on the proposed effective date of the Extension, (x) the Company shall deliver to the Administrative Agent a certificate of an Authorized Officer of each Credit Party dated the applicable date of the Extension and executed by an Authorized Officer of such Credit Party certifying and attaching the resolutions adopted by such Credit Party approving or consenting to such Extension and (y) the conditions set forth in Sections 7.01 and 7.03 shall be satisfied (with all references in such Section to any Credit Event



being deemed to be references to the Extension on the applicable date of the Extension) and the Administrative Agent shall have received a certificate to that effect dated the applicable date of the Extension and executed by an Authorized Officer of the Company.

(d) With respect to the Extension consummated by the Company pursuant to this Section 2.19, (i) the Extension shall not constitute voluntary or mandatory payments or prepayments for purposes of this Agreement (including Section 5.01, 5.02, 5.03, 13.02 or ~~13.06~~13.07), (ii) if the amount extended is less than the Maximum Letter of Credit Amount, the Maximum Letter of Credit Amount shall be reduced upon the date that is five Business Days prior to the ~~2023-Extended~~Initial Maturity Date (to the extent needed so that the Maximum Letter of Credit Amount does not exceed the aggregate Revolving Loan Commitments which would be in effect after the ~~2023-Extended~~Initial Maturity Date), and, if applicable, the Company shall cash collateralize obligations under any issued Letters of Credit with a termination date (taking into account any possible extensions thereof) later than five Business Days prior to the ~~2023-Extended~~Initial Maturity Date in an amount equal to 102% of the Stated Amount of such Letters of Credit that are in excess of the proposed reduced Maximum Letter of Credit Amount, and (iii) if the amount extended is less than the Maximum Swingline Amount, the Maximum Swingline Amount shall be reduced upon the date that is five Business Days prior to the ~~2023-Extended~~Initial Maturity Date (to the extent needed so that the Maximum Swingline Amount does not exceed the aggregate Revolving Loan Commitments which would be in effect after the ~~2023-Extended~~Initial Maturity Date), and, if applicable, the Company shall prepay any outstanding Swingline Loans in excess of the Maximum Swingline Amount that is then in effect. The Administrative Agent and the Lenders hereby consent to the Extensions and the other transactions contemplated by this Section 2.19 (including, for the avoidance of doubt, payment of any interest or fees in respect of any Extended Revolving Loan Commitments on such terms as may be set forth in the Extension Offer) and hereby waive the requirements of any provision of this Agreement (including Section 5.01, 5.02, 5.03, 13.02 or ~~13.06~~13.07) or any other Credit Document that may otherwise prohibit the Extension or any other transaction contemplated by this Section 2.19; provided that such consent shall not be deemed to be an acceptance of the Extension Offer.

(e) The Lenders hereby irrevocably authorize the Administrative Agent on behalf of all of the Lenders to enter into amendments to this Agreement and the other Credit Documents with the Credit Parties as may be necessary in order establish new tranches in respect of Revolving Loan Commitments so extended and such amendments as may be necessary in connection with the establishment of such new tranches, in each case on terms consistent with this Section 2.19 and without any requirement of additional consent by any Lender. Without limiting the foregoing, in connection with the Extension, the respective parties shall (at the expense of the Credit Parties) amend (and the Administrative Agent is hereby authorized to amend) any Credit Document that has a maturity date prior to the Extended Final Maturity Date so that such maturity date is extended to the Extended Final Maturity Date (or such later date as may be advised by local counsel to the Administrative Agent).

(f) In connection with the Extension, the Company shall provide the Administrative Agent at least 10 Business Days' (or such shorter period as may be agreed by the Administrative Agent) prior written notice thereof, and shall agree to such procedures, if any, as may be reasonably established by, or reasonably acceptable to, the Administrative Agent, in each case acting reasonably to accomplish the purposes of this Section 2.19.

~~(g) Notwithstanding anything to the contrary contained herein, any Lender with Initial Revolving Loan Commitments may agree after the Amendment and Restatement Effective Date to convert all or a portion of such Initial Revolving Loan Commitments to 2023-Extended Revolving Loan Commitments pursuant to an agreement, in form and substance reasonably satisfactory to the Administrative Agent and the Borrowers, duly executed by such Lender, the Borrowers and the Administrative Agent, without any requirement of additional consent by any other Lender. Thereafter,~~

SECTION 3. Letters of Credit.

3.01. Letters of Credit. (a) Subject to and upon the terms and conditions set forth herein, a Borrower may request that an Issuing Lender issue, at any time and from time to time on and after the Effective Date and prior to the Final Maturity Date, (i) in the case of a request for a Letter of Credit by a U.S. Borrower, for the joint and several account of the U.S. Borrowers, ~~and~~ (ii) in the case of a request for a Letter of Credit by a Dutch Borrower, for the joint and several account of the Dutch Borrowers, ~~for~~ and (iii) in the case of a request for a Letter of Credit by a UK Borrower, for the joint and several account of the UK Borrowers, for the benefit of (x) any holder (or any trustee, agent or other similar representative for any such holders) of L/C Supportable Obligations, an irrevocable standby letter of credit, in a form customarily used by such Issuing Lender or in such other form as is reasonably acceptable to such Issuing Lender, and (y) sellers of goods to the Company or any of its Subsidiaries, an irrevocable trade letter of credit, in a form customarily used by such Issuing Lender or in such other form as has been approved by such Issuing Lender (each such letter of credit, a “Letter of Credit” and, collectively, the “Letters of Credit”) (although (i) without limiting the joint and several nature of the U.S. Borrowers’ ~~or~~ the Dutch Borrowers’ of the UK Borrowers’ obligations, as the case may be, in respect of the Letters of Credit, any particular Letter of Credit may name only one or more of the U.S. Borrowers ~~or~~ the Dutch Borrowers or the UK Borrowers, as the case may be, as the applicant or obligor therein and, at the direction of such respective Borrower(s), may be issued for the benefit of, or on behalf of, one or more Wholly-Owned Subsidiaries of the Company and (ii) no Issuing Lender shall be obligated to confirm that any Letter of Credit is issued only for the benefit of a beneficiary set forth in clauses (x) or (y) above or a Wholly-Owned Subsidiary of the Company).

(b) Subject to and upon the terms and conditions set forth herein, each Issuing Lender agrees that it will, at any time and from time to time on and after the Effective Date and prior to the Final Maturity Date, following its receipt of the respective Letter of Credit Request, issue for (i) in the case of a request for a Letter of Credit by a U.S. Borrower, for the joint and several account of the U.S. Borrowers, ~~and~~ (ii) in the case of a request for a Letter of Credit by a Dutch Borrower, for the joint and several account of the Dutch Borrowers and (iii) in the case of a request for a Letter of Credit by a UK Borrower, for the joint and several account of the UK Borrowers, one or more Letters of Credit as are permitted to remain outstanding hereunder without giving rise to a Default or an Event of Default; provided that no Issuing Lender shall be under any obligation to issue trade Letters of Credit if such Issuing Lender has provided the Company notice that it is unable to issue trade Letters of Credit; provided further that no Issuing Lender shall be under any obligation to issue any Letter of Credit of the types described above if at the time of such issuance:

(i) (x) any order, judgment or decree of any Governmental Authority or arbitrator shall purport by its terms to enjoin or restrain such Issuing Lender from issuing such Letter of Credit or any requirement of law applicable to such Issuing Lender or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such Issuing Lender shall prohibit, or request that such Issuing Lender refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon such Issuing Lender with respect to such Letter of Credit any restriction or reserve or capital requirement (for which such Issuing Lender is not otherwise compensated hereunder) not in effect with respect to such Issuing Lender on the date hereof, (y) the issuance of such Letter of Credit shall contradict any internal policy of such Issuing Lender, or (z) any unreimbursed loss,

cost or expense which was not applicable or in effect with respect to such Issuing Lender as of the date hereof and which such Issuing Lender reasonably and in good faith deems material to it; or

(ii) such Issuing Lender shall have received from any Borrower, any other Credit Party or the Required Lenders prior to the issuance of such Letter of Credit notice of the type described in the second sentence of Section 3.03(b).

3.02. Maximum Letter of Credit Outstandings; Currencies; Final Maturities; Collateralized Letters of Credit. (a) Notwithstanding anything to the contrary contained in this Agreement:

(i) no Letter of Credit shall be issued (or required to be issued) if the Stated Amount of such Letter of Credit, when added to the Letter of Credit Outstandings (calculated (x) using the U.S. Dollar Equivalent of amounts denominated in Euros or any Acceptable Foreign Currency, and (y) exclusive of Unpaid Drawings which are repaid on the date of, and prior to the issuance of, the respective Letter of Credit) at such time would exceed ~~\$400,000,000~~500,000,000 (the "Maximum Letter of Credit Amount"); provided that no Issuing Lender shall be required to (but, for the avoidance of doubt, such Issuing Lender may, in its sole discretion) issue any Letter of Credit if the Stated Amount of such Letter of Credit, when added to the Letter of Credit Outstandings (calculated (1) using the U.S. Dollar Equivalent of amounts denominated in Euros or any Acceptable Foreign Currency and (2) exclusive of Unpaid Drawings which are repaid on the date of, and prior to the issuance of, the respective Letter of Credit) in respect of Letters of Credit issued by such Issuing Lender at such time would exceed of ~~\$70,000,000~~85,000,000.

(ii) no Letter of Credit shall be issued (or required to be issued) at any time when the Aggregate Exposure exceeds (or would after giving effect to such issuance exceed) the Total Revolving Loan Commitment at such time;

(iii) no Letter of Credit shall be issued (or required to be issued) for the account of a U.S. Borrower at any time when the Aggregate U.S. Borrower Exposure exceeds (or would after giving effect to such issuance exceed) the U.S. Borrowing Base at such time;

(iv) no Letter of Credit shall be issued (or required to be issued) for the account of a Dutch Borrower at any time when the Aggregate Dutch Borrower Exposure exceeds (or would after giving effect to such issuance exceed) the Dutch Borrowing Base at such time;

(v) no Letter of Credit shall be issued (or required to be issued) ~~during a Reduced Availability Period when Excess Availability is less than~~for the account of a UK Borrower at any time when the Aggregate UK Borrower Exposure exceeds (or would after giving effect to such issuance ~~be less than~~ 10% of Availability~~exceed~~) the UK Borrowing Base at such time;

(vi) each Letter of Credit issued at the request of a Borrower shall be denominated in an Available Currency; and

(vii) each Letter of Credit shall by its terms terminate on or before the earlier of (i) the date which occurs 12 months after the date of the issuance thereof or such longer period as may be acceptable to the respective Issuing Lender (although any such standby Letter of Credit may be extendible for successive periods of up to 12 months, but, in each case, not beyond the fifth Business Day prior to the latest Final Maturity Date in effect at such time, unless cash collateralized, prior to the extension of such Letter of Credit, in an amount equal to 102% of the Stated Amount of such Letter of Credit in a manner reasonably acceptable to the respective Issuing Lender) and (ii) five Business Days prior to the latest Final Maturity Date in effect at such

time, unless cash collateralized, prior to the issuance of such Letter of Credit, in an amount equal to 102% of the Stated Amount of such Letter of Credit in a manner reasonably acceptable to the respective Issuing Lender.

(b) At any time, and from time to time, upon notice to the Administrative Agent, the Company shall be permitted, if no Loans are then outstanding, to provide cash collateral in respect of any or all of the then outstanding Letters of Credit (each such Letter of Credit, a "Collateralized Letter of Credit") in an amount equal to 102% of the Stated Amount of such Letters of Credit in a manner reasonably acceptable to the Administrative Agent and the respective Issuing Lender and, solely for purposes of determining whether a Compliance Period exists at such time, the undrawn Stated Amount of such Collateralized Letters of Credit shall be excluded from the calculation of Letter of Credit Outstandings for purposes of calculating the Aggregate Exposure and Excess Availability at such time. At any time that no Default or Event of Default has occurred and is continuing, the Company may request that the cash collateral provided in respect of the Collateralized Letters of Credit be released and, upon such release, such Letters of Credit will again be included in the calculation of Letter of Credit Outstandings for all purposes of calculating the Aggregate Exposure and Excess Availability. Furthermore, to the extent that any Borrower thereafter desires to incur Loans hereunder or have additional Letters of Credit issued hereunder (or increase the Stated Amount of any then outstanding Letter of Credit) as permitted by Section 7.04, all Collateralized Letters of Credit will again be included in the calculation of Letter of Credit Outstandings for all purposes of calculating the Aggregate Exposure and Excess Availability.

3.03. Letter of Credit Requests. (a) Whenever a Borrower desires that a Letter of Credit be issued for (i) in the case of a request for a Letter of Credit by a U.S. Borrower, for the joint and several account of the U.S. Borrowers, ~~and~~ (ii) in the case of a request for a Letter of Credit by a Dutch Borrower, for the joint and several account of the Dutch Borrowers and (iii) in the case of a request for a Letter of Credit by a UK Borrower, for the joint and several account of the UK Borrowers, such Borrower shall give the respective Issuing Lender (with a copy to the Administrative Agent) at least two Business Days' (or such shorter period as is acceptable to such Issuing Lender) written notice thereof (including by way of facsimile or electronic mail). Each notice shall be in the form of Exhibit C, appropriately completed (each, a "Letter of Credit Request"), and shall be accompanied by the respective Issuing Lender's customary application and documentation, if any, to the extent required by such Issuing Lender.

(b) The making of each Letter of Credit Request shall be deemed to be a representation and warranty by such requesting Borrower to the Lenders that such Letter of Credit may be issued in accordance with, and will not violate the requirements of, Section 3.02 or 3.03. Unless the respective Issuing Lender has received notice from the Administrative Agent, any Borrower, any other Credit Party or the Required Lenders before it issues a Letter of Credit that one or more of the conditions specified in Section 6 or 7 are not then satisfied, or that the issuance of such Letter of Credit would violate Section 3.02 or 3.03, then such Issuing Lender shall, subject to the terms and conditions of this Agreement, issue the requested Letter of Credit for the account of such Borrower in accordance with such Issuing Lender's usual and customary practices. Upon the issuance of or modification or amendment to any standby Letter of Credit, each Issuing Lender shall promptly notify the Borrower to be named as account party therein and the Administrative Agent, in writing of such issuance, modification or amendment and such notice shall be accompanied by a copy of such Letter of Credit or the respective modification or amendment thereto, as the case may be. Promptly after receipt of such notice the Administrative Agent shall notify the Participants, in writing, of such issuance, modification or amendment. On the first Business Day of each week, each Issuing Lender shall furnish the Administrative Agent with a written (including via facsimile) report of the daily aggregate outstandings of trade Letters of Credit issued by such Issuing Lender for the immediately preceding week.

3.04. Letter of Credit Participations. (a) Immediately upon the issuance by an Issuing Lender of any Letter of Credit, such Issuing Lender shall be deemed to have sold and transferred to each Lender, and each such Lender (in its capacity under this Section 3.04, a "Participant") shall be deemed irrevocably and unconditionally to have purchased and received from such Issuing Lender, without recourse or warranty, an undivided interest and participation, to the extent of such Participant's RL Percentage, in such Letter of Credit, each drawing or payment made thereunder and the obligations of the U.S. Borrowers ~~or~~ the Dutch Borrowers or the UK Borrowers, as the case may be, under this Agreement with respect thereto, and any security therefor or guaranty pertaining thereto. Upon any change in the Revolving Loan Commitments or RL Percentages of the Lenders pursuant to Section 2.13, 2.14, 2.15 or ~~13.04~~13.05(b), it is hereby agreed that, with respect to all outstanding Letters of Credit and Unpaid Drawings relating thereto, there shall be an automatic adjustment to the participations pursuant to this Section 3.04 to reflect the new RL Percentages of the assignor and assignee Lender, as the case may be.

(b) In determining whether to pay under any Letter of Credit, no Issuing Lender shall have any obligation relative to the other Lenders other than to confirm that any documents required to be delivered under such Letter of Credit appear to have been delivered and that they appear to substantially comply on their face with the requirements of such Letter of Credit. Any action taken or omitted to be taken by an Issuing Lender under or in connection with any Letter of Credit issued by it shall not create for such Issuing Lender any resulting liability to any Borrower, any other Credit Party, any Lender or any other Person unless such action is taken or omitted to be taken with gross negligence or willful misconduct on the part of such Issuing Lender (as determined by a court of competent jurisdiction in a final and non-appealable decision).

(c) In the event that an Issuing Lender makes any payment under any Letter of Credit issued by it and the U.S. Borrowers ~~or~~ the Dutch Borrowers or the UK Borrowers, as applicable, shall not have reimbursed such amount in full to such Issuing Lender pursuant to Section 3.05(a), such Issuing Lender shall promptly notify the Administrative Agent, which shall promptly notify each Participant of such failure, and each Participant shall promptly and unconditionally pay to such Issuing Lender the amount of such Participant's RL Percentage of such unreimbursed payment in U.S. Dollars (or, in the case of any unreimbursed payment made in Euros or an Acceptable Foreign Currency, such currency) and in same day funds. If the Administrative Agent so notifies, prior to 2:00 P.M. (New York City time) on any Business Day, any Participant required to fund a payment under a Letter of Credit, such Participant shall make available to the respective Issuing Lender in U.S. Dollars (or, in the case of any unreimbursed payment made in Euros or an Acceptable Foreign Currency, such currency) such Participant's RL Percentage of the amount of such payment on such Business Day in same day funds. If and to the extent such Participant shall not have so made its RL Percentage of the amount of such payment available to the respective Issuing Lender, such Participant agrees to pay to such Issuing Lender, forthwith on demand such amount, together with interest thereon, for each day from such date until the date such amount is paid to such Issuing Lender at the overnight Federal Funds Rate (or, in the case of any unreimbursed payment made in a currency other than U.S. Dollars, at the respective Issuing Lender's customary rate for interbank advances) for the first three days and at the interest rate applicable to U.S. Dollar Denominated Revolving Loans that are maintained as Base Rate Loans for each day thereafter. The failure of any Participant to make available to an Issuing Lender its RL Percentage of any payment under any Letter of Credit issued by such Issuing Lender shall not relieve any other Participant of its obligation hereunder to make available to such Issuing Lender its RL Percentage of any payment under any Letter of Credit on the date required, as specified above, but no Participant shall be responsible for the failure of any other Participant to make available to such Issuing Lender such other Participant's RL Percentage of any such payment.

(d) Whenever an Issuing Lender receives a payment of a reimbursement obligation as to which it has received any payments from the Participants pursuant to clause (c) above, such Issuing

Lender shall pay to each such Participant which has paid its RL Percentage thereof, in U.S. Dollars (or, in the case of any unreimbursed payment made in Euros or an Acceptable Foreign Currency, such currency) and in same day funds, an amount equal to such Participant's share (based upon the proportionate aggregate amount originally funded by such Participant to the aggregate amount funded by all Participants) of the principal amount of such reimbursement obligation and interest thereon accruing after the purchase of the respective participations.

(e) Upon the request of any Participant, each Issuing Lender shall furnish to such Participant copies of any standby Letter of Credit issued by it and such other documentation as may reasonably be requested by such Participant.

(f) The obligations of the Participants to make payments to each Issuing Lender with respect to Letters of Credit shall be irrevocable and not subject to any qualification or exception whatsoever and shall be made in accordance with the terms and conditions of this Agreement under all circumstances, including any of the following circumstances:

(i) any lack of validity or enforceability of this Agreement or any of the other Credit Documents;

(ii) the existence of any claim, setoff, defense or other right which the Company or any of its Subsidiaries may have at any time against a beneficiary named in a Letter of Credit, any transferee of any Letter of Credit (or any Person for whom any such transferee may be acting), the Administrative Agent, any Participant, or any other Person, whether in connection with this Agreement, any Letter of Credit, the transactions contemplated herein or any unrelated transactions (including any underlying transaction between the Company or any Subsidiary of the Company and the beneficiary named in any such Letter of Credit);

(iii) any draft, certificate or any other document presented under any Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect;

(iv) the surrender or impairment of any security for the performance or observance of any of the terms of any of the Credit Documents; or

(v) the occurrence of any Default or Event of Default, or the failure of any of the other conditions specified in Section 6 or 7 to be satisfied.

3.05. Agreement to Repay Letter of Credit Drawings. (a) (i) Each U.S. Borrower, in the case of a Letter of Credit issued for the account of a U.S. Borrower, hereby jointly and severally agrees, ~~and~~ (ii) each Dutch Borrower, in the case of a Letter of Credit issued for the account of a Dutch Borrower and (iii) each UK Borrower, in the case of a Letter of Credit issued for the account of a UK Borrower, hereby jointly and severally agrees, in each case, to reimburse each Issuing Lender, by making payment to the Administrative Agent, for the account of the applicable Issuing Bank, in U.S. Dollars (or, in the case of any unreimbursed payment made in Euros or an Acceptable Foreign Currency, such currency) in immediately available funds at the Payment Office, for any payment or disbursement made by such Issuing Lender under any Letter of Credit issued by it for the account of any U.S. Borrower ~~or~~, any Dutch Borrower or any UK Borrower, as applicable (each such amount, so paid until reimbursed by such U.S. Borrower ~~or~~, such Dutch Borrower or such UK Borrower, as applicable, an "Unpaid Drawing"), not later than one Business Day following receipt by any U.S. Borrower ~~or~~, any Dutch Borrower or any UK Borrower, as the case may be, of notice of such payment or disbursement (provided that no such notice shall be required to be given if a Default or an Event of Default under Section 11.05 shall have occurred

and be continuing, in which case the Unpaid Drawing shall be due and payable immediately without presentment, demand, protest or notice of any kind (all of which are hereby waived by the Borrowers to the extent permitted by applicable law)), with interest on the amount so paid or disbursed by such Issuing Lender, to the extent not reimbursed prior to 2:00 P.M. (New York City time) on the date of such payment or disbursement from and including the date paid or disbursed to but excluding the date such Issuing Lender was reimbursed by any U.S. Borrower ~~or~~ any Dutch Borrower or any UK Borrower, as applicable, at a rate per annum equal to the Base Rate as in effect from time to time plus the Applicable Margin as in effect from time to time for U.S. Dollar Denominated Revolving Loans that are maintained as Base Rate Loans; provided, however, to the extent such amounts are not reimbursed prior to 2:00 P.M. (New York City time) on the third Business Day following the receipt by any U.S. Borrower ~~or~~ any Dutch Borrower or any UK Borrower, as applicable, of notice of such payment or disbursement or following the occurrence of a Default or an Event of Default under Section 11.05, interest shall thereafter accrue on the amounts so paid or disbursed by such Issuing Lender (and until reimbursed by any U.S. Borrower ~~or~~ any Dutch Borrower or UK Borrower, as applicable) at a rate per annum equal to the Base Rate as in effect from time to time plus the Applicable Margin for U.S. Dollar Denominated Revolving Loans that are maintained as Base Rate Loans as in effect from time to time plus 2%, with such interest to be payable on demand. Amounts paid to the Administrative Agent in accordance with the immediately preceding sentence shall be promptly disbursed to the applicable Issuing Lender. Each Issuing Lender shall give the applicable U.S. Borrowers ~~or~~ Dutch Borrowers or UK Borrowers, as the case may be, prompt written notice of each Drawing under any Letter of Credit issued by it for the account of such U.S. Borrowers ~~or~~ Dutch Borrowers or UK Borrowers, as the case may be; provided that the failure to give any such notice shall in no way affect, impair or diminish the obligations of any such Borrower to reimburse such Unpaid Drawing. Each Drawing under any Letter of Credit shall (unless (x) the Company notifies the Administrative Agent in writing to the contrary, (y) the Borrowers are unable to satisfy the conditions precedent to the making of Revolving Loans set forth in Section 7, or (z) (i) with respect to Drawings under Letters of Credit issued for the account of any U.S. Borrower, the Aggregate U.S. Borrower Exposure at such time exceeds 100% (or, during an Agent Advance Period, 105%) of the U.S. Borrowing Base at such time, (ii) with respect to Drawings under Letters of Credit issued for the account of any Dutch Borrower, the Aggregate Dutch Borrower Exposure at such time exceeds ~~the~~ 100% (or, during an Agent Advance Period, 105%) of the Dutch Borrowing Base at such time, (iii) with respect to Drawing under Letters of Credit issued for the account of any UK Borrower, the Aggregate UK Borrower Exposure at such time exceeds 100% (or, during an Agent Advance Period, 105%) of the UK Borrower Base at such time or (iv) the Aggregate Exposure at such time exceeds the Total Revolving Loan Commitment at such ~~time or (iv) during a Reduced Availability Period, Excess Availability is less than 10% of Availability at such~~ time, in which case the procedures specified above in this Section 3.05 and in Section 3.04 for funding by the Participants shall apply) constitute a request by the applicable Borrower to the Administrative Agent for a Borrowing of Revolving Loans pursuant to Section 2.03(a) constituting Base Rate Loans (or, at the option of the Administrative Agent and the Swingline Lender in their sole discretion, a Borrowing of Swingline Loans pursuant to Section 2.03(b)) in the amount of such Drawing, and the date with respect to such Borrowing shall be the date of payment of the relevant Drawing (it being understood that, in each such case, the Administrative Agent shall notify the Lenders (or the Swingline Lender, as applicable) thereof and the Lenders (or the Swingline Lender, as applicable) shall make available to the Administrative Agent their pro rata portion of such Borrowing (or, in the case of Swingline Loans, the Swingline Lender will make available the full amount thereof) and the proceeds thereof shall be applied to reimburse the respective Issuing Lender for such Drawing).

(b) The joint and several obligations of the U.S. Borrowers, in the case of a Letter of Credit issued for the account of a U.S. Borrower, ~~or~~ the Dutch Borrowers, in the case of a Letter of Credit issued for the account of a Dutch Borrower or the UK Borrowers, in the case of a Letter of Credit issued for the account of a UK Borrower, as the case may be, under this Section 3.05 to reimburse each Issuing Lender with respect to drafts, demands and other presentations for payment under Letters of Credit issued by it

(each, a “Drawing”) (including, in each case, interest thereon) shall be absolute and unconditional under any and all circumstances and irrespective of any setoff, counterclaim or defense to payment which the Company, any other Borrower or any other Subsidiary of the Company may have or have had against any Lender (including in its capacity as an Issuing Lender or as a Participant), including any defense based upon the failure of any drawing under a Letter of Credit to conform to the terms of the Letter of Credit or any nonapplication or misapplication by the beneficiary of the proceeds of such Drawing; provided that the foregoing shall not be construed to excuse the Issuing Lender from liability to the Borrower to the extent of any direct damages (as opposed to special, indirect, consequential or punitive damages, claims in respect of which are hereby waived by the Borrower to the extent permitted by applicable law) suffered by the Borrower that are caused by the Issuing Lender's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof.

(c) If any Lender becomes a Defaulting Lender at any time that any Letter of Credit is outstanding, the U.S. Borrowers ~~or~~ the Dutch Borrowers or the UK Borrowers, as applicable, shall enter into Letter of Credit Back-Stop Arrangements with the relevant Issuing Lender or Issuing Lenders no later than two Business Days after the date such Lender becomes a Defaulting Lender to the extent required by Section 2.15(a).

3.06. Increased Costs. If at any time after the Effective Date, the introduction of or any change in any applicable law, rule, regulation, order, guideline or request or in the interpretation or administration thereof by the NAIC or any Governmental Authority charged with the interpretation or administration thereof, or compliance by any Issuing Lender or any Participant with any request or directive by the NAIC or by any such Governmental Authority (whether or not having the force of law), shall either (a) impose, modify or make applicable any reserve, deposit, capital adequacy, liquidity or similar requirement against letters of credit issued by any Issuing Lender or participated in by any Participant, or (b) impose on any Issuing Lender or any Participant any other conditions relating, directly or indirectly, to this Agreement or any Letter of Credit; and the result of any of the foregoing is to increase the cost to any Issuing Lender or any Participant of issuing, maintaining or participating in any Letter of Credit, or reduce the amount of any sum received or receivable by any Issuing Lender or any Participant hereunder or reduce the rate of return on its capital with respect to Letters of Credit (except for Indemnified Taxes and Excluded Taxes), then, within 10 days after the delivery of the certificate referred to below to the Borrowers by any Issuing Lender or any Participant (a copy of which certificate shall be sent by such Issuing Lender or such Participant to the Administrative Agent), the U.S. Borrowers (jointly and severally with respect to U.S. Borrower Obligations) ~~and~~ the Dutch Borrowers (jointly and severally with respect to Dutch Borrower Obligations) and the UK Borrowers (jointly and severally with respect to UK Borrower Obligations) agree to pay to such Issuing Lender or such Participant such additional amount or amounts as will compensate such Issuing Lender or such Participant for such increased cost or reduction in the amount receivable or reduction on the rate of return on its capital. Any Issuing Lender or any Participant, upon determining that any additional amounts will be payable to it pursuant to this Section 3.06, will give prompt written notice thereof to the Borrowers, which notice shall include a certificate submitted to the Borrowers by such Issuing Lender or such Participant (a copy of which certificate shall be sent by such Issuing Lender or such Participant to the Administrative Agent), setting forth in reasonable detail the basis for the calculation of such additional amount or amounts necessary to compensate such Issuing Lender or such Participant; provided that the Borrowers shall not be required to compensate any Issuing Lender or Participant pursuant to this Section 3.06 for any increased costs or reductions incurred more than 180 days prior to the date that such Issuing Lender or Participant notifies the Company of the change giving rise to such increased costs or reductions and of such Issuing Lender's or Participant's intention to claim compensation therefor; provided, further, that, if the change giving rise to such increased costs or reductions is retroactive, then the 180 day period referred to above shall be extended to include the period of retroactive effect thereof. The certificate required to be delivered



pursuant to this Section 3.06 shall, absent manifest error, be final and conclusive and binding on the Borrowers.

~~3.07. Extended Revolving Loan Commitments. (a) (i) On the Initial Maturity Date, Letters of Credit shall automatically be deemed to have been issued (including for purposes of the obligations of the Lenders to purchase participations therein and to make payments in respect thereof pursuant to Sections 3.04 and 3.05) under (and ratably participated in by Lenders under the applicable tranche pursuant to) the outstanding 2023 Extended Revolving Loan Commitments and any Extended Revolving Loan Commitments up to an aggregate amount not to exceed the aggregate principal amount of the unutilized 2023 Extended Revolving Loan Commitments and the Extended Revolving Loan Commitments at such time (it being understood that no partial face amount of any Letter of Credit may be so reallocated).~~

3.07. Extended Revolving Loan Commitments. (ia) If the ~~2023 Extended~~Initial Maturity Date shall have occurred at a time when Extended Revolving Loan Commitments are in effect, then such Letters of Credit shall automatically be deemed to have been issued (including for purposes of the obligations of the Lenders to purchase participations therein and to make payments in respect thereof pursuant to Sections 3.04 and 3.05) under (and ratably participated in by Lenders under the applicable tranche pursuant to) the Extended Revolving Loan Commitments up to an aggregate amount not to exceed the aggregate principal amount of the unutilized Extended Revolving Loan Commitments thereunder at such time (it being understood that no partial face amount of any Letter of Credit may be so reallocated).

(b) To the extent not reallocated pursuant to clause (a) of this Section 3.07, but without limiting the obligations with respect thereto, the applicable Borrower shall either (i) provide cash collateral with respect to such Letters of Credit on the Initial Maturity Date ~~or the 2023 Extended Maturity Date, as applicable,~~ in accordance with Section 3.02(b) or (ii) enter into backstop arrangements reasonably acceptable to the applicable Issuing Lender. If, for any reason, such cash collateral is not provided, such backstop arrangements are not entered into and the reallocation does not occur, the Lenders under the maturing tranche shall continue to be responsible for their participating interests in the Letters of Credit; provided that, notwithstanding anything to the contrary contained herein, (A) the continuing participations of the Lenders under the maturing tranche shall be included in the calculation of the Required Lenders (with each such Lender being deemed to have a Revolving Loan Commitment in the amount of such continued participation) and (B) upon any subsequent repayment of the Loans, the reallocation set forth in Section 3.07(a) shall automatically and concurrently occur to the extent of such repayment.

(c) Except to the extent of reallocations of participations pursuant to Section 3.07(a), the occurrence of the Initial ~~Maturity Date and the 2023 Extended~~Maturity Date shall have no effect upon (and shall not diminish) the percentage participations of the Lenders under the Revolving Loan Commitments in any Letter of Credit issued before the Initial Maturity Date ~~or the 2023 Extended Maturity Date.~~

3.08. Conflict. In the event of any conflict between the terms hereof and the terms of any Letter of Credit application required by an Issuing Lender (or any other document, agreement and instrument entered into by an Issuing Lender and any Borrower or in favor of an Issuing Lender and relating to any such Letter of Credit) or if such application, document, agreement or instrument imposes materially more burdensome representations or covenants than those contained in Section 8, 9 or 10, the terms hereof shall control.

SECTION 4. Commitment Commission; Fees; Reductions of Commitment.

4.01. Fees. (a) The U.S. Borrowers jointly and severally agree to pay to the Administrative Agent for distribution to each Non-Defaulting Lender a commitment commission (the "Commitment Commission") for the period from and including the Effective Date to but excluding the Final Maturity Date (or such earlier date on which the Total Revolving Loan Commitment has been terminated) computed at a rate per annum equal to the Commitment Commission Percentage of the Unutilized Revolving Loan Commitment of such Non-Defaulting Lender as in effect from time to time. Accrued Commitment Commission shall be due and payable quarterly in arrears on each Quarterly Payment Date and on the date upon which the Total Revolving Loan Commitment is terminated.

(b) (i) Each U.S. Borrower, in the case of the Letters of Credit issued for the account of a U.S. Borrower, hereby jointly and severally agrees, ~~and~~ (ii) each Dutch Borrower, in the case of the Letters of Credit issued for the account of a Dutch Borrower, hereby jointly and severally agrees; and (iii) each UK Borrower, in the case of Letters of Credit issued for the account of a UK Borrower, hereby jointly and severally agrees, in each case, to pay to the Administrative Agent for distribution to each Lender (based on each such Lender's respective RL Percentage) a fee in respect of each Letter of Credit issued for the account of such U.S. Borrower ~~or~~, such Dutch Borrower or such UK Borrower, as applicable (the "Letter of Credit Fee"), for the period from and including the date of issuance of such Letter of Credit to and including the date of termination or expiration of such Letter of Credit, computed at a rate per annum equal to the Applicable Margin as in effect from time to time during such period with respect to Revolving Loans that are maintained as LIBOR Loans (whether or not any such Revolving Loans are outstanding at such time) on the daily Stated Amount of each such Letter of Credit. Accrued Letter of Credit Fees shall be due and payable quarterly in arrears on each Quarterly Payment Date and on the first day on or after the termination of the Total Revolving Loan Commitment upon which no Letters of Credit remain outstanding.

(c) (i) Each U.S. Borrower, in the case of the Letters of Credit issued for the account of a U.S. Borrower, hereby jointly and severally agrees, ~~and~~ (ii) each Dutch Borrower, in the case of the Letters of Credit issued for the account of a Dutch Borrower, hereby jointly and severally agrees; and (iii) each UK Borrower, in the case of Letters of Credit issued for the account of a UK Borrower, hereby jointly and severally agrees, in each case, to pay to each Issuing Lender, for its own account, a facing fee in respect of each Letter of Credit issued by such Issuing Lender for the account of the applicable Borrower (the "Facing Fee") for the period from and including the date of issuance of such Letter of Credit to and including the date of termination or expiration of such Letter of Credit, computed at a rate per annum equal to 1/8 of 1% on the daily Stated Amount of such Letter of Credit (but in no event less than \$500 per annum for each Letter of Credit). Accrued Facing Fees shall be due and payable quarterly in arrears on each Quarterly Payment Date and upon the first day on or after the termination of the Total Revolving Loan Commitment, upon which no Letters of Credit remain outstanding.

(d) (i) Each U.S. Borrower, in the case of the Letters of Credit issued for the account of a U.S. Borrower, hereby jointly and severally agrees, ~~and~~ (ii) each Dutch Borrower, in the case of the Letters of Credit issued for the account of a Dutch Borrower, hereby jointly and severally agrees; and (iii) each UK Borrower, in the case of Letters of Credit issued for the account of a UK Borrower, hereby jointly and severally agrees, in each case, to pay to each Issuing Lender, for its own account, upon each payment under, issuance of, or amendment to, any Letter of Credit issued by it for the account of such U.S. Borrower ~~or~~, such Dutch Borrower or such UK Borrower, as applicable, such amount as shall at the time of such event be the administrative charge and the reasonable expenses which such Issuing Lender is generally imposing in connection with such occurrence with respect to letters of credit.

(e) The applicable Borrowers agree to pay to each Agent such fees as may have been, or are hereafter, agreed to in writing from time to time by the Company or any of its Subsidiaries and such Agent on the basis and to the extent set forth therein.

4.02. Voluntary Termination of Revolving Loan Commitments. (a) Upon at least three Business Days' prior written notice to the Administrative Agent at the Notice Office (which notice the Administrative Agent shall promptly transmit to each of the Lenders), the Borrowers shall have the right, subject to the requirements of Section 5.02(a), at any time or from time to time, without premium or penalty to terminate the Total Revolving Loan Commitment in whole, or reduce it in part, pursuant to this Section 4.02(a), in an integral multiple of \$10,000,000 in the case of partial reductions to the Total Revolving Loan Commitment; provided that (i) each such reduction shall apply proportionately to permanently reduce the Revolving Loan Commitment of each Lender and (ii) in the case of any partial reduction, after giving effect to such reduction (x) the aggregate amount of the Letter of Credit Outstandings shall not exceed the Maximum Letter of Credit Amount (for this purpose, using the U.S. Dollar Equivalent of amounts denominated in Euros or any Acceptable Foreign Currency) and (y) the aggregate principal amount of Swingline Loans then outstanding shall not exceed the Maximum Swingline Amount and (iii) in the case of any termination of the Total Revolving Loan Commitment in whole, the applicable Borrower or Borrowers shall have provided cash collateral to the respective Issuing Lender or Lenders in an amount equal to 102% of the undrawn Stated Amount of all outstanding Letters of Credit in a manner reasonably acceptable to the respective Issuing Lender. Any such notice of termination delivered in connection with a refinancing of all or part of this Agreement or any other transaction may be, if so expressly stated to be, conditional upon the consummation of such refinancing or other transaction and may be revoked by the Borrowers in the event such refinancing or other transaction is not consummated.

(b) In the event of refusals by a Lender to consent to certain proposed changes, waivers, discharges or terminations with respect to this Agreement which have been approved by the Required Lenders as (and to the extent) provided in Section ~~13.12~~13.13(b), the Borrowers shall have the right, subject to obtaining the consents required by Section ~~13.12~~13.13(b) with the express written consent of the Required Lenders, upon three Business Days' prior written notice to the Administrative Agent at the Notice Office (which notice the Administrative Agent shall promptly transmit to each of the Lenders), to terminate the entire Revolving Loan Commitment of such Lender, so long as all Loans, together with accrued and unpaid interest, Fees and all other amounts, owing to such Lender (including all amounts, if any, owing pursuant to Section 2.11) are repaid concurrently with the effectiveness of such termination (at which time Schedule 1.01(a) shall be deemed modified to reflect such changed amounts) and such Lender's RL Percentage of all outstanding Letters of Credit is cash collateralized in a manner reasonably satisfactory to the Administrative Agent and the respective Issuing Lenders for so long as such Letter of Credit Exposure is outstanding (it being understood that, for purposes of clarity, at the request of the Company, upon a determination by the Administrative Agent or the respective Issuing Lenders that there exists cash collateral in excess of such Lender's RL Percentage of such Letter of Credit Exposure, such excess cash collateral may be returned to the applicable Borrowers so long as no Default or Event of Default then exists or would result therefrom), and at such time such Lender shall no longer constitute a "Lender" for purposes of this Agreement, except with respect to indemnifications under this Agreement (including Sections 2.10, 2.11, 3.06, 5.04, 12.06, 13.01 and ~~13.06~~13.07), which shall survive as to such repaid Lender.

4.03. Mandatory Reduction of Commitments. The Revolving Loan Commitment of each Lender shall terminate in its entirety upon the Final Maturity Date applicable thereto.

SECTION 5. Prepayments; Payments; Taxes.

5.01. Voluntary Prepayments. (a) Each Borrower shall have the right to prepay the Loans made to such Borrower, without premium or penalty, in whole or in part at any time and from time to time on the following terms and conditions: (i) such Borrower shall give the Administrative Agent prior to 1:00 P.M. (New York City time) at the Notice Office (A) at least one Business Day's prior written notice (or telephonic notice promptly confirmed in writing) of its intent to prepay Base Rate Loans (or same day notice in the case of a prepayment of Swingline Loans) and (B) at least three Business Days' prior written notice (or telephonic notice promptly confirmed in writing) of its intent to prepay LIBOR Loans, which notice (in each case) shall specify whether Revolving Loans or Swingline Loans shall be prepaid, the amount of such prepayment and the Types of Loans to be prepaid and, in the case of LIBOR Loans, the specific Borrowing or Borrowings pursuant to which such LIBOR Loans were made, and which notice the Administrative Agent shall, except in the case of a prepayment of Swingline Loans, promptly transmit to each of the Lenders; (ii) (x) each partial prepayment of Revolving Loans pursuant to this Section 5.01(a) shall be in an aggregate principal amount of at least \$250,000 (or the U.S. Dollar Equivalent thereof in the case of Euro Denominated Loans or Foreign Currency Denominated Loans or, in each case, such lesser amount as is acceptable to the Administrative Agent) and (y) each partial prepayment of Swingline Loans pursuant to this Section 5.01(a) shall be in an aggregate principal amount of at least \$100,000 (or such lesser amount as is acceptable to the Administrative Agent in any given case); provided that if any partial prepayment of LIBOR Loans made pursuant to any Borrowing shall reduce the outstanding principal amount of LIBOR Loans made pursuant to such Borrowing to an amount less than the Minimum Borrowing Amount applicable thereto, then such Borrowing may not be continued as a Borrowing of LIBOR Loans (and same shall automatically be converted into a Borrowing of Base Rate Loans) and any election of an Interest Period with respect thereto given by the applicable Borrower shall have no force or effect; and (iii) each prepayment pursuant to this Section 5.01(a) in respect of any Revolving Loans made pursuant to a Borrowing shall be applied pro rata among such Revolving Loans; provided that at the Borrower's election in connection with any prepayment of Revolving Loans pursuant to this Section 5.01(a), such prepayment shall not, so long as no Default or Event of Default then exists, be applied to any Revolving Loan of a Defaulting Lender. Any such notice of prepayment delivered in connection with a refinancing of all or part of this Agreement or any other transaction may be, if so expressly stated to be, conditional upon the consummation of such refinancing or other transaction and may be revoked by the Borrowers in the event such refinancing or other transaction is not consummated.

(b) In the event of certain refusals by a Lender to consent to certain proposed changes, waivers, discharges or terminations with respect to this Agreement which have been approved by the Required Lenders as (and to the extent) provided in Section ~~13.12~~13.13(b), the Borrowers may, upon three Business Days' prior written notice to the Administrative Agent at the Notice Office (which notice the Administrative Agent shall promptly transmit to each of the Lenders), repay all Revolving Loans of such Lender, together with accrued and unpaid interest, Fees and all other amounts then owing to such Lender (including all amounts, if any, owing pursuant to Section 2.11) in accordance with, and subject to the requirements of Section ~~13.12~~13.13(b), so long as (i) in the case of the repayment of Revolving Loans of any Lender pursuant to this clause (b), (A) the Revolving Loan Commitment of such Lender is terminated concurrently with such repayment pursuant to Section 4.02(b) (at which time Schedule 1.01(a) shall be deemed modified to reflect the changed Revolving Loan Commitments) and (B) such Lender's RL Percentage of all outstanding Letters of Credit is cash collateralized in a manner reasonably satisfactory to the Administrative Agent and the respective Issuing Lenders for so long as such Letter of Credit Exposure is outstanding (it being understood that, for purposes of clarity, at the request of the Company, upon a determination by the Administrative Agent or the respective Issuing Lenders that there exists cash collateral in excess of such Lender's RL Percentage of such Letter of Credit Exposure, such excess cash collateral may be returned to the applicable Borrowers so long as no Default or Event of

Default then exists or would result therefrom) and (ii) the consents, if any, required by Section ~~13.12~~13.13(b) in connection with the repayment pursuant to this clause (b) shall have been obtained.

5.02. Mandatory Repayments; Cash Collateralization. (a) (i) On any day on which any one or more of the following conditions shall exist, the applicable Borrowers shall repay the applicable Loans and/or cash collateralize outstanding Letters of Credit (in U.S. Dollars or, to the extent any Letter of Credit is denominated in Euros or an Acceptable Foreign Currency, such currency) pursuant to clause (iii) below in such amount as may be required to cause such conditions to cease to exist on such day:

(u) the Aggregate U.S. Borrower Exposure at such time exceeds 100% (or, during an Agent Advance Period, 105%) of the U.S. Borrowing Base at such time;

(v) the Aggregate Dutch Borrower Exposure at such time exceeds 100% (or, during an Agent Advance Period, 105%) of the Dutch Borrowing Base at such time;

(w) the Aggregate UK Borrower Exposure at such time exceeds 100% (or, during an Agent Advance Period, 105%) of the UK Borrowing Base at such time;

~~(wx)~~ the Aggregate Exposure at such time exceeds the Total Revolving Loan Commitment at such time;

~~(x) during a Reduced Availability Period, Excess Availability is less than 10% of the Availability at such time;~~

(y) the aggregate Swingline Loan Exposure at such time exceeds the Maximum Swingline Amount; and/or

(z) the aggregate Letter of Credit Outstandings (for this purpose, using the U.S. Dollar Equivalent of amounts denominated in Euros or any Acceptable Foreign Currency) at such time exceeds the Maximum Letter of Credit Amount.

(ii) In connection with any repayment and/or cash collateralization required pursuant to Section 5.02(a)(i) on any day, the Borrowers shall first prepay the Loans in the following order:

(A) in the case of a repayment and/or cash collateralization required pursuant to Section 5.02(a)(i)(u) on any day, the U.S. Borrowers shall repay on such day the principal of outstanding U.S. Borrower Swingline Loans and, after all U.S. Borrower Swingline Loans have been repaid in full or if no U.S. Borrower Swingline Loans are outstanding, U.S. Borrower Revolving Loans, in each case in such amount as may be required to cause the conditions giving rise to such mandatory repayment requirement to cease to exist on such day,

(B) in the case of a repayment and/or cash collateralization required pursuant to Section 5.02(a)(i)(v) on any day, the Dutch Borrowers shall repay on such day the principal of outstanding Dutch Borrower Swingline Loans and, after all Dutch Borrower Swingline Loans have been repaid in full or if no Dutch Borrower Swingline Loans are outstanding, Dutch Borrower Revolving Loans, in each case in such amount as may be required to cause the conditions giving rise to such mandatory repayment requirement to cease to exist on such day,

(C) in the case of a repayment and/or cash collateralization required pursuant to Section 5.02(a)(i)(w) ~~or (x)~~ on any day, each respective Borrower shall repay on such day the principal of its outstanding Swingline Loans and, after all Swingline Loans extended to such Borrower have been repaid in full or if no Swingline Loans are outstanding, its respective Revolving Loans, in each case in such amount as may be required to cause the conditions giving rise to such mandatory repayment requirement to cease to exist on such day, and

(D) in the case of a repayment and/or cash collateralization required pursuant to Section 5.02(a)(i)(~~y~~x) on any day, each respective Borrower shall repay on such day the principal of its outstanding Swingline Loans in such amount as may be required to cause the conditions giving rise to such mandatory repayment requirement to cease to exist on such day.

(iii) If after giving effect to the prepayment of all Loans and in the circumstances described in Section 5.02(a)(i)(~~z~~y), the conditions set forth in Section 5.02(a)(i) continue to exist, the respective Borrowers shall pay to the Administrative Agent at the Payment Office on such day an amount of cash and/or Cash Equivalents equal to 100% of the amount of such excess (or, in the case of a termination of the Total Revolving Loan Commitment, 102% of the amount of such excess), such cash and/or Cash Equivalents to be held as security for all Obligations of the Borrowers to the Issuing Lenders and the Lenders hereunder in a cash collateral account to be established by, and under the sole dominion and control of, the Administrative Agent (and which cash and/or Cash Equivalents may, without limiting the Borrowers' obligations in respect thereof, be paid to and applied by the Issuing Lenders and/or the Lenders in satisfaction of the Obligations of the applicable Borrowers to the Issuing Lenders and/or Lenders in respect of any Drawings made under any Letter of Credit issued for the account of such Borrower on the maturity date thereof). Notwithstanding the foregoing, in no event will cash or Cash Equivalents of any Dutch Borrower or UK Borrower be security for U.S. Borrower Obligations.

(b) With respect to each repayment of Loans required by this Section 5.02, the Borrowers may designate the Types of Loans which are to be repaid and, in the case of LIBOR Loans, the specific Borrowing or Borrowings pursuant to which such LIBOR Loans were made (subject, in the case of any repayment and/or cash collateralization required by Section 5.02(a), to the order of priorities set forth therein); provided that: (i) repayments of LIBOR Loans pursuant to this Section 5.02 made on a day other than the last day of an Interest Period applicable thereto shall be subject to Section 2.11; (ii) if any repayment of LIBOR Loans made pursuant to a single Borrowing shall reduce the outstanding LIBOR Loans made pursuant to such Borrowing to an amount less than the Minimum Borrowing Amount applicable thereto, such Borrowing shall be automatically converted into a Borrowing of Base Rate Loans and (iii) each repayment of any Revolving Loans made pursuant to a Borrowing shall be applied pro rata among the Lenders holding such Revolving Loans. In the absence of a designation by a Borrower as described in the preceding sentence, the Administrative Agent shall, subject to the above, make such designation in its sole discretion.

(c) In addition to any other mandatory repayments pursuant to this Section 5.02, (i) all then outstanding Swingline Loans shall be repaid in full on the earlier of (x) the fifth Business Day following the date the incurrence of such Swingline Loans and (y) the Swingline Expiry Date and (ii) all then outstanding Revolving Loans shall be repaid in full on the Final Maturity Date applicable thereto.

5.03. Method and Place of Payment. (a) Except as otherwise specifically provided herein, all payments under this Agreement and under any Note shall be made to the Administrative Agent for the account of the Lender or Lenders entitled thereto not later than 2:00 P.M. (New York City time) on the date when due and shall be made in (x) U.S. Dollars (or, in the case of any Unpaid Drawings denominated in Euros or an Acceptable Foreign Currency, such currency) in immediately available funds at the Payment Office in respect of any obligation of the Borrowers under this Agreement except as otherwise provided in the immediately following clauses (y) and (z), (y) Euros in immediately available funds at the Payment Office, if such payment is made in respect of (i) principal of, or interest on, Euro Denominated Loans or (ii) any increased costs, indemnities or other amounts owing with respect to Euro Denominated Loans (including pursuant to Sections 2.10, 2.11, 3.06, 5.04, 12.06, 13.01 and ~~13.06~~13.07) or (z) the applicable Acceptable Foreign Currency in immediately available funds at the Payment Office, if such payment is made in respect of (i) principal of, or interest on, Foreign Currency Denominated Loans or (ii) any increased costs, indemnities or other amounts owing with respect to Foreign Currency Denominated Loans (including pursuant to Sections 2.10, 2.11, 3.06, 5.04, 12.06, 13.01 and ~~13.06~~13.07). Whenever any payment to be made hereunder or under any Note shall be stated to be due on a day which is not a Business Day, the due date thereof shall be extended to the next succeeding Business Day and, with respect to payments of principal, interest shall be payable at the applicable rate during such extension.

(b) (i) Each U.S. Borrower shall, along with the Collateral Agent, and each of those banks (the "U.S. Collection Banks") in which each Core U.S. Deposit Account is maintained by each such U.S. Borrower, enter into on or prior to the 90<sup>th</sup> day following the Effective Date (in each case, as such date may be extended from time to time by the Administrative Agent in its sole discretion) and thereafter maintain separate Cash Management Control Agreements in respect of each such Core U.S. Deposit Account. (ii) Each U.S. Borrower shall instruct all Account Debtors of such U.S. Borrower to remit all payments in U.S. Dollars to the applicable "P.O. Boxes" or "Lockbox Addresses" of the applicable U.S. Collection Bank (or to remit such payments to the applicable U.S. Collection Bank by electronic settlement) with respect to all Accounts of such Account Debtor, which remittances shall be collected by the applicable U.S. Collection Bank and deposited into one or more deposit accounts with the Administrative Agent or a financial institution reasonably acceptable to the Administrative Agent (each a "Core U.S. Deposit Account" and collectively, the "Core U.S. Deposit Accounts"); provided that on and after the 90<sup>th</sup> day following the Effective Date (as such date may be extended from time to time by the Administrative Agent in its sole discretion) such remittances may only be deposited into Core U.S. Deposit Accounts that are subject to Cash Management Control Agreements. (iii) All amounts received in U.S. Dollars by any U.S. Borrower and any U.S. Collection Bank in respect of any Account of an Account Debtor of any U.S. Borrower shall upon receipt be deposited into a Core U.S. Deposit Account; provided that on and after the 90<sup>th</sup> day following the Effective Date (as such date may be extended from time to time by the Administrative Agent in its sole discretion) such amounts may only be deposited into Core U.S. Deposit Accounts that are subject to Cash Management Control Agreements.

(c) (i) Each Dutch Borrower shall, along with the Collateral Agent, and each of those banks (the "Dutch Collection Banks") in which each Core Dutch Deposit Account ~~are~~is maintained by each such Dutch Borrower, enter into on or prior to the 90<sup>th</sup> day following the Effective Date (in each case, as such date may be extended from time to time by the Administrative Agent in its sole discretion) and thereafter maintain separate Cash Management Control Agreements in respect of each such Core Dutch Deposit Account. (ii) Each Dutch Borrower shall instruct all Account Debtors of such Dutch Borrower to remit all payments in U.S. Dollars or Euros to the applicable "P.O. Boxes" or "Lockbox Addresses" of the applicable Dutch Collection Bank (or to remit such payments to the applicable Dutch Collection Bank by electronic settlement) with respect to all Accounts of such Account Debtor, which remittances shall be collected by the applicable Dutch Collection Bank and deposited into one or more deposit accounts with the Administrative Agent or a financial institution reasonably acceptable to the Administrative Agent (each a "Core Dutch Deposit Account" and collectively, the "Core Dutch Deposit Accounts"); provided

that on and after the 90<sup>th</sup> day following the Effective Date (as such date may be extended from time to time by the Administrative Agent in its sole discretion) such remittances may only be deposited into Core Dutch Deposit Accounts that are subject to Cash Management Control Agreements. (iii) All amounts received in U.S. Dollars or Euros by any Dutch Credit Party and any Dutch Collection Bank in respect of any Account of an Account Debtor of any Dutch Credit Party, shall upon receipt be deposited into a Core Dutch Deposit Account; provided that on and after the 90<sup>th</sup> day following the Effective Date (as such date may be extended from time to time by the Administrative Agent in its sole discretion) such amounts may only be deposited into Core Dutch Deposit Accounts that are subject to Cash Management Control Agreements.

(d) (i) Each UK Borrower shall, along with the Collateral Agent, and each of those banks (the "UK Collection Banks") in which each Core UK Deposit Account is maintained by each such UK Borrower, enter into on or prior to the 90<sup>th</sup> day following the First Amendment Effective Date (in each case, as such date may be extended from time to time by the Administrative Agent in its sole discretion) and thereafter maintain separate Cash Management Control Agreements in respect of each such Core UK Deposit Account. (ii) Each UK Borrower shall instruct all Account Debtors of such UK Borrower to remit all payments in U.S. Dollars or Euros to the applicable "P.O. Boxes" or "Lockbox Addresses" of the applicable UK Collection Bank (or to remit such payments to the applicable UK Collection Bank by electronic settlement) with respect to all Accounts of such Account Debtor, which remittances shall be collected by the applicable UK Collection Bank and deposited into one or more deposit accounts with the Administrative Agent or a financial institution reasonably acceptable to the Administrative Agent (each a "Core UK Deposit Account" and collectively, the "Core UK Deposit Accounts"); provided that on and after the 90<sup>th</sup> day following the First Amendment Effective Date (as such date may be extended from time to time by the Administrative Agent in its sole discretion) such remittances may only be deposited into Core UK Deposit Accounts that are subject to Cash Management Control Agreements. (iii) All amounts received in U.S. Dollars, Sterling or Euros by any UK Credit Party and any UK Collection Bank in respect of any Account of an Account Debtor of any UK Credit Party, shall upon receipt be deposited into a Core UK Deposit Account; provided that on and after the 90<sup>th</sup> day following the First Amendment Effective Date (as such date may be extended from time to time by the Administrative Agent in its sole discretion) such amounts may only be deposited into Core UK Deposit Accounts that are subject to Cash Management Control Agreements.

(e) Each Cash Management Control Agreement relating to a Core U.S. Deposit Account shall (unless otherwise agreed by the Administrative Agent in its sole discretion) include provisions that allow, during any Dominion Period, for all collected amounts held in such Core U.S. Deposit Account from and after the date requested by the Administrative Agent, to be sent by ACH or wire transfer or similar electronic transfer no less frequently than once per Business Day to one or more accounts maintained by the Administrative Agent at DBNY (or if DBNY is not the Administrative Agent, at the institution designated by such successor Administrative Agent) or an affiliate thereof (each, a "DB U.S. Account"). Subject to the terms of the respective Security Document, all amounts received in a DB U.S. Account shall be applied (and allocated) by the Administrative Agent on a daily basis in the following order (in each case, to the extent the Administrative Agent has actual knowledge of the amounts owing or outstanding as described below): (i) first, to the payment (on a ratable basis) of any outstanding Expenses actually due and payable to the Administrative Agent and the Collateral Agent under any of the Credit Documents and to repay or prepay outstanding U.S. Borrower Loans advanced by the Administrative Agent on behalf of the Lenders pursuant to Section 2.01(e); (ii) second, to the extent all amounts referred to in preceding clause (i) have been paid in full, to pay (on a ratable basis) all outstanding Expenses actually due and payable to each Issuing Lender under any of the Credit Documents and to repay all outstanding Unpaid Drawings in respect of Letters of Credit issued for the account of a U.S. Borrower and all interest thereon; (iii) third, to the extent all amounts referred to in preceding clauses (i) and (ii) have been paid in full, to pay (on a ratable basis) all accrued and unpaid interest actually due and payable



on the U.S. Borrower Loans and all accrued and unpaid Fees actually due and payable by any U.S. Borrower to the Administrative Agent, the Issuing Lenders and the Lenders under any of the Credit Documents; (iv) fourth, to the extent all amounts referred to in preceding clauses (i) through (iii), inclusive, have been paid in full, to repay the outstanding principal of U.S. Borrower Swingline Loans (whether or not then due and payable); (v) fifth, to the extent all amounts referred to in preceding clauses (i) through (iv), inclusive, have been paid in full, to repay the outstanding principal of U.S. Borrower Revolving Loans (whether or not then due and payable); (vi) sixth, to the extent all amounts referred to in preceding clauses (i) through (v), inclusive, have been paid in full, to cash collateralize all outstanding Letters of Credit issued for the account of a U.S. Borrower (such cash collateral to be held by the Administrative Agent in a cash collateral account to be established by, and under the sole dominion and control of, the Administrative Agent and applied to the Obligations of the U.S. Borrowers to the Issuing Lenders and/or Lenders in respect of any Drawings made under any such Letters of Credit), provided, however, that such amounts shall be released to the U.S. Borrowers from time to time so long as no Default or Event of Default then exists or would result therefrom and none of the conditions in clause (i) of Section 5.02(a) then exist or would result from any such release; (vii) seventh, to the extent all amounts referred to in preceding clauses (i) through (vi), inclusive, have been paid in full, to pay (on a ratable basis) all other outstanding Obligations of any U.S. Borrower then due and payable to the Administrative Agent, the Collateral Agent and the Lenders under any of the Credit Documents; and (viii) eighth, to the extent all amounts referred to in preceding clauses (i) through (vii), inclusive, have been paid in full and so long as no Default or Event of Default then exists, to be returned to the U.S. Borrowers.

(ef) Each Cash Management Control Agreement relating to a Core Dutch Deposit Account shall (unless otherwise agreed by the Administrative Agent in its sole discretion) include provisions that allow, during any Dominion Period, for all collected amounts held in such Core Dutch Deposit Account from and after the date requested by the Administrative Agent, to be sent by ACH or wire transfer or similar electronic transfer no less frequently than once per Business Day to one or more accounts maintained by the Administrative Agent at DBNY (or if DBNY is not the Administrative Agent, at the institution designated by such successor Administrative Agent) or an affiliate thereof (each a "DB Netherlands Account"). Subject to the terms of the respective Security Document, all amounts received in a DB Netherlands Account shall be applied (and allocated) by the Administrative Agent on a daily basis in the following order (in each case, to the extent the Administrative Agent has actual knowledge of the amounts owing or outstanding as described below): (i) first, to the payment (on a ratable basis) of any outstanding Expenses owed by the Dutch Credit Parties actually due and payable to the Administrative Agent and the Collateral Agent under any of the Credit Documents and to repay or prepay outstanding Dutch Borrower Loans advanced by the Administrative Agent on behalf of the Lenders pursuant to Section 2.01(e); (ii) second, to the extent all amounts referred to in preceding clause (i) have been paid in full, to pay (on a ratable basis) all outstanding Expenses owed by the Dutch Credit Parties actually due and payable to each Issuing Lender under any of the Credit Documents and to repay all outstanding Unpaid Drawings in respect of Letters of Credit issued for the account of a Dutch Borrower and all interest thereon; (iii) third, to the extent all amounts referred to in preceding clauses (i) and (ii) have been paid in full, to pay (on a ratable basis) all accrued and unpaid interest actually due and payable on the Dutch Borrower Loans and all accrued and unpaid Fees actually due and payable by any Dutch Borrower to the Administrative Agent, the Issuing Lenders and the Lenders under any of the Credit Documents; (iv) fourth, to the extent all amounts referred to in preceding clauses (i) through (iii), inclusive, have been paid in full, to repay the outstanding principal of Dutch Borrower Swingline Loans (whether or not then due and payable); (v) fifth, to the extent all amounts referred to in preceding clauses (i) through (iv), inclusive, have been paid in full, to repay the outstanding principal of Dutch Borrower Revolving Loans (whether or not then due and payable); (vi) sixth, to the extent all amounts referred to in preceding clauses (i) through (v), inclusive, have been paid in full, to cash collateralize (on a ratable basis) all outstanding Letters of Credit issued for the account of a Dutch Borrower (such cash collateral to be held by the Administrative Agent in a cash collateral account to be established by, and under the sole dominion and

control of, the Administrative Agent and applied to the Obligations of the Dutch Borrowers to the Issuing Lenders and/or Lenders in respect of any Drawings made under any such Letters of Credit), provided, however, that such amounts shall be released to the Dutch Borrowers from time to time so long as no Default or Event of Default then exists or would result therefrom and none of the conditions in clause (i) of Section 5.02(a) then exist or would result from any such release; (vii) seventh, to the extent all amounts referred to in preceding clauses (i) through (vi), inclusive, have been paid in full, to pay (on a ratable basis) all other outstanding Obligations of any Dutch Borrower then due and payable to the Administrative Agent, the Collateral Agent and the Lenders under any of the Credit Documents; and (viii) eighth, to the extent all amounts referred to in preceding clauses (i) through (vii), inclusive, have been paid in full and so long as no Default or Event of Default then exists, to be returned to the Dutch Borrowers.

(g) Each Cash Management Control Agreement relating to a Core UK Deposit Account shall (unless otherwise agreed by the Administrative Agent in its sole discretion) include provisions that allow, during any Dominion Period, for all collected amounts held in such Core UK Deposit Account from and after the date requested by the Administrative Agent, to be sent by ACH or wire transfer or similar electronic transfer no less frequently than once per Business Day to one or more accounts maintained by the Administrative Agent at DBNY (or if DBNY is not the Administrative Agent, at the institution designated by such successor Administrative Agent) or an affiliate thereof (each a "DB UK Account"). Subject to the terms of the respective Security Document, all amounts received in a DB UK Account shall be applied (and allocated) by the Administrative Agent on a daily basis in the following order (in each case, to the extent the Administrative Agent has actual knowledge of the amounts owing or outstanding as described below): (i) first, to the payment (on a ratable basis) of any outstanding Expenses owed by the UK Credit Parties actually due and payable to the Administrative Agent and the Collateral Agent under any of the Credit Documents and to repay or prepay outstanding UK Borrower Loans advanced by the Administrative Agent on behalf of the Lenders pursuant to Section 2.01(e); (ii) second, to the extent all amounts referred to in preceding clause (i) have been paid in full, to pay (on a ratable basis) all outstanding Expenses owed by the UK Credit Parties actually due and payable to each Issuing Lender under any of the Credit Documents and to repay all outstanding Unpaid Drawings in respect of Letters of Credit issued for the account of a UK Borrower and all interest thereon; (iii) third, to the extent all amounts referred to in preceding clauses (i) and (ii) have been paid in full, to pay (on a ratable basis) all accrued and unpaid interest actually due and payable on the UK Borrower Loans and all accrued and unpaid Fees actually due and payable by any UK Borrower to the Administrative Agent, the Issuing Lenders and the Lenders under any of the Credit Documents; (iv) [reserved]; (v) fifth, to the extent all amounts referred to in preceding clauses (i) through (iv), inclusive, have been paid in full, to repay the outstanding principal of UK Borrower Revolving Loans (whether or not then due and payable); (vi) sixth, to the extent all amounts referred to in preceding clauses (i) through (v), inclusive, have been paid in full, to cash collateralize (on a ratable basis) all outstanding Letters of Credit issued for the account of a UK Borrower (such cash collateral to be held by the Administrative Agent in a cash collateral account to be established by, and under the sole dominion and control of, the Administrative Agent and applied to the Obligations of the UK Borrowers to the Issuing Lenders and/or Lenders in respect of any Drawings made under any such Letters of Credit), provided, however, that such amounts shall be released to the UK Borrowers from time to time so long as no Default or Event of Default then exists or would result therefrom and none of the conditions in clause (i) of Section 5.02(a) then exist or would result from any such release; (vii) seventh, to the extent all amounts referred to in preceding clauses (i) through (vi), inclusive, have been paid in full, to pay (on a ratable basis) all other outstanding Obligations of any UK Borrower then due and payable to the Administrative Agent, the Collateral Agent and the Lenders under any of the Credit Documents; and (viii) eighth, to the extent all amounts referred to in preceding clauses (i) through (vii), inclusive, have been paid in full and so long as no Default or Event of Default then exists, to be returned to the UK Borrowers.

(h) Without limiting the provisions set forth in Section ~~13.15~~13.16, the Administrative Agent shall maintain accounts on its books in the name of each Borrower (collectively, the “Credit Account”) in which each Borrower will be charged with all loans and advances made by the Lenders to the respective Borrower for the respective Borrower’s account, including the Loans, the Letter of Credit Outstandings, and the Fees, Expenses and any other Obligations relating thereto. Each Borrower will be credited, in accordance with this Section 5.03, with all amounts received by the Lenders from such Borrower or from others for its account, including, as set forth above, all amounts received by the Administrative Agent and applied to the Obligations. In no event shall prior recourse to any Accounts or other Collateral be a prerequisite to the Administrative Agent’s right to demand payment of any Obligation upon its maturity. Further, the Administrative Agent shall have no obligation whatsoever to perform in any respect any of the Borrowers’ or other Credit Parties’ contracts or obligations relating to the Accounts.

5.04. Net Payments. (a) All payments made by the Borrowers and the other Credit Parties hereunder and under any other Credit Document will be made without setoff, counterclaim or other defense. Except as ~~provided in Section 5.04(b), and except as~~ required by applicable law, all such payments will be made free and clear of, and without deduction or withholding for, any present or future taxes, levies, imposts, duties, fees, assessments or other charges of whatever nature now or hereafter imposed by any jurisdiction or by any political subdivision or taxing authority thereof or therein, including any interest, penalties or similar liabilities with respect ~~to such payments (but~~ thereto (collectively, “Taxes”). If any Taxes (excluding (i) any tax or withholding on account of tax imposed on or measured by the net income or net profits of a Lender or the Administrative Agent (as applicable) and any franchise taxes and branch profits taxes imposed pursuant to the laws of the jurisdiction in which it is resident or organized or the jurisdiction in which the principal office or applicable lending office of such Lender or the Administrative Agent (as applicable) is located or any political subdivision thereof or therein, or any tax imposed as a result of a present or former connection between such Lender or the Administrative Agent (as applicable) and the jurisdiction imposing such tax (other than connections arising only from such Lender or the Administrative Agent (as applicable) having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Credit Document, or sold or assigned an interest in any Loan or Credit Document), (ii) in the case of a Lender, any U.S. federal or Netherlands withholding tax that is imposed on amounts payable to such Lender at the time such Lender becomes a party hereto (or designates a new lending office), except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive additional amounts from such U.S. Borrower with respect to such withholding tax pursuant to Section 5.04(a), (iii) in the case of a Lender, any United Kingdom withholding tax that is required to be withheld or deducted from amounts payable to such Lender if, on the date on which such payment falls due, the payment could have been made without such deduction or withholding if the relevant Lender had been a Qualifying Lender, but on that date the relevant Lender is not, or has ceased to be, a Qualifying Lender other than as a result of any change after the date on which it became a party hereto in (or in the interpretation, administration, or application of) any law or double taxation agreement or any published practice or published concession of any relevant taxing authority, (iv) taxes attributable to a Lender’s failure to comply with Section 5.04(e) and (ivv) any U.S. federal withholding tax imposed under FATCA (subparagraphs (i) through (ivv) together, “Excluded Taxes”)) ~~and all interest, penalties or similar liabilities with respect to such non-excluded taxes, levies, imposts, duties, fees, assessments or other charges (all such non-excluded taxes, levies, imposts, duties, fees, assessments or other charges being referred to collectively as “(all such Taxes, other than Excluded Taxes, “Indemnified Taxes”). If any Taxes~~ are so levied or imposed, the respective Borrower (and any other Credit Party making the respective payment or which has guaranteed the obligations of the relevant Borrower) agrees to pay to the full amount of such Taxes, including Taxes on relevant Lender or Administrative Agent, as the case may be, such additional amounts paid pursuant to this Section 5.04(a) as may be necessary so that, after making such withholding or deduction for or on account of any ~~Taxes,~~ Indemnified Taxes (including any

Indemnified Taxes on such additional amounts paid pursuant to this Section 5.04(a), the net amount actually received by such Lender or Administrative Agent, as the case may be, in respect of each payment of amounts due under this Agreement will not be less than the amount that would have been paid received if no such Indemnified Taxes had been withheld or deducted. ~~The~~If any Borrower or other Credit Party deducts or withholds any Taxes from any payments under this Agreement, the respective Borrower (or other Credit Party) will, upon the Administrative Agent's written request, furnish to the Administrative Agent, within 45 days after the date the payment of any Taxes is due pursuant to applicable law, certified copies of tax receipts evidencing such payment by such Borrower (or other Credit Party) or other evidence of payment reasonably satisfactory to the Administrative Agent.

(b) Subject to Section 14.07, the U.S. Borrowers (jointly and severally) or the Dutch Borrowers (jointly and severally) or the UK Borrowers (jointly and severally), as applicable, agree (and the applicable Subsidiary Guarantors agree) to timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(c) Subject to Section 14.07, the U.S. Borrowers (jointly and severally) or the Dutch Borrowers (jointly and severally) or the UK Borrowers (jointly and severally) shall, as applicable, agree (and the applicable Subsidiary Guarantors agree) to indemnify each Lender or the Administrative Agent, as the case may be, within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by such Lender or required to be withheld or deducted from a payment to such Lender and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Company by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(d) Each Lender shall severally indemnify the Administrative Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that any Credit Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of Credit Parties, subject to Section 14.07, to do so), (ii) any taxes attributable to such Lender's failure to comply with the provisions of Section ~~13.04~~13.05(e) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Credit Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Credit Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this clause (d).

(e) (i) Any Lender that is entitled to an exemption from or reduction of withholding tax with respect to payments made under any Credit Document shall deliver to the Company and the Administrative Agent, at the time or times reasonably requested by the Company or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Company or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Company or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Company or the Administrative Agent as will enable the Company or the Administrative

Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 5.04(e)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that the Borrower is a U.S. Borrower,

(A) any Lender that is a U.S. Person shall deliver to the Company and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Company or the Administrative Agent), executed originals of Internal Revenue Service Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Company and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Company or the Administrative Agent), whichever of the following is applicable:

(i) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Credit Document, executed originals of Internal Revenue Service Form W-8BEN or Internal Revenue Service Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Credit Document, Internal Revenue Service Form W-8BEN or Internal Revenue Service Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding tax pursuant to the "business profits" or "other income" article of such tax treaty;

(ii) executed originals of Internal Revenue Service Form W-8ECI;

(iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit D-1 to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of the Company within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code (a "U.S. Tax Compliance Certificate") and (y) executed originals of Internal Revenue Service Form W-8BEN or Internal Revenue Service Form W-8BEN-E; or

(iv) to the extent a Foreign Lender is not the beneficial owner, executed originals of Internal Revenue Service Form W-8IMY, accompanied by Internal Revenue Service Form W-8ECI, Internal Revenue Service Form W-8BEN or Internal Revenue Service Form W-8BEN-E, a U.S. Tax Compliance

Certificate substantially in the form of Exhibit D-2 or Exhibit D-3, Internal Revenue Service Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit D-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Company and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Company or the Administrative Agent), executed originals of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Company or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Credit Document would be subject to U.S. federal withholding tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Company and the Administrative Agent at the time or times prescribed by law such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) as may be necessary for the Company and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(iii) Without limiting the generality of the foregoing, each Treaty Lender shall cooperate in completing any procedural formalities necessary for the purpose of any UK Borrower obtaining authorization to make a payment to the relevant Treaty Lender without any deduction or withholding for or on account of any Taxes imposed by the United Kingdom. A Treaty Lender which holds a passport under the HMRC DT Treaty Passport Scheme, and which wishes that scheme to apply to this Agreement, shall confirm its scheme reference number and its jurisdiction of tax residence in writing and, having done so, that Treaty Lender shall be under no further obligation pursuant to this Section 5.04(e)(iii).

(iv) Each Lender listed on Schedule 1.01(a) (each, an "Original Lender") confirms and represents that it is (x) a Qualifying Lender other than a Treaty Lender or (y) holds a passport under HMRC DT Treaty Passport Scheme (a "DTTP Passport") and that its scheme reference number is set out against its name in Schedule 1.01(a).

(v) Any Lender which is not an Original Lender shall confirm to the Borrowers as soon as possible after becoming a Lender whether it is (a) a Treaty Lender, (b) a Qualifying Lender other than a Treaty Lender or (c) is not a Qualifying Lender ("Tax Confirmation") and in the case of a Treaty Lender, it shall also confirm whether or not it holds a DTTP Passport and, if so, provide the scheme reference number.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Company and the Administrative Agent in writing of its legal inability to do so.

(f) If the Administrative Agent or a Lender determines, in its sole discretion, that it has received a refund of any Indemnified Taxes as to which it has been indemnified by a Borrower or with respect to which a Borrower has paid additional amounts pursuant to Section 5.04(a), it shall pay to such Borrower an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by such Borrower under this Section with respect to the Indemnified Taxes giving rise to such refund), net of all out-of-pocket expenses of the Administrative Agent or such Lender, as the case may be, and without interest (other than any interest paid by the relevant jurisdiction or any political subdivision or taxing authority thereof with respect to such refund), provided that the U.S. Borrowers (on a joint and several basis) and the Dutch Borrowers (on a joint and several basis) and the UK Borrowers (on a joint and several basis), as the case may be, upon the request of the Administrative Agent or such Lender, agree to repay the amount paid over to any such Borrower (plus any penalties, interest or other charges imposed by the relevant jurisdiction or any political subdivision or taxing authority thereof) to the Administrative Agent or such Lender in the event the Administrative Agent or such Lender is required to repay such refund to such jurisdiction or any political subdivision or taxing authority thereof; provided, further, that no Borrower shall be required to repay the Administrative Agent or such Lender an amount in excess of the amount paid over by such party to any such Borrower pursuant to this Section 5.04(f). This paragraph shall not be construed to require the Administrative Agent or any Lender to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Company, any other Borrower, any other Credit Party or any other Person. Notwithstanding anything to the contrary in this Section 5.04(f), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this Section 5.04(f) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Indemnified Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Indemnified Tax had never been paid.

SECTION 6. Conditions Precedent to Credit Events on the Effective Date. The occurrence of the Effective Date and the obligation of each Lender to make Loans, and the obligation of each Issuing Lender to issue Letters of Credit, on the Effective Date, are subject to the satisfaction of the following conditions:

6.01. Effective Date: Notes. On or prior to the Effective Date, (a) this Agreement shall have been executed and delivered as provided in Section ~~13.10~~13.11, (b) the Disclosure Letter shall have been delivered by the Company to the Administrative Agent and (c) there shall have been delivered to the Administrative Agent for the account of the Lenders that have requested same, the appropriate Revolving Notes executed by the appropriate Borrowers and if requested by the Swingline Lender, the appropriate Swingline Notes executed by the appropriate Borrowers, in each case, in the amount, maturity and as otherwise provided herein.

6.02. Officer's Certificate. On the Effective Date, the Administrative Agent shall have received a certificate in the form of Exhibit E-1, dated the Effective Date and signed on behalf of the Company by an Authorized Officer of the Company, certifying on behalf of the Company that all of the conditions in Sections 6.05, 6.13(b) and 7.01 have been satisfied on such date.

6.03. Opinions of Counsel. On the Effective Date, the Administrative Agent shall have received (a) from Wilson Sonsini Goodrich & Rosati, P.C., special New York counsel to the Credit Parties, an opinion in form and substance reasonably satisfactory to the Administrative Agent addressed

to the Administrative Agent, the Collateral Agent and each of the Lenders and dated the Effective Date covering such matters incident to the transactions contemplated herein as the Administrative Agent may reasonably request, (b) from DLA Piper Nederland N.V., special Dutch counsel to the Dutch Credit Parties, an opinion in form and substance reasonably satisfactory to the Administrative Agent addressed to the Administrative Agent, the Collateral Agent and each of the Lenders and dated the Effective Date covering such matters incident to the transactions contemplated herein as the Administrative Agent may reasonably request, and (c) without duplication, from such local counsel, reasonably satisfactory to the Administrative Agent, in each jurisdiction where a U.S. Credit Party is "located" for purposes of Section 9-307 of the UCC and/or organized, in each case, an opinion in form and substance reasonably satisfactory to the Administrative Agent addressed to the Administrative Agent, the Collateral Agent and each of the Lenders and dated the Effective Date covering such matters incident to the transactions contemplated herein as the Administrative Agent may reasonably request.

6.04. Company Documents; Proceedings; etc. (a) On the Effective Date, the Administrative Agent shall have received a certificate from each Credit Party, dated the Effective Date, signed by an Authorized Officer of such Credit Party (or, with respect to Tesla B.V., its directors), and, if signed by an Authorized Officer of such Credit Party, attested to by another Authorized Officer of such Credit Party, in the form of Exhibit E-2 (or such other form reasonably acceptable to the Administrative Agent) with appropriate insertions, together with copies of the certificate or articles of incorporation and by-laws (or other equivalent organizational documents relating to any Dutch Credit Party), as applicable, of such Credit Party and the resolutions of such Credit Party referred to in such certificate (including, with respect to each Dutch Credit Party, if applicable, an unconditional positive, written advice from any works council in relation to the transactions contemplated by this Agreement and any other document required for compliance with the Dutch Works Council Act), and each of the foregoing shall be in form and substance reasonably acceptable to the Administrative Agent.

(b) On the Effective Date, all Business and legal proceedings and all instruments and agreements in connection with the transactions contemplated by this Agreement and the other Credit Documents shall be reasonably satisfactory in form and substance to the Administrative Agent, and the Administrative Agent shall have received all information and copies of all documents and papers, including records of Business proceedings, governmental approvals, good standing certificates and bring-down facsimiles or other electronic transmission, if any, which the Administrative Agent reasonably may have requested in connection therewith, such documents and papers where appropriate to be certified by proper Authorized Officers or Governmental Authorities.

6.05. Adverse Change; Approvals. (a) Since December 31, 2014, nothing shall have occurred, either individually or in the aggregate, which has had, or could reasonably be expected to have a Material Adverse Effect.

(b) On or prior to the Effective Date, all necessary governmental (domestic and foreign) and material third-party approvals and/or consents in connection with the Transaction and the granting of Liens under the Credit Documents shall have been obtained and remain in effect, and all applicable waiting periods with respect thereto shall have expired without any action being taken by any competent authority which restrains, prevents or imposes materially adverse conditions upon the consummation of the Transaction. On the Effective Date, there shall not exist any judgment, order, injunction or other restraint issued or filed or a hearing seeking injunctive relief or other restraint pending or notified prohibiting or imposing materially adverse conditions upon the Transaction.

6.06. [Reserved].



6.07. Guaranty. On the Effective Date, (a) each Dutch Guarantor shall have duly authorized, executed and delivered the Dutch Guaranty in the form of Exhibit G-1 and (b) each U.S. Guarantor shall have duly authorized, executed and delivered the U.S. Guaranty in the form of Exhibit G-2, and each Guaranty shall be in full force and effect.

6.08. [Reserved].

6.09. Security Agreement. On the Effective Date, (a) each Dutch Credit Party shall have duly authorized, executed and delivered the Dutch Security Agreements in the form of Exhibit I-1, I-2 and I-3 and (b) each U.S. Credit Party and each Dutch Credit Party shall have duly authorized, executed and delivered the U.S. Security Agreement in the form of Exhibit I-4, in each case covering all of each applicable Credit Party's Security Agreement Collateral, together with:

(a) proper financing statements (Form UCC-1 or the equivalent) for filing under the UCC or other appropriate filing offices of each jurisdiction as may be necessary or, in the reasonable opinion of the Collateral Agent, desirable, to perfect the security interests purported to be created by each Security Agreement;

(b) delivery of all promissory notes and stock certificates required to be delivered to the Collateral Agent pursuant to each Security Agreement, together with undated instruments of transfer with respect thereto endorsed in blank;

(c) delivery of (A) the results of a recent search, by a Person reasonably satisfactory to the Collateral Agent, of all effective UCC financing statements (or equivalent filings) made with respect to any personal or mixed property the creation of security interests in which is governed by the UCC (or foreign equivalent) of any Credit Party in the jurisdiction of formation of each such entity and the location (state and county) where such entities maintain their chief executive offices, together with copies of all such filings disclosed by such search, and (B) UCC security termination statements (or similar documents) duly executed by all applicable Persons for filing in all applicable jurisdictions as may be necessary to terminate any effective UCC financing statements (or equivalent filings) disclosed in such search (other than any such financing statements in respect of Permitted Liens);

(d) confirmation that arrangements have been made by the Administrative Agent's counsel for all other recordings and filings of, or with respect to, each Security Agreement as may be necessary or, in the reasonable opinion of the Collateral Agent, desirable, to perfect and protect the security interests intended to be created by each Security Agreement; and

(e) evidence that all other actions required to be taken under each Security Agreement on the Effective Date to perfect and protect the security interests purported to be created by each Security Agreement have been taken, and each Security Agreement shall be in full force and effect.

6.10. Financial Statements. On or prior to the Effective Date, the Administrative Agent shall have received true and correct copies of the financial statements referred to in Section 8.05(a), which financial statements shall be in form and substance reasonably satisfactory to the Administrative Agent.

6.11. Solvency Certificate; Insurance Certificates. On the Effective Date, the Administrative Agent shall have received:

(a) a solvency certificate from the chief financial officer of the Company in the form of Exhibit J; and

(b) certificates of insurance complying with the requirements of Section 9.03 for the business and properties of the Company and its Subsidiaries, in form and substance reasonably satisfactory to the Administrative Agent and naming the Collateral Agent as an additional insured and/or as lender loss payee, as applicable, and, to the extent obtainable after use of commercially reasonable efforts, stating that such insurance shall not be canceled or materially revised without at least 30 days' (or at least 10 days in the case of nonpayment of premium) prior written notice by the insurer to the Collateral Agent.

6.12. Fees, Expenses. On the Effective Date, the Borrowers shall have paid to the Arrangers (as defined in the Original Credit Agreement) and the Agents (as defined in the Original Credit Agreement) (and their relevant affiliates) and each Lender all costs, duties, fees and expenses (including reasonable legal fees and expenses and all expenses of any collateral appraiser and any field examiner) and other compensation contemplated hereby or separately agreed in writing payable to the Arrangers (as defined in the Original Credit Agreement) or the Agents (as defined in the Original Credit Agreement) (and/or their relevant affiliates) or such Lender to the extent then due and invoiced at least one Business Day prior to the Effective Date.

6.13. Initial Borrowing Base Certificate; Outstanding Indebtedness. (a) On the Effective Date, the Administrative Agent shall have received the initial Borrowing Base Certificate meeting the requirements of Section 9.01(h).

(b) On the Effective Date and after giving effect to the Transaction (and the Credit Events hereunder on such date), the Company and its Subsidiaries shall have no outstanding Indebtedness, Contingent Obligations or Preferred Equity, except (x) for Indebtedness outstanding under to this Agreement, (y) the Existing Convertible Notes and (z) such existing Indebtedness and Contingent Obligations as shall be permitted under Section 10.04.

6.14. Appraisals; Field Examinations. On or prior to the Effective Date, the Company shall have provided to the Agents (i) an Acceptable Appraisal in respect of (x) the Inventory of the Borrowers and (y) the Eligible Machinery and Equipment of the U.S. Borrowers and (ii) an Acceptable Field Examination in respect of the Inventory and the Accounts and the related accounts of the Borrowers. Notwithstanding anything to the contrary contained in this Section 6.14, to the extent the Acceptable Field Examination required by clause (ii) above in respect of Accounts cannot be delivered on or prior to the Effective Date, the delivery of such Acceptable Field Examination shall not be a condition precedent but instead shall be required to be delivered in accordance with Section 9.12(h).

6.15. Patriot Act. Not later than the fifth Business Day prior to the Effective Date, the Agents and the Lenders shall have received from the Credit Parties all documentation and other information required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including the Patriot Act.

In determining the satisfaction of the conditions specified in this Section 6, (x) to the extent any item is required to be satisfactory to any Lender or Agent (other than the Administrative Agent), such item shall be deemed satisfactory to each Lender and each Agent (other than the Administrative Agent) which has not notified the Administrative Agent in writing prior to the occurrence of the Effective Date that the respective item or matter does not meet its satisfaction and (y) in determining whether any Lender or Agent (other than the Administrative Agent) is aware of any fact, condition or event that has occurred and which would reasonably be expected to have a Material Adverse Effect, each Lender and each Agent (other than the Administrative Agent) which has not notified the Administrative Agent in writing prior to the occurrence of the Effective Date of such fact, condition or event shall be deemed not to be aware of any such fact, condition or event on the Effective Date. Upon the Administrative Agent's good faith determination that the conditions specified in this Section 6 have been met (after giving effect to the

preceding sentence), then the Effective Date shall be deemed to have occurred regardless of any subsequent determination that one or more of the conditions thereto had not been met (although the occurrence of the Effective Date shall not release the Company or any other Borrower from any liability for failure to satisfy one or more of the applicable conditions contained in this Section 6).

SECTION 7. Conditions Precedent to All Credit Events. The obligation of each Lender to make Loans (including Loans made on the Effective Date), and the obligation of each Issuing Lender to issue Letters of Credit (including Letters of Credit issued on the Effective Date), are subject, at the time of the Effective Date and at the time of each Credit Event (except as hereinafter indicated), to the satisfaction of the following conditions:

7.01. No Default; Representations and Warranties. At the time of each such Credit Event and also after giving effect thereto (a) there shall exist no Default or Event of Default and (b) all representations and warranties contained herein and in the other Credit Documents shall be true and correct in all material respects with the same effect as though such representations and warranties had been made on the date of such Credit Event (it being understood and agreed that (x) any representation or warranty which by its terms is made as of a specified date shall be required to be true and correct in all material respects only as of such specified date ~~and~~ (y) any representation or warranty that is qualified as to "materiality," "Material Adverse Effect" or similar language shall be true and correct in all respects as of any such date and (z) the representation and warranty in Section 8.22 is made solely with respect to the most recently delivered Borrowing Base Certificate).

7.02. Notice of Borrowing; Letter of Credit Request. (a) Prior to the making of each Loan (other than a Swingline Loan or a Revolving Loan made pursuant to a Mandatory Borrowing), the Administrative Agent shall have received a Notice of Borrowing meeting the requirements of Section 2.03(a). Prior to the making of each Swingline Loan, the Swingline Lender shall have received the notice referred to in Section 2.03(b)(i).

(b) Prior to the issuance of each Letter of Credit, the Administrative Agent and the respective Issuing Lender shall have received a Letter of Credit Request meeting the requirements of Section 3.03(a).

7.03. Borrowing Limitations. Notwithstanding anything to the contrary set forth herein (but subject to Section 2.01(e)), it shall be a condition precedent to each Credit Event that after giving effect thereto (and the use of the proceeds thereof):

(i) the Aggregate U.S. Borrower Exposure would not exceed 100% (or, during an Agent Advance Period, 105%) of the U.S. Borrowing Base at such time;

(ii) the Aggregate Dutch Borrower Exposure would not exceed 100% (or, during an Agent Advance Period, 105%) of the Dutch Borrowing Base at such time;

(iii) the Aggregate UK Borrower Exposure would not exceed 100% (or, during an Agent Advance Period, 105%) of the UK Borrowing Base at such time; and

~~(iiiiv)~~ the Aggregate Exposure at such time would not exceed the Total Revolving Loan Commitment at such time; ~~and~~

~~(iv) during a Reduced Availability Period, Excess Availability would exceed 10% of the Availability at such time.~~

7.04. Collateralized Letters of Credit. Notwithstanding anything to the contrary set forth herein, so long as there are outstanding any Collateralized Letters of Credit pursuant to Section 3.02(b), no Loans may be incurred, and no additional Letters of Credit may be issued (nor may the Stated Amount of any then outstanding Letter of Credit be increased), unless, in any such case, the Company would be able to comply with Section 10.07 (to the extent that such compliance is then required) but, for this purpose, including all outstanding Letters of Credit (including all outstanding Collateralized Letters of Credit) in calculating the Aggregate Exposure and Excess Availability at such time.

The acceptance of the benefits of each Credit Event shall constitute a representation and warranty by the Company and the other Borrowers to the Administrative Agent and each of the Lenders that all the conditions specified in Section 6 (with respect to the occurrence of the Effective Date and Credit Events on the Effective Date) and in this Section 7 (with respect to the occurrence of the Effective Date and Credit Events on or after the Effective Date) and applicable to such Credit Event are satisfied as of that time, in each case, to the extent the satisfaction of any such condition is not expressly subject to any Lender's or Agent's determination. All of the Notes, certificates, legal opinions and other documents and papers referred to in Section 6 and in this Section 7, unless otherwise specified, shall be delivered to the Administrative Agent at the Notice Office for the account of each of the Lenders and, except for the Notes, in sufficient counterparts or copies for each of the Lenders and shall be in form and substance reasonably satisfactory to the Administrative Agent and the Required Lenders.

SECTION 8. Representations and Warranties. In order to induce the Lenders to enter into this Agreement and to make the Loans, and issue (or participate in) the Letters of Credit as provided herein, each of the Company and the other Borrowers makes the following representations and warranties, in each case after giving effect to the Transaction, all of which shall survive the execution and delivery of this Agreement and the Notes and the making of the Loans and the issuance of the Letters of Credit, with the occurrence of the Effective Date and each Credit Event on or after the Effective Date being deemed to constitute a representation and warranty that the matters specified in this Section 8 are true and correct in all material respects on and as of the Effective Date and on the date of each such Credit Event (it being understood and agreed that (x) any representation or warranty which by its terms is made as of a specified date shall be required to be true and correct in all material respects only as of such specified date and (y) any representation or warranty that is qualified by "materiality", "Material Adverse Effect" or similar language shall be true and correct in all respects).

8.01. Company Status. Each of the Company and each of its Subsidiaries (i) is a duly organized and validly existing Business, (ii) has the Business power and authority to own its property and assets and to transact the business in which it is engaged and presently proposes to engage, (iii) is duly qualified and is authorized to do business and is in good standing (or its equivalent, to the extent that such concept is applicable in the respective jurisdiction) under the laws of the jurisdiction of its organization and in each jurisdiction where the ownership, leasing or operation of its property or the conduct of its business requires such qualifications, except in the case of clause (i) (other than in the case of the Company), cause (ii) and this clause (iii) for failures to be so qualified or authorized which, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect and (iv) with respect to each Credit Party incorporated in a jurisdiction where European Parliament and Council Regulation (EU) No. 2015/848 on insolvency proceedings of 20 May 2015 (the "Insolvency Regulation") applies and each UK Credit Party (to the extent that the Insolvency Regulation is recognized in England and Wales after 31 December 2020), it has its centre of main interest (as that term is used in Section 3(1) of the Insolvency Regulation) in its jurisdiction of incorporation and it has no establishment (as defined in section 2(h) of the Insolvency Regulation) in any other jurisdiction that is a member state of the European Union.

8.02. Power and Authority. Each Credit Party has the Business power and authority to execute, deliver and perform the terms and provisions of each of the Credit Documents to which it is party and has taken all necessary Business action to authorize the execution, delivery and performance by it of each of such Credit Documents. Each Credit Party has duly executed and delivered each of the Credit Documents to which it is party, and each of such Credit Documents constitutes its legal, valid and binding obligation enforceable in accordance with its terms, except to the extent that the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws generally affecting creditors' rights and by equitable principles (regardless of whether enforcement is sought in equity or at law).

8.03. No Violation. Neither the execution, delivery or performance by any Credit Party of the Credit Documents to which it is a party, nor compliance by it with the terms and provisions thereof, (i) will contravene any provision of any applicable law, statute, rule or regulation or any order, writ, injunction or decree of any court or Governmental Authority, (ii) will conflict with or result in any breach of any of the terms, covenants, conditions or provisions of, or constitute a default under, or result in the creation or imposition of (or the obligation to create or impose) any Lien (except pursuant to the Security Documents) upon any of the property or assets of any Credit Party or any of its Subsidiaries pursuant to the terms of any material indenture, mortgage, deed of trust, credit agreement or loan agreement, or any other material agreement, contract or instrument, in each case to which any Credit Party or any of its Subsidiaries is a party or by which it or any its property or assets is bound or to which it may be subject including the Existing Convertible Notes Indentures except any such conflict or breach which, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect, or (iii) will violate any provision of the certificate or articles of incorporation, certificate of formation, limited liability company agreement or by-laws (or equivalent organizational documents), as applicable, of any Credit Party ~~or any of their~~ respective Subsidiaries.

8.04. Approvals. No order, consent, approval, license, authorization or validation of, or filing, recording or registration with (except for (x) those that have otherwise been obtained or made on or prior to the Effective Date and which remain in full force and effect on the Effective Date and (y) filings which are necessary to perfect the security interests created or intended to be created under the Security Documents), or exemption by, any Governmental Authority is required to be obtained or made by, or on behalf of, any Credit Party to authorize, or is required to be obtained or made by, or on behalf of, any Credit Party in connection with, (i) the execution, delivery and performance by such Credit Party of any Credit Document, or (ii) the legality, validity, binding effect or enforceability of any such Credit Document against such Credit Party, except in each case any such consent, approval, license, authorization, validation, filing, recording, registration or exemption which the failure to obtain, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

8.05. Financial Statements; Financial Condition; Undisclosed Liabilities. (a) The audited consolidated balance sheets of the Company for its fiscal years ended December 31, ~~2017 and December 31, 2018~~ 2019 and the related consolidated statements of income and cash flows and changes in shareholders' equity of the Company for its fiscal years ended December 31, ~~2017 and December 31, 2018~~ 2019, copies of which were in each case furnished to the Lenders prior to the Amendment and Restatement Effective Date, present fairly in all material respects the consolidated financial position of the Company and its Subsidiaries at the date of said financial statements and the results for the respective periods covered thereby.

(b) (i) The sum of the fair value of the assets, at a fair valuation, of the Company and its Subsidiaries (taken as a whole) will exceed their respective debts, (ii) the sum of the present fair saleable value of the assets of the Company and its Subsidiaries (taken as a whole) will exceed their respective debts, (iii) the Company and its Subsidiaries (taken as a whole) have not incurred and do not intend to

incur, and do not believe that they will incur, debts beyond their ability to pay such debts as such debts mature, and (iv) the Company and its Subsidiaries (taken as a whole) will have sufficient capital with which to conduct their respective businesses. For purposes of this Section 8.05(b), "debt" means any liability on a claim, and "claim" means right to payment, whether or not such a right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured. The amount of contingent liabilities at any time shall be computed as the amount that, in the light of all the facts and circumstances available at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

(c) ~~Except as fully disclosed in the financial statements delivered pursuant to Section 8.05(a), and except for the indebtedness incurred under the Credit Documents and Existing Indebtedness and liabilities or obligations arising in the ordinary course of business, there were as of the Effective Date no liabilities or obligations with respect to the Company or any of its Subsidiaries of any nature whatsoever (whether absolute, accrued, contingent or otherwise and whether or not due) which, either individually or in the aggregate, could reasonably be expected to be material to the Company and its Subsidiaries (taken as a whole).~~ [Reserved].

(d) ~~After giving effect to the Transaction, s~~Since December 31, 2018~~2019~~, nothing has occurred that has had, or could reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

8.06. Litigation. There are no actions, suits, claims, demands, investigations, audits, charges or proceedings by or before any Governmental Authority pending or, to the knowledge of any Responsible Officer of the Company, threatened in writing (i) that purports to affect the legality, validity or enforceability of any Credit Document or (ii) that has had, or could reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

8.07. True and Complete Disclosure. All factual information (other than projections and information of a general economic or industry nature) (taken as a whole) furnished by or on behalf of the Company or any other Borrower in writing to any Agent or any Lender for purposes of or in connection with this Agreement, the other Credit Documents or any transaction contemplated herein or therein, taken as a whole and together with the Company's filings with the SEC, is true and accurate in all material respects on the date as of which such information is dated or certified and not incomplete by omitting to state any fact necessary to make such information (taken as a whole) not misleading in any material respect at such time in light of the circumstances under which such information was provided.

8.08. Use of Proceeds; Margin Regulations. (a) All proceeds of the Loans will be used for the working capital and general corporate purposes (including Acquisitions) of the Borrowers and their respective Subsidiaries; provided that the proceeds of Swingline Loans shall not be used to refinance then outstanding Swingline Loans.

(b) No part of any Credit Event (or the proceeds thereof) will be used to purchase or carry any Margin Stock or to extend credit for the purpose of purchasing or carrying any Margin Stock. ~~Neither the making of any Loan nor the use of the proceeds thereof nor the occurrence of any other Credit Event will violate or be inconsistent with the provisions of~~ in manner that violates Regulation T, ~~U or X~~. Not more than 25% of the value of the assets of the Company and its Subsidiaries taken as a whole is represented by Margin Stock.

8.09. Tax Returns and Payments. The Company and each of its Subsidiaries has timely filed or caused to be timely filed with the appropriate taxing authority all U.S. federal and other material returns, statements, forms and reports for taxes (the "Returns") required to be filed by, or with respect to the

income, properties or operations of, the Company and/or any of its Subsidiaries. The Returns accurately reflect in all material respects all liability for taxes of the Company and its Subsidiaries, as applicable, for the periods covered thereby. The Company and each of its Subsidiaries has paid all material taxes and assessments payable by it which have become due and payable, other than those that are being contested in good faith and adequately disclosed for which adequate reserves have been established in accordance with GAAP. There is no action, suit, proceeding, investigation, audit or claim now pending or, to the knowledge of any Responsible Officer of the Company, threatened in writing by any authority regarding any taxes relating to the Company or any of its Subsidiaries that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. As of the Effective Date, other than as set forth on Schedule 8.09 to the Disclosure Letter, neither the Company nor any of its Subsidiaries has entered into an agreement or waiver or been requested to enter into an agreement or waiver extending any statute of limitations relating to the payment or collection of material taxes of the Company or any of its Subsidiaries, has otherwise been granted an extension of any statute of limitations relating to the payment or collection of taxes, or is aware of any circumstances that would cause the taxable years or other taxable periods of the Company or any of its Subsidiaries not to be subject to the normally applicable statute of limitations.

8.10. Compliance with ERISA. (a) Schedule 8.10 to the Disclosure Letter sets forth each Plan as of the Effective Date. Each Plan is in compliance in form and operation with its terms and with ERISA and the Code (including the Code provisions compliance with which is necessary for any intended favorable tax treatment) and all other applicable laws and regulations, except where any failure to comply could not reasonably be expected, either individually or in the aggregate, to result in a Material Adverse Effect. Each Plan ~~(and each related trust, if any) which~~ that is intended to be qualified under Section 401(a) of the Code has received a favorable determination letter from the IRS or has applied to the IRS for such a determination letter to the effect that ~~it meets the requirements of such Plan and its related trust are exempt from federal income taxes under~~ Sections 401(a) and 501(a), respectively, of the Code ~~covering all applicable tax law changes or is comprised of a master or prototype plan that has received, or can rely on~~ a favorable opinion or advisory letter from the IRS with respect to a volume submitter or master and prototype plan, and to the knowledge of any Responsible Officer of the Company, nothing has occurred since the date of such determination that would reasonably be expected to adversely affect such determination (or, in the case of a Plan with no determination, to the knowledge of any Responsible Officer of the Company, nothing has occurred that would reasonably be expected to materially adversely affect the issuance of a favorable determination letter or otherwise materially adversely affect such qualification). No ERISA Event has occurred, or is reasonably expected to occur, other than as could not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(b) There exists no Unfunded Pension Liability with respect to any Plan, which either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

(c) No Multiemployer Plan is insolvent. None of the Company or any of its Subsidiaries or any ERISA Affiliate has incurred a complete or partial withdrawal from any Multiemployer Plan, and, if each of the Company, any of its Subsidiaries and each ERISA Affiliate were to withdraw in a complete withdrawal as of the date this assurance is given or deemed given, the aggregate withdrawal liability that would be incurred could not, either individually or in the aggregate, be reasonably expected to result in a Material Adverse Effect.

~~(d) There are no actions, suits or claims pending against or involving a Plan (other than routine claims for benefits) or, to the knowledge any Responsible Officer of the Company, any of its Subsidiaries or any ERISA Affiliate, threatened, which could reasonably be expected to be asserted successfully against any Plan and, if so asserted successfully, could reasonably be expected either individually or in the aggregate to result in a Material Adverse Effect.~~

(ed) The Company, its Subsidiaries and any ERISA Affiliate have made all contributions to or under each Plan and Multiemployer Plan required by law within the applicable time limits prescribed thereby, the terms of such Plan or Multiemployer Plan, respectively, or any contract or agreement requiring contributions to a Plan or Multiemployer Plan except where any failure to comply, either individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

(fe) No Plan which is subject to Section 412 of the Code or Section 302 of ERISA has applied for or received an extension of any amortization period, within the meaning of Section 412 of the Code or Section 303 or 304 of ERISA. The Company, its Subsidiaries and any ERISA Affiliate have not ceased operations at a facility so as to become subject to the provisions of Section 4062(e) of ERISA, withdrawn as a substantial employer so as to become subject to the provisions of Section 4063 of ERISA or ceased making contributions to any Plan subject to Section 4064(a) of ERISA to which it made contributions which either individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. None of the Company, its Subsidiaries or any ERISA Affiliate have incurred liability to the PBGC which, either individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect, and no lien imposed under the Code or ERISA on the assets of the Company, its Subsidiaries or any ERISA Affiliate exists on account of any Plan which either individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. None of the Company, its Subsidiaries or any ERISA Affiliate has any liability under Section 4069 or 4212(c) of ERISA which either individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

(f) There are no actions, suits or claims pending against or involving a Plan (other than routine claims for benefits) or, to the knowledge any Responsible Officer of the Company, any of its Subsidiaries or any ERISA Affiliate, threatened in writing, which could reasonably be expected to be asserted successfully against any Plan and, if so asserted successfully, could reasonably be expected either individually or in the aggregate to result in a Material Adverse Effect.

(g) Except as could not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect: each Foreign Pension Plan has been maintained in compliance with its terms and with the requirements of any and all applicable laws, statutes, rules, regulations and orders and has been maintained, where required, in good standing with applicable regulatory authorities; all contributions required to be made with respect to a Foreign Pension Plan have been timely made; neither the Company nor any of its Subsidiaries has incurred any obligation in connection with the termination of, or withdrawal from, any Foreign Pension Plan; and the Foreign Pension Plan is funded in compliance with applicable law.

8.11. Security Documents. (a) The provisions of the U.S. Security Agreement (when executed and delivered by all parties thereto) are effective to create in favor of the Collateral Agent, for the benefit of the Secured Creditors, a legal, valid and enforceable security interest in all right, title and interest of the U.S. Credit Parties in all of the Security Agreement Collateral described therein, and when proper UCC financing statements have been filed in the appropriate filing offices against each U.S. Credit Party and/or the Collateral Agent has obtained "control" (within the meaning of the UCC) of the Core Deposit Accounts and DB Accounts thereunder, the Collateral Agent, for the benefit of the Secured Creditors, shall have a perfected security interest in all right, title and interest in all of the Security Agreement Collateral described therein of such U.S. Credit Party to the extent such security interest can be perfected by filing a UCC financing statement under the UCC or, with respect to the Core Deposit Accounts or DB Accounts, by the Collateral Agent having "control", subject to no other Liens other than Permitted Liens (it being understood that the Permitted Liens described in Section 10.01(s) are subject to the terms of the Intercreditor Agreement at any time that Permitted Additional Secured Indebtedness is outstanding).



(b) The Dutch Security Agreements and each other Security Document governed by Dutch law (when executed and delivered by all parties thereto) are effective to create in favor of the Collateral Agent for the benefit of the Secured Creditors, a legal, valid and enforceable security interest in all right, title and interest of the Dutch Credit Parties in all of the Collateral described therein, and when proper filings have been made in the appropriate filing offices against each Dutch Credit Party, the Collateral Agent, for the benefit of the Secured Creditors, will have a perfected security interest in all right, title and interest in all of the Collateral described therein of such Dutch Credit Party, to the extent such security interest can be perfected by making such filings under Dutch law, subject to no other Liens other than Permitted Liens (it being understood that the Permitted Liens described in Section 10.01(s) are subject to the terms of the Intercreditor Agreement at any time that Permitted Additional Secured Indebtedness is outstanding).

~~8.12. **Properties.** Each of the Company and each of its Subsidiaries has good title to all material properties (and to all land, buildings, fixtures and improvements located thereon) owned by it, including valid and marketable fee simple title to any Eligible Real Property (except as sold or otherwise disposed of in the ordinary course of business as permitted by the terms of this Agreement or such defects in title as could not, either individually or in the aggregate, reasonably be expected to have a material adverse effect on the conduct of the business of the Company and its Subsidiaries (taken as a whole)), free and clear of all Liens, other than Permitted Liens. Each of the Company and each of its Subsidiaries have a valid leasehold interest in the material properties leased by it free and clear of all Liens other than Permitted Liens, and except for such defects in title as could not, either individually or in the aggregate, reasonably be expected to have a material adverse effect on the use or operation of any such material property.~~

(c) The UK Security Agreement and each other Security Document governed by English law (when executed and delivered by all parties thereto) are effective to create in favor of the Collateral Agent for the benefit of the Secured Creditors, a legal, valid and enforceable security interest in all right, title and interest of the UK Credit Parties in all of the Collateral described therein, and when proper filings have been made in the appropriate filing offices against each UK Credit Party, the Collateral Agent, for the benefit of the Secured Creditors, will have a perfected security interest in all right, title and interest in all of the Collateral described therein of such UK Credit Party, to the extent such security interest can be perfected by making such filings under English law, subject to no other Liens other than Permitted Liens (it being understood that the Permitted Liens described in Section 10.01(s) are subject to the terms of the Intercreditor Agreement at any time that Permitted Additional Secured Indebtedness is outstanding).

8.12. [Reserved].

8.13. [Reserved].

8.14. ~~**Subsidiaries.** On and as of the Effective Date, the Company has no Subsidiaries other than those Subsidiaries listed on Schedule 8.14 to the Disclosure Letter. Schedule 8.14 to the Disclosure Letter sets forth, as of the Effective Date, (i) the percentage ownership (direct and indirect) of the Company in each class of capital stock or other Equity Interests of each of its Subsidiaries and also identifies the direct owner thereof, (ii) which Subsidiaries are Credit Parties (including whether they are U.S. Borrowers, Dutch Borrowers, UK Borrowers, U.S. Subsidiary Guarantors, UK Guarantors or Dutch Guarantors) and (iii) which Subsidiaries are Immaterial Subsidiaries. All outstanding Equity Interests of each Subsidiary of the Company (i) have been duly and validly issued, (ii) in the case of any corporation, are fully paid and non-assessable and (iii) have been issued free of preemptive rights. No Wholly-Owned Subsidiary of the Company has outstanding any securities convertible into or exchangeable for such Wholly-Owned Subsidiary's Equity Interests or outstanding any right to subscribe for or to purchase, or any options or warrants for the purchase of, or any agreement providing for the issuance (contingent or~~

~~otherwise) of or any calls, commitments or claims of any character relating to, such Wholly-Owned Subsidiary's Equity Interests or any stock appreciation or similar rights:~~

8.15. Compliance with Statutes, etc. Each of the The Company and each of its Subsidiaries is in compliance with all applicable statutes, regulations and orders of, and all applicable restrictions imposed by, all Governmental Authorities in respect of the conduct of its business and the ownership of its property ~~(including Environmental Laws)~~, except such non-compliances as could not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

8.16. Investment Company Act. Neither the Company nor any of its Subsidiaries is an "investment company" or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended.

8.17. Environmental Matters. ~~(a)~~ Except as could not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect:

(i) ~~each of~~ the Company and each of its Subsidiaries is are in compliance with all applicable Environmental Laws and has have obtained and is are in compliance with the terms of any permits required to be obtained by any of them under such Environmental Laws;

(ii) there are no Environmental Claims pending or, to the knowledge of any Responsible Officer of the Company, threatened in writing, against the Company or any of its Subsidiaries;

(iii) no Lien, other than a Permitted Lien, has been recorded or, to the knowledge of any Responsible Officer of the Company, threatened in writing under any Environmental Law with respect to any Real Property owned, leased or operated by the Company or any of its Subsidiary (including any such claim arising out of the ownership, lease or operation by the Company or any of its Subsidiaries of any Real Property formerly owned, leased or operated by the Company or any of its Subsidiaries but no longer owned, leased or operated by the Company or any of its Subsidiaries);

(iv) except as disclosed in the Company's filings with the SEC prior to the Effective Date regarding the Company's Fremont facility, neither the Company nor any of its Subsidiaries has agreed to assume or accept responsibility for any existing liability of any other Person under any Environmental Law; and

(v) except as disclosed in the Company's filings with the SEC prior to the Effective Date regarding the Company's Fremont facility, there are no facts, circumstances, conditions or occurrences with respect to the past or present business, operations, properties or facilities of the Company or any of its Subsidiaries, or any of their respective predecessors, that could reasonably be expected to give rise to any Environmental Claim against or any liability for the Company or any of its Subsidiaries under any Environmental Law.

~~(b) Neither the Company nor any of its Subsidiaries has received any letter or request for information under Section 104(e) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9601, et seq.) or any comparable state law with regard to any matter that could reasonably be expected, either individually or in the aggregate, to result in a Material Adverse Effect.~~

~~(c) Neither the Company nor any of its Subsidiaries has been issued or been required to obtain a permit for the treatment, storage or disposal of hazardous waste for any of its facilities pursuant to the federal Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et. seq.~~

~~(“RCRA”), or any equivalent state law, nor are any such facilities regulated as “interim status” facilities required to undergo corrective action pursuant to RCRA or any state equivalent, except, in each case, for such matters that could not reasonably be expected, either individually or in the aggregate, to result in a Material Adverse Effect.~~

8.18. Employment and Labor Relations. Neither the Company nor any of its Subsidiaries is ~~engaged in any unfair labor practice that could~~ a party to any collective bargaining agreement or other labor contract applicable to the Company’s or any of its Subsidiaries’ employees other than in jurisdictions where regulations mandate employee participation in industrial collective bargaining agreements and works councils with certain consultation rights with respect to the relevant entity’s operations. As of the First Amendment Effective Date, except as could not reasonably be expected, ~~either~~ individually or in the aggregate, to have a Material Adverse Effect. ~~There is (i) there are~~ no unfair labor practice complaint pending against the Company or any of its Subsidiaries or, to the knowledge of any Responsible Officer of the Company, threatened in writing against any of them, before the National Labor Relations Board or other Governmental Authority, and no grievance or arbitration or other proceeding arising out of or under any collective bargaining agreement or any other similar collective agreements with any type of employees’ representative is so pending against the Company or any of its Subsidiaries or, to the knowledge of any Responsible Officer of the Company, threatened in writing against any of them, (ii) no strike, labor dispute, slowdown, strikes, slowdowns, lock-outs, work stoppages or other labor disputes existing, pending or, to the knowledge of any Responsible Officer of the Company, threatened in writing against the Company or any of its Subsidiaries, (iii) ~~no~~ trade union, council of trade unions or other employees’ representative or employee bargaining agency that has applied or, to the knowledge of any Responsible Officer of the Company, threatened in writing to apply to be certified as the bargaining agent of any employees of the Company or any of its Subsidiaries and no existing or, to the knowledge of any Responsible Officer of the Company, threatened in writing union organizing activity taking place with respect to any of the employees of the Company or any of its Subsidiaries in the last three years, (iv) no legal actions, lawsuits, arbitrations, administrative or other proceedings, charges, complaints, investigations, inspections, audits or notices of violations or possible violations pending or, to the knowledge of any Responsible Officer of the Company, threatened in writing against the Company or any of its Subsidiaries by or on behalf of, or otherwise involving, any current or former employee, any person alleging to be a current or former employee, any applicant for employment, or any class of the foregoing, or any Governmental Authority, that involve the labor or employment relations and practices of the Company or any of its Subsidiaries, including but not limited to claims of employment discrimination, and (v) no violation of since January 1, 2017, the Company and its Subsidiaries have been in compliance with the US federal Fair Labor Standards Act of 1938, as amended, or any other applicable laws, regulations or legal requirements dealing with wage and hour matters with respect to the Company or any of its Subsidiaries, ~~except (with respect to any matter specified in clauses (i) – (v) above, either individually or in the aggregate) such as could not reasonably be expected to have a Material Adverse Effect.~~ Any and (iii) any individual who performs services for the Company or any of its Subsidiaries ~~(other than through a contract with an organization other than such individual)~~ and who is not treated as an employee of the Company or such Subsidiary for any purpose, including income tax, withholding and remittances purposes, has been properly classified as an independent non-employee contractor ~~and if such characterization is incorrect it could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.~~

8.19. Intellectual Property, etc. Each of the Company and each of its Subsidiaries owns or has the right to use all the patents, trademarks, permits, domain names, service marks, trade names, copyrights, licenses, franchises, inventions, trade secrets, proprietary information and know-how of any type, whether or not written (including, but not limited to, rights in computer programs and databases) and formulas, or rights with respect to the foregoing, and has obtained assignments of all leases, licenses and other rights of whatever nature, used in the present conduct of its business, without any known

conflict with the rights of others which, ~~or except where~~ the failure to own or ~~have which, as the case may be, could~~ obtain or such conflicts could not reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect.

~~8.20. Indebtedness. Schedule 8.20 to the Disclosure Letter sets forth a list of all Indebtedness (including Contingent Obligations) of the Company and its Subsidiaries as of the Effective Date and which is to remain outstanding after giving effect to the Transaction (excluding (i) the Obligations, (ii) the Existing Convertible Notes and (iii) any existing intercompany Indebtedness among the Company and its Subsidiaries) (all such non-excluded Indebtedness (other than such intercompany Indebtedness), “Existing Indebtedness”), in each case showing the aggregate principal amount thereof and the name of the respective borrower and any Credit Party or any of its Subsidiaries which directly or indirectly guarantees such debt.~~

8.20. [Reserved].

~~8.21. Insurance. Schedule 8.21 to the Disclosure Letter sets forth a listing of all insurance maintained by the Company and its Subsidiaries as of the Effective Date, with the amounts insured (and any deductibles) set forth therein.~~ [Reserved].

8.22. Borrowing Base Calculation. The calculation by the Company of ~~each~~ the Borrowing Base in any Borrowing Base Certificate delivered hereunder is complete and accurate.

8.23. Anti-Corruption Laws and Sanctions. The Company has implemented and maintains in effect policies and procedures designed to ensure compliance by the Company, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions, and the Company, its Subsidiaries and their respective officers and employees, and to the knowledge of the Company its directors and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects and are not knowingly engaged in any activity that would reasonably be expected to result in any Borrower being designated as a Sanctioned Person. None of (i) the Company or its Subsidiaries, nor any of their respective directors, officers or employees, or (ii) to the knowledge of the Company, any agent of the Company or any Subsidiary that will act in any capacity in connection with or benefit from the credit facility established hereby, is a Sanctioned Person. No use of proceeds or other transaction contemplated by this Agreement will violate Anti-Corruption Laws or applicable Sanctions.

~~8.24. No Default. No Credit Party is in default under or with respect to any of its contractual obligations in any respect that could reasonably be expected to have a Material Adverse Effect.~~ No Default or Event of Default has occurred and is continuing.

8.25. Fiscal Unity. No Dutch Credit Party is a member of a fiscal unity (*fiscal eenheid*) other than (a) a fiscal unity among the Dutch Credit Parties only or (b) so long as the Tax Sharing Agreement remains in full force and effect, a fiscal unity among the Dutch Credit Parties and other Dutch Affiliates of Tesla B.V. from time to time party to such Tax Sharing Agreement, Tesla Motors Netherlands Coöperatief U.A., and the New B.V.

SECTION 9. Affirmative Covenants. Each of the Company and each other Borrower hereby covenants and agrees that on and after the Effective Date and until the Total Revolving Loan Commitment and all Letters of Credit have terminated (or have been cash collateralized or backstopped by another letter of credit, in either case on terms and pursuant to arrangements reasonably satisfactory to the Administrative Agent and the respective Issuing Lenders (which arrangements, in any event, shall require such cash collateral or backstop letter of credit to be in a stated amount equal to at least 102% of the aggregate Stated Amount of all Letters of Credit outstanding at such time)) and the Loans, ~~Notes~~ and

Unpaid Drawings (in each case together with interest thereon), Fees and all other Obligations (other than indemnities and other contingent payment obligations of the Credit Parties set forth in the Credit Documents and reimbursement obligations under Section 13.01 which, in either case, are not then due and payable) incurred hereunder and thereunder, are paid in full:

9.01. Information Covenants. The Company will furnish to the Administrative Agent for delivery to each Lender:

(a) Quarterly Financial Statements. Within 45 days after the close of each of the first three fiscal quarters in each fiscal year of the Company, (i) the consolidated balance sheet of the Company and its Consolidated Subsidiaries as at the end of such fiscal quarter and the related consolidated statements of income and statement of cash flows for such fiscal quarter and for the elapsed portion of the fiscal year ended with the last day of such fiscal quarter, in each case setting forth comparative figures for the corresponding fiscal quarter in the prior fiscal year, all of which shall be certified by an Authorized Officer of the Company that they fairly present in all material respects in accordance with GAAP the financial condition of the Company and its Consolidated Subsidiaries as of the dates indicated and the results of their operations for the periods indicated, subject to normal year-end audit adjustments and the absence of footnotes and (ii) management's discussion and analysis meeting the requirements of Item 303 of Regulation S-K under the Securities Act as set forth in the Quarterly Report on Form 10-Q statement of the Company filed with the SEC for such fiscal quarter (it being understood and agreed that such management's discussion and analysis shall relate to the Company and its Consolidated Subsidiaries, provided that if the Company no longer files such Form 10-Q with the SEC, the Company shall deliver to the Administrative Agent a statement containing such management's discussion and analysis in a form that would otherwise be required in such Form 10-Q).

(b) Annual Financial Statements. Within 90 days after the close of each fiscal year of the Company, (i) the consolidated balance sheet of the Company and its Consolidated Subsidiaries as at the end of such fiscal year and the related consolidated statements of income and statement of cash flows for such fiscal year, setting forth comparative figures for the preceding fiscal year and audited by PricewaterhouseCoopers LLP or other independent certified public accountants of recognized national standing, accompanied by an opinion of such accounting firm (which opinion shall be without a "going concern" or like qualification or exception and without any qualification or exception as to scope of audit), and (ii) management's discussion and analysis meeting the requirements of Item 303 of Regulation S-K under the Securities Act as set forth in the Annual Report on Form 10-K of the Company filed with the SEC for such fiscal year (it being understood and agreed that such management's discussion and analysis shall relate to the Company and its Consolidated Subsidiaries, provided that if the Company no longer files such Form 10-K with the SEC, the Company shall deliver to the Administrative Agent a statement containing such management's discussion and analysis in a form that would otherwise be required in such Form 10-K).

(c) Budget. No later than the 90th day of each fiscal year of the Company, a budget (including budgeted statements of income, sources and uses of cash and balance sheets for the Company and its Subsidiaries on a consolidated basis) for each of the four fiscal quarters of such fiscal year prepared in detail.

(d) Officer's Certificates. At the time of the delivery of the financial statements provided for in Sections 9.01 (a) and (b), a compliance certificate from an Authorized Officer of the Company in the form of Exhibit K certifying on behalf of the Company that, to the best of such officer's knowledge, no Default or Event of Default has occurred and is continuing or, if any Default or Event of Default has occurred and is continuing, specifying the nature and extent thereof, and which certificate shall set forth (i) in reasonable detail the calculations required to establish whether the Company and its Subsidiaries

were in compliance with the provisions of Section 10.07 (setting forth, for the purposes of such certificate, calculations setting forth the Fixed Charge Coverage Ratio for such period irrespective of whether a Compliance Period exists at such time) at the end of such fiscal quarter or fiscal year, as the case may be and (ii) ~~in respect of any Indebtedness incurred pursuant to Section 10.04(n) during such period, calculations required by clause (vii) thereof~~changes to the name, type of entity or jurisdiction of organization of any Credit Party.

(e) Notice of Default, Litigation and Material Adverse Effect. Promptly, and in any event within five Business Days after any Responsible Officer of the Company obtains knowledge thereof, notice of (i) the occurrence of any event which constitutes a Default or an Event of Default, (ii) any litigation or governmental investigation or proceeding pending against the Company or any of its Subsidiaries (x) which, either individually or in the aggregate, has had, or ~~w~~ould reasonably be expected to have, a Material Adverse Effect or (y) that purports to affect the legality, validity or enforceability of any Credit Document, or (iii) any other event, change or circumstance that has had, either individually or in the aggregate, a Material Adverse Effect.

(f) Beneficial Ownership Certification. ~~Promptly upon the reasonable request of the Administrative Agent or any Lender, provide the Administrative Agent or such Lender, as the case may be, any information or documentation requested by it for purposes of complying with the Beneficial Ownership Regulation.~~[Reserved].

(g) Environmental Matters. ~~Promptly after any Responsible Officer of the Company obtains knowledge thereof, notice of one or more of the following environmental matters to the extent that such environmental matters, either individually or when aggregated with all other such environmental matters, could reasonably be expected to have a Material Adverse Effect:~~[Reserved].

(i) ~~any pending or threatened in writing Environmental Claim against the Company or any of its Subsidiaries or against or relating to any Real Property owned, leased or operated by the Company or any of its Subsidiaries;~~

(ii) ~~any condition or occurrence on or arising from any Real Property owned, leased or operated by the Company or any of its Subsidiaries that (a) results in noncompliance by the Company or any of its Subsidiaries with any applicable Environmental Law or (b) could reasonably be expected to form the basis of an Environmental Claim against the Company or any of its Subsidiaries or against or relating to any such Real Property;~~

(iii) ~~any condition or occurrence on any Real Property owned, leased or operated by the Company or any of its Subsidiaries that could reasonably be expected to cause such Real Property to be subject to any restrictions on the ownership, lease, occupancy, use or transferability by the Company or any of its Subsidiaries of such Real Property under any Environmental Law; and~~

(iv) ~~the taking of any removal or remedial action to the extent required by any Environmental Law or any Governmental Authority in response to the Release or threatened Release of any Hazardous Material on any Real Property owned, leased or operated by the Company or any of its Subsidiaries.~~

~~All such notices shall describe in reasonable detail the nature of the claim, investigation, condition, occurrence or removal or remedial action and the Company's or such Subsidiary's response thereto.~~

(h) Borrowing Base Certificate. (i) On the Effective Date, (ii) unless clause (iii) below applies, not later than 5:00 P.M. (New York City time) on or before the 20th day (or, solely with respect to the first three fiscal months of the Company after the Effective Date, the 25th day) of each fiscal month thereafter, (iii) during any period in which a Weekly Borrowing Base Period is in effect, not later than 5:00 P.M. (New York City time) on or before the third Business Day of each week, (iv) at the time of the consummation of any Asset Sale (other than a sale of Inventory in the ordinary course of business) involving Eligible Accounts, Eligible Inventory, and/or Eligible Machinery and Equipment and/or Eligible Real Property with an aggregate value in excess of \$25,000,000 ~~and~~, (v) within five Business Days after any Recovery Event involving Eligible Inventory, Eligible Machinery and Equipment and/or Eligible Real Property with an aggregate value of \$25,000,000 or more, and (vi) at the time of the consummation by (A) any U.S. Credit Party of any Asset Sale to, or Investment in, any Subsidiary that is not a U.S. Credit Party, (B) any Dutch Credit Party of any Asset Sale to, or Investment in, any Subsidiary that is not a Dutch Credit Party or (C) any UK Credit Party of any Asset Sale to, or Investment in, any Subsidiary that is not a UK Credit Party, in each case in reliance on Section 10.06(g)(ii) involving Eligible Accounts, Eligible Inventory, Eligible Machinery and Equipment and/or Eligible Real Property with an aggregate value in excess of \$25,000,000, a borrowing base certificate setting forth each Borrowing Base (in each case with supporting calculations in reasonable detail) substantially in the form of Exhibit O (each, a “Borrowing Base Certificate”), which shall be prepared (A) as of April 30, 2015 in the case of the initial Borrowing Base Certificate and (B) as of the last day of the preceding fiscal month of the Company in the case of each subsequent Borrowing Base Certificate (or, if any such Borrowing Base Certificate is delivered more frequently than monthly, as of the last Business Day of the week preceding such delivery); provided that any Borrowing Base Certificate delivered pursuant to preceding clauses (iv) ~~and~~, (v) and (vi) shall be prepared on a pro forma basis to include or exclude, as applicable, any Eligible Accounts, Eligible Inventory, Eligible Machinery and Equipment or Eligible Real Property the subject of any such event. Notwithstanding the foregoing, (w) the Company may, at any time, provide (or shall, at the request of the Administrative Agent, provide on the date of such request) a Borrowing Base Certificate updating the Borrowing Base with respect to Eligible Cash and Cash Equivalents as of the date of delivery of such Borrowing Base Certificate, (x) the Company may, within 10 Business Days of any Real Property becoming Eligible Real Property, update the Borrowing Base with respect to such Eligible Real Property, (y) the Company may, within 10 Business Days of the execution of any Belgian law register pledge agreement and perfection of the Liens granted thereunder under Belgian law, update the Borrowing Base with respect to Eligible In-Transit Inventory in-transit to Belgium and Eligible Inventory within Belgium, and (z) the Company may, up to four times per calendar year, provide a second Borrowing Base Certificate during a fiscal month updating the Borrowing Base as of the third Business Day preceding such delivery; provided that if the Company elects to provide a Borrowing Base Certificate more frequently than once during a fiscal month, that frequency must be continued for the next 30 days. Each Borrowing Base Certificate delivered pursuant to this Agreement shall include such supporting information as may be reasonably requested from time to time by the Administrative Agent.

(i) Notice of Dominion Period or Compliance Period. Promptly, and in any event within two Business Days after any Responsible Officer of the Company obtains knowledge thereof, notice of the commencement of a Dominion Period or a Compliance Period.

(j) Field Examinations; Appraisals. The Company shall provide (i) an Acceptable Appraisal in respect of the Inventory of the Borrowers and (ii) an Acceptable Field Examination in respect of the Inventory and the Accounts and related accounts of the Borrowers, at the request of the Administrative Agent, in each case no more than one time during each fiscal year of the Company (or (A) at any time during an Additional Appraisal/Exam Period, at the request of the Administrative Agent, no more than two times in each fiscal year of the Company (provided that no Acceptable Appraisal or Acceptable Field Examination, as applicable, may be required pursuant to this clause (A) if an Acceptable Appraisal in respect of Inventory or an Acceptable Field Examination, respectively, has been provided within the prior

six months) and (B) at any time that any Event of Default exists, as often as the Administrative Agent may reasonably require). At the request of the Administrative Agent at any time during an Additional Appraisal/Exam Period (which request shall not be made more than one time during each fiscal year of the Company), the Company shall provide an Acceptable Appraisal in respect of the Eligible Machinery and Equipment of the U.S. Borrowers; provided that any time that any Event of Default exists, the Company shall provide an Acceptable Appraisal in respect of the Eligible Machinery and Equipment of the U.S. Borrowers as often as the Administrative Agent may reasonably require. For the avoidance of doubt, the Company shall be permitted to deliver an Acceptable Appraisal in respect of Eligible Machinery and Equipment of the U.S. Borrowers at its option at any time. At the request of the Administrative Agent at any time during an Additional Appraisal/Exam Period (which request shall not be made more than one time during each fiscal year of the Company), the Company shall assist the Administrative Agent in procuring an Acceptable Appraisal in respect of the Eligible Real Property of the U.S. Borrowers; provided that any time that any Event of Default exists, the Company shall assist the Administrative Agent in procuring an Acceptable Appraisal in respect of the Eligible Real Property of the U.S. Borrowers as often as the Administrative Agent may reasonably require. Each such appraisal and field examination shall be at the sole cost and expense of the Company.

(k) Other Reporting. Upon the request of the Administrative Agent, as soon as available, but in any event (x) no later than 20 days after the end of each fiscal month of the Company ending after the Effective Date and (y) at any time that an Event of Default shall be continuing, a detailed aged trial balance for such period showing Accounts listed in the Borrowing Base and a detailed summary of all Accounts listed in the Borrowing Base indicating which Accounts are 30, 60 and 90 days past due and listing the names of all Account Debtors, accompanied by such supporting detail and documentation as shall be reasonably requested by the Administrative Agent.

(l) ~~Patriot Act. Promptly following the Administrative Agent's or any Lender's request therefor, all documentation and other information that the Administrative Agent or such Lender reasonably requests in order to comply with its ongoing obligations under the applicable "know your customer" and anti money laundering rules and regulations, including the Patriot Act.~~ [Reserved].

(m) ~~Cancellation of Insurance. Promptly (but in any event within three Business Days of receipt thereof) inform the Administrative Agent if any Credit Party receives notice of cancellation of any insurance policy required to be maintained pursuant to Section 9.03.~~ [Reserved].

(n) ~~Change in Name. (i) 10 days (or such lesser time as agreed by the Administrative Agent) prior written notice of any change in the legal name of any Credit Party and with respect to such new name, the Company and the applicable Credit Party shall take all action reasonably requested by the Collateral Agent to ensure the security interests of the Collateral Agent in the Collateral intended to be granted pursuant to the applicable Security Documents is at all times fully perfected and in full force and effect, subject to the limitations set forth in this Agreement and the applicable Security Documents, and (ii) 10 days (or such lesser time as agreed by the Administrative Agent) prior written notice of any change in the jurisdiction of organization of any Credit Party and with respect to such new jurisdiction of organization, the Company and the applicable Credit Party shall take all action reasonably requested by the Collateral Agent to ensure the security interests of the Collateral Agent in the Collateral intended to be granted pursuant to the applicable Security Documents is at all times fully perfected and in full force and effect, subject to the limitations set forth in this Agreement and in the applicable Security Documents.~~

(n) [Reserved].



(o) Other Information. From time to time, such other information or documents (financial or otherwise) with respect to the Company or any of its Subsidiaries as the Administrative Agent or any Lender may reasonably request, including with respect to the Beneficial Ownership Regulation or Patriot Act.

Financial information required to be delivered pursuant to Sections 9.01(a) and (b) (in each case, solely to the extent such financial information is included in materials filed with the SEC) shall be deemed to have been delivered to the Administrative Agent on the date on which such information is available via the EDGAR system of the SEC on the Internet; provided that, in each case, the Company shall (i) to the extent such information required to be provided under Section 9.01(b) is not included in materials filed with the SEC, separately deliver to the Administrative Agent an audit report and the opinion of PricewaterhouseCoopers LLP or other independent certified public accountants of national recognized standing satisfying the requirements set forth in Section 9.01(b)(i) and (ii) if such information is not available via the EDGAR system of the SEC on the Internet, promptly deliver paperemail copies of any such documents to the Administrative Agent if the Administrative Agent or any Lender requests the Company to furnish such paper copies until written notice to cease delivering such paper copies is given by the Administrative Agent.

9.02. Books, Records and Inspections. The Company will, and will cause each of its Subsidiaries to, keep proper books of record and accounts in which full, true and correct in all material respects entries are made sufficient to prepare financial statements in conformity with GAAP. The Company will, and will cause each of its Subsidiaries to, permit officers and designated representatives of the Administrative Agent and, upon the occurrence and during the continuance of an Event of Default, any Lender which is accompanying the Administrative Agent, (a) to visit and inspect, under guidance of officers of the Company or such Subsidiary, any of the properties of the Company or such Subsidiary, (b) to examine the books of account of the Company or such Subsidiary and discuss the affairs, finances and accounts of the Company or such Subsidiary with, and be advised as to the same by, its and their officers and independent accountants and (c) to verify Eligible Accounts, Eligible Inventory, Eligible Machinery and Equipment and/or Eligible Real Property, all upon reasonable prior notice and at such reasonable times and intervals and to such reasonable extent as the Administrative Agent may reasonably request; provided that, unless a Default or an Event of Default has occurred and is continuing, the Company shall only be required to reimburse the Expenses of the Administrative Agent for one such visit per calendar year.

9.03. Maintenance of Property; Insurance. (a) The Company will, and will cause each of its Subsidiaries to, (i) keep all property necessary to the business of the Company and its Subsidiaries in good working order and condition in all material respects, ordinary wear and tear excepted and subject to the occurrence of casualty and condemnation events, (ii) maintain with financially sound and reputable insurance companies insurance on all in such property amounts and against all such risks as is consistent and in accordance with industry practice for customarily maintained by companies similarly situated owning similar properties and engaged in similar businesses as the Company and its Subsidiaries, and (iii) furnish to the Administrative Agent, upon its request therefor, full information as to the insurance carried.

~~(b) The Company will, and will cause each of the Credit Parties to, at all times keep its property insured in favor of the Collateral Agent, and all policies and certificates (or certified copies thereof including any endorsements) with respect to such insurance (and any general liability insurance and marine cargo insurance maintained by the Company and/or such Credit Parties) (i) shall be endorsed to the Collateral Agent's satisfaction for the benefit of the Collateral Agent by naming the Collateral Agent as lender loss payee, mortgagee and/or additional insured, as applicable, (ii) shall provide that the respective insurers irrevocably waive any and all rights of subrogation with respect to the Collateral Agent and the other Secured Creditors, and (iii) such certificates shall be deposited with~~

~~the Collateral Agent. The Company will, and will cause each of the Credit Parties to, use commercially reasonable efforts to obtain endorsements to its insurance policies stating that such insurance policies shall not be canceled without at least 30 days' (or 10 days' in the case of non-payment of premium) prior written notice thereof by the respective insurer to the Collateral Agent.~~

(b) [Reserved].

(c) If at any time the improvements on any Mortgaged Property are located in an area identified as a special flood hazard area by the Federal Emergency Management Agency or any successor thereto or other applicable agency, the Company will, and will cause the applicable Credit Party to, at all times keep and maintain flood insurance in an amount reasonably satisfactory to the Administrative Agent but in no event less than the amount sufficient to comply with the Flood Insurance Laws.

(d) If the Company or any of its Subsidiaries shall fail to maintain insurance in accordance with this Section 9.03, or if the Company or any of its Subsidiaries shall fail to so endorse and deposit all certificates with respect thereto, the Administrative Agent shall have the right (but shall be under no obligation) to procure such insurance and the Company and the other U.S. Borrowers jointly and severally agree to reimburse the Administrative Agent for all out-of-pocket costs and expenses of procuring such insurance.

9.04. Existence; Franchises. The Company will, and will cause each of its Subsidiaries to, do or cause to be done, all things necessary to preserve and keep in full force and effect its existence and its rights, franchises, licenses, permits, copyrights, trademarks and patents; provided, however, that nothing in this Section 9.04 shall prevent (i) sales of assets, Divisions and other transactions by the Company or any of its Subsidiaries not prohibited by this Agreement, (ii) the withdrawal by the Company or any of its Subsidiaries of its qualification as a foreign Business in any jurisdiction if such withdrawal could not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, or (iii) the termination or suspension of any existence, rights, franchises, licenses, permits, copyrights, trademarks and patents if such termination or suspension, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

9.05. Compliance with Laws, etc. (a) The Company will, and will cause each of its Subsidiaries to, comply with all applicable statutes, regulations and orders of, and all applicable restrictions imposed by, all Governmental Authorities in respect of the conduct of its business and the ownership of its property ~~(including applicable statutes, regulations, orders and restrictions relating to Environmental Laws)~~, except such non-compliances as could not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) The Company will comply, and will cause each of its Subsidiaries to comply, with all Anti-Corruption Laws and all Sanctions in all material respects and will not knowingly engage in any activity that would reasonably be expected to result in any party to this Agreement being in violation of Sanctions or Anti-Corruption Laws.

9.06. Compliance with Environmental Laws. (a) The Company will comply, and will cause each of its Subsidiaries to comply, with all Environmental Laws and permits applicable to, or required in respect of the conduct of its business or operations or by, the ownership, lease or use of its Real Property now or hereafter owned, leased or operated by the Company or any of its Subsidiaries, except for such instances of noncompliance as could not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, and will promptly pay or cause to be paid all costs and expenses incurred in connection with such required compliance, except to the extent such nonpayment could not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, and will

keep or cause to be kept all such Real Property free and clear of any Liens imposed pursuant to such Environmental Laws or post bonds or other financial assurances sufficient to satisfy the obligations or liability evidenced by such Liens, except to the extent that such Liens, including any action to enforce any such Liens, could not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Neither the Company nor any of its Subsidiaries will generate, use, treat, store, Release or dispose of, or permit the generation, use, treatment, storage, Release or disposal of Hazardous Materials on any Real Property now or hereafter owned, leased or operated by the Company or any of its Subsidiaries, or transport or permit the transportation of Hazardous Materials to or from any such Real Property, except for Hazardous Materials generated, used, treated, stored, Released or disposed of at, or transported to or from, any such Real Properties which, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

(b) (i) ~~After the receipt by the Administrative Agent or any Lender of any notice of the type described in Section 9.01(g); (ii) at~~ any time that the Company or any of its Subsidiaries are not in compliance with Section 9.06(a) or (iii) in the event that the Administrative Agent or the Lenders have exercised any of the remedies pursuant to the last paragraph of Section 11, the Company and the other Borrowers will (in each case) provide, at the sole joint and several expense of the Company and the other Borrowers and at the request of the Administrative Agent, an environmental site assessment report in connection with, in the case of clauses (i) ~~and (ii)~~ above, any or all the Real Property that is the subject of clauses (i) ~~or (ii)~~ above or, in the case of clause (iii) above, any Real Property, and is owned, leased or operated by the Company or any of its Subsidiaries, prepared by an environmental consulting firm reasonably approved by the Administrative Agent, for purpose of identifying the presence or absence of Hazardous Materials and any violations of Environmental Law, and the potential cost of any removal or remedial action in connection with such Hazardous Materials on or emanating from, and the correction of any such violations at, such Real Property. If the Company or any other Borrower fails to provide the same within 45 days after such request was made, the Administrative Agent may order the same, the cost of which shall be borne by the Company and the other Borrowers on a joint and several basis, and the Company and the other Borrowers shall grant and hereby grant (in the case of property leased by the Company or any of its Subsidiaries, subject to the terms of the applicable lease) to the Administrative Agent and the Lenders and their respective agents reasonable access to such Real Property and specifically grant the Administrative Agent and the Lenders an irrevocable non-exclusive license, subject to the rights of tenants, to undertake such an assessment, and to address any Hazardous Materials and any violations of Environmental Law identified by such an assessment, at any reasonable time upon reasonable notice to the Company or the applicable other Borrower, all at the sole joint and several expense of the Company and the other Borrowers.

9.07. ERISA.

(a) The Company will deliver to the Administrative Agent (in sufficient copies for all Lenders, if the Administrative Agent so requests):

(i) promptly and in any event within 15 days after receiving a request from the Administrative Agent a copy of the most recent IRS Form 5500 (including the Schedule B) with respect to a Plan;

(ii) promptly and in any event within 30 days after any Responsible Officer of the Company knows that any ERISA Event has occurred that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, a certificate of an Authorized Officer of the Company describing such ERISA Event and the action, if any, proposed to be taken with respect to such ERISA Event and a copy of any notice filed with the PBGC or the IRS pertaining to such ERISA Event and any notices received by the Company, any Subsidiary of the

Company or, to the Company's knowledge, any ERISA Affiliate from the PBGC or any other governmental agency with respect thereto; provided that, in the case of such ERISA Events under paragraph (d) of the definition thereof, the 30-day notice period set forth above shall be a 10-day period, and, in the case of such ERISA Events under paragraph (b) of the definition thereof, in no event shall notice be given later than 10 days after the occurrence of any such ERISA Event; and

(iii) promptly, and in any event within 30 days, after a Responsible Officer of the Company, becomes aware that there has been (A) an increase in Unfunded Pension Liabilities (taking into account only Plans with positive Unfunded Pension Liabilities) that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, (B) an increase since the date the representations hereunder are given or deemed given, or from any prior notice, as applicable, in potential withdrawal liability under Section 4201 of ERISA, if the Company, any Subsidiary of the Company and the ERISA Affiliates were to withdraw completely from any and all Multiemployer Plans that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, (C) that any contribution required to be made with respect to a Foreign Pension Plan has not been timely made, except where the failure to do so, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect or (D) the adoption of any amendment to a Plan which results in an increase in contribution obligations of the Company or any Subsidiary that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, a detailed written description thereof from an Authorized Officer of the Company.

(b) The Company and each of its applicable Subsidiaries shall ensure that all Foreign Pension Plans administered by it or into which it makes payments obtains or retains (as applicable) registered or tax-qualified, as applicable, status under and as required by applicable law and is administered in a timely manner in all respects in compliance with all applicable laws and the terms of each relevant Foreign Pension Plans, except where the failure to do any of the foregoing, either individually or in the aggregate, could not be reasonably likely to result in a Material Adverse Effect.

(c) None of the Company nor its Subsidiaries will incur liabilities to any Multiemployer Plan in the event of a complete or partial withdrawal therefrom that, either individually or in the aggregate, could be reasonably expected to have a Material Adverse Effect.

9.08. [Reserved].

9.09. ~~Performance of Obligations. The Company will, and will cause each of its Subsidiaries to, perform all of its obligations under the terms of each mortgage, indenture, security agreement, loan agreement or credit agreement and each other agreement, contract or instrument by which it is bound, except such non-performances as could not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.~~ [Reserved].

9.10. Payment of Taxes. The Company will pay and discharge, and will cause each of its Subsidiaries to pay and discharge, all material taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits or upon any properties belonging to it, prior to the date on which penalties attach thereto, and all material lawful claims which, if unpaid, might become a Lien or charge upon any properties of the Company or any of its Subsidiaries not otherwise permitted under Section 10.01(a); provided that neither the Company nor any of its Subsidiaries shall be required to pay any such tax, assessment, charge, levy or claim which is being contested in good faith and by proper proceedings if it has maintained adequate reserves with respect thereto in accordance with GAAP.

9.11. Use of Proceeds. The Borrowers will use the proceeds of the Loans only as provided in Section 8.08 and the last sentence of Section 8.23.

9.12. Additional Security; Further Assurances; Post-Closing Matters; Additional Borrowers; etc.— (a) Subject to the limitations set forth in the Security Documents and this Agreement, the Company will, and will cause each of the other Credit Parties to, at the expense of the Company and the other Borrowers, make, execute, endorse, acknowledge, file and/or deliver to the Collateral Agent from time to time such vouchers, invoices, schedules, confirmatory assignments, conveyances, financing statements, transfer endorsements, powers of attorney, certificates, Real Property Surveys, reports, control agreements (other than with respect to Excluded Accounts) and other assurances or instruments and take such further steps relating to the Collateral covered by any of the Security Documents as the Collateral Agent may reasonably require. Furthermore, the Company will, and will cause the other Credit Parties to, deliver to the Collateral Agent such opinions of counsel, Title Policies and other related documents as may be reasonably requested by the Collateral Agent to assure itself that this Section 9.12 has been complied with. Notwithstanding anything to the contrary set forth in the Credit Documents, (x) no action shall be required to be taken by any of the Credit Parties to create, perfect or maintain any Lien on the Collateral under the laws of any jurisdiction other than the United States, the States and territories of the United States, the District of Columbia, the Netherlands, Belgium, England and Wales and as provided in Sections 9.12(c), (d) and (e) and (y) the Credit Parties shall not be obligated to otherwise undertake collateral perfection not otherwise required under the Credit Documents. Each of the Company and each other Borrower agrees that each action required by this clause (a) shall be completed as soon as possible, but in no event later than 30 days after such action is requested to be taken by the Administrative Agent or the Required Lenders (as such date may be extended by the Administrative Agent in its sole discretion); provided that, in no event will the Company or any of its Subsidiaries be required to take any action, other than using commercially reasonable efforts, to obtain consents or other agreements from third parties with respect to its compliance with this clause.

(b) If the Administrative Agent or the Required Lenders reasonably determine that they are required by law or regulation to have Real Property Appraisals prepared in respect of any Mortgaged Property, the Company and the other Credit Parties will assist the Administrative Agent in procuring and be financially responsible for the procurement of Real Property Appraisals which satisfy the applicable requirements of the Real Estate Appraisal Reform Amendments of the Financial Institution Reform, Recovery and Enforcement Act of 1989, as amended, and which shall otherwise be in form and substance reasonably satisfactory to the Administrative Agent.

(c) ~~(i) The Company and each other Borrower will, within 90 days following the Effective Date (as such date may be extended from time to time by the Administrative Agent in its sole discretion), enter into one or more Cash Management Control Agreements as, and to the extent, required by Sections 5.03(b) and (c). (ii) The Company and each other Borrower will, within 90 days following the Effective Date (as such date may be extended from time to time by the Administrative Agent in its sole discretion) and at all times thereafter,~~ comply with the requirements of Section 5.03(b)(ii) and (iii) and Section 5.03(c)(ii) and (iii).

(d) If the Company or any Credit Party establishes, creates or acquires after the Effective Date any direct Wholly-Owned Subsidiary (or any existing Wholly-Owned Subsidiary becomes a direct Wholly-Owned Domestic Subsidiary of the Company or a direct Wholly-Owned Dutch Subsidiary of Tesla B.V.), (i) within 30 days (as such date may be extended by the Administrative Agent in its sole discretion) after the establishment, creation or acquisition of any such Subsidiary, the applicable Credit Party shall pledge the capital stock or other Equity Interests of such new Subsidiary pursuant to, and to the extent required by, any applicable Security Document and deliver the certificates, if any, representing such stock or other Equity Interests, together with stock or other appropriate powers duly executed in

blank, to the Collateral Agent to the extent required by the applicable Security Document (but otherwise subject to the Intercreditor Agreement if then in effect), (ii) within 30 days (as such date may be extended from time to time by the Administrative Agent in its sole discretion) after the establishment, creation or acquisition of any direct Wholly-Owned Domestic Subsidiary of the Company (other than an Immaterial Subsidiary, a Securitization Subsidiary, a Tesla Finance Subsidiary, an Excluded Charging Subsidiary or an Excluded Energy Storage Subsidiary) ~~(as such date may be extended from time to time by the Administrative Agent in its sole discretion)~~, such Wholly-Owned Domestic Subsidiary shall become a party to each of the Intercreditor Agreement if then in effect, the U.S. Security Agreement and the U.S. Guaranty and each other applicable Security Document, in each case by executing and delivering to the Administrative Agent a counterpart of a Joinder Agreement (or other applicable joinder agreement reasonably satisfactory to the Administrative Agent and the Company), (iii) within 30 days (as such date may be extended from time to time by the Administrative Agent in its sole discretion) after the establishment, creation or acquisition of any direct Wholly-Owned Dutch Subsidiary of Tesla B.V. (other than an Immaterial Subsidiary, a Securitization Subsidiary, a Tesla Finance Subsidiary, an Excluded Charging Subsidiary or an Excluded Energy Storage Subsidiary) ~~(as such date may be extended from time to time by the Administrative Agent in its sole discretion)~~, such Wholly-Owned Dutch Subsidiary shall become a party to each of the Intercreditor Agreement if then in effect and applicable, the Dutch Security Agreements and the Dutch Guaranty and each other applicable Security Document, in each case by executing and delivering to the Administrative Agent a counterpart of a Joinder Agreement (or other applicable joinder agreement reasonably satisfactory to the Administrative Agent and the Company) and any related documentation required by such Joinder Agreement (or other applicable joinder agreement) ~~and~~, (iv) within 30 days (as such date may be extended from time to time by the Administrative Agent in its sole discretion) after the establishment, creation, or acquisition of any direct Wholly-Owned UK Subsidiary of Tesla UK (other than an Immaterial Subsidiary, a Securitization Subsidiary, a Tesla Finance Subsidiary, an Excluded Charging Subsidiary or an Excluded Energy Storage Subsidiary) (as such date may be extended from time to time by the Administrative Agent in its sole discretion), such Wholly-Owned UK Subsidiary shall become a party to each of the Intercreditor Agreement if then in effect and applicable, the UK Security Agreement and the UK Guaranty and each other applicable Security Document, in each case by executing and delivering to the Administrative Agent a counterpart of a Joinder Agreement (or other applicable joinder agreement reasonably satisfactory to the Administrative Agent and the Company) and any related documentation required by such Joinder Agreement (or other applicable joinder agreement) and (v) each such new Wholly-Owned Domestic Subsidiary and each such new Wholly-Owned Dutch Subsidiary and each such new Wholly-Owned UK Subsidiary, to the extent requested by the Administrative Agent or the Required Lenders, shall take all actions required pursuant to this Section 9.12. In addition, each new Wholly-Owned Subsidiary that is required to execute any Credit Document (other than any Wholly-Owned Subsidiary that is not a Credit Party) shall execute and deliver, or cause to be executed and delivered, all other relevant documentation (including opinions of counsel (which shall be substantially similar to those opinions delivered on the Effective Date)) of the type described in Section 6 as such new Wholly-Owned Subsidiary would have had to deliver if such new Wholly-Owned Subsidiary were a Credit Party on the Effective Date.

(e) At the time that any Credit Party grants a Lien or other security interest in any Permitted Additional Secured Indebtedness Priority Collateral to secure any Permitted Additional Secured Indebtedness or Cash Flow Revolving Indebtedness, such Credit Party, concurrently therewith, shall enter into one or more additional security documents and/or Mortgages (collectively, "Additional Security Documents") and/or amend any then existing Security Document, in each case in form and substance reasonably satisfactory to the Administrative Agent, pursuant to which such Credit Party shall grant a Second Priority Lien and security interest to the Collateral Agent, for the benefit of the Secured Creditors, in such Permitted Additional Secured Indebtedness Priority Collateral. All such security interests shall constitute valid and enforceable perfected security interests subject to no Liens except for Permitted Liens and shall be subject to the terms of the Intercreditor Agreement. In connection therewith, each such

Credit Party shall take all such further actions described in clause (a) of this Section 9.12 as the Collateral Agent may reasonably request.

(f) If, as of the last day of any fiscal quarter of the Company, the aggregate consolidated assets (excluding intercompany assets) of all Immaterial Subsidiaries exceeds 10.0% of Consolidated Total Assets (as set forth in the most recent consolidated balance sheet of the Company and its Consolidated Subsidiaries delivered to the Lenders pursuant to this Agreement and computed in accordance with GAAP) or the aggregate consolidated total revenues of all Immaterial Subsidiaries exceeds 10.0% of the consolidated total revenues of the Company and its Consolidated Subsidiaries (as set forth in the most recent income statement of the Company and its Consolidated Subsidiaries delivered to the Lenders pursuant to this Agreement and computed in accordance with GAAP) then, within 45 days after the end of any such fiscal quarter (or, if such fiscal quarter is the fourth fiscal quarter of the Company, within 90 days thereafter) (as either such date may be extended by the Administrative Agent in its sole discretion), the Company shall cause one or more Immaterial Subsidiaries to take the actions specified in Section 9.12(d) on the same basis that any newly formed or acquired Wholly-Owned Domestic Subsidiary of Tesla B.V. or any Wholly-Owned Dutch Subsidiary or Wholly-Owned UK Subsidiary of the Company would have to take; provided, however, such actions shall only be required to the extent that, after giving effect to such actions, the aggregate consolidated assets (excluding intercompany assets) of all Immaterial Subsidiaries do not exceed 10.0% of Consolidated Total Assets and the aggregate consolidated total revenues of all Immaterial Subsidiaries do not exceed 10.0% of consolidated total revenues of the Company and its Consolidated Subsidiaries (as set forth in the most recent income statement of the Company and its Consolidated Subsidiaries delivered to the Lenders pursuant to this Agreement and computed in accordance with GAAP).

(g) At any time that the Company desires that a then existing Wholly-Owned Domestic Subsidiary of the Company (other than a Securitization Subsidiary, a Tesla Finance Subsidiary, an Excluded Charging Subsidiary or an Excluded Energy Storage Subsidiary) ~~or~~ Wholly-Owned Dutch Subsidiary of Tesla B.V. (other than a Securitization Subsidiary, a Tesla Finance Subsidiary, an Excluded Charging Subsidiary or an Excluded Energy Storage Subsidiary) or Wholly-Owned UK Subsidiary of Tesla UK (other than a Securitization Subsidiary, a Tesla Finance Subsidiary, an Excluded Charging Subsidiary or an Excluded Energy Storage Subsidiary) become a U.S. Borrower or a Dutch Borrower or a UK Borrower hereunder after the Effective Date, or any other Wholly Owned Subsidiary of the Company acceptable to the Administrative Agent and the Lenders become a Borrower hereunder after the Effective Date, such Wholly Owned Subsidiary shall satisfy the following conditions at the time it becomes a U.S. Borrower or a Dutch Borrower or a UK Borrower, as the case may be: (i) the consent of the Administrative Agent shall have been obtained (which consent shall not be unreasonably withheld); (ii) each such Wholly-Owned Subsidiary shall become a party to this Agreement and each applicable Note by executing and delivering to the Administrative Agent a counterpart of a Joinder Agreement (or other applicable joinder agreement reasonably satisfactory to the Administrative Agent and the Company); (iii) to the extent not already a party thereto, each such Wholly-Owned Domestic Subsidiary shall become a party to each of the Intercreditor Agreement if then in effect, the U.S. Security Agreement and the U.S. Guaranty and each other applicable Security Document, in each case by executing and delivering to the Administrative Agent a counterpart of a Joinder Agreement (or other applicable joinder agreement reasonably satisfactory to the Administrative Agent and the Company); (iv) to the extent not already a party thereto, each such Wholly-Owned Dutch Subsidiary shall become a party to each of the Intercreditor Agreement if then in effect and applicable, the Dutch Security Agreements and the Dutch Guaranty and each other applicable Security Document, in each case by executing and delivering to the Administrative Agent a counterpart of a Joinder Agreement (or other applicable joinder agreement reasonably satisfactory to the Administrative Agent and the Company) and any related documentation required by such Joinder Agreement (or other applicable joinder agreement); (v) to the extent not already a party thereto, each such Wholly-Owned UK Subsidiary shall become a party to each of the Intercreditor

Agreement if then in effect and applicable, the UK Security Agreement and the UK Guaranty and each other applicable Security Document, in each case by executing and delivering to the Administrative Agent a counterpart of a Joinder Agreement (or other applicable joinder agreement reasonably satisfactory to the Administrative Agent and the Company) and any related documentation required by such Joinder Agreement (or other applicable joinder agreement); (vi) to the extent not already a party thereto, each such Wholly-Owned Subsidiary (other than a Wholly-Owned Domestic Subsidiary, Wholly-Owned Dutch Subsidiary or Wholly-Owned UK Subsidiary) shall become a party to each of the Intercreditor Agreement if then in effect and applicable, and each other applicable Security Document, in each case by executing and delivering to the Administrative Agent a counterpart of a Joinder Agreement (or other applicable joinder agreement reasonably satisfactory to the Administrative Agent and the Company) and any related documentation required by such Joinder Agreement (or other applicable joinder agreement), and such amendments shall be made to this Agreement as may be appropriate to reflect the assets of such Subsidiary contributing to the Borrowing Base; (vii) each such Wholly-Owned Subsidiary shall have provided all documentation and other information that the Administrative Agent or any Lender reasonably requests in order to comply with its ongoing obligations under the applicable "know your customer" and anti-money laundering rules and regulations, including the Patriot Act, and (viii) each such Wholly-Owned Subsidiary, to the extent requested by the Administrative Agent or the Required Lenders, shall take all actions required pursuant to Section 9.12 to the extent not previously taken by such Wholly-Owned Subsidiary. In addition, each such Wholly-Owned Subsidiary shall execute and deliver, or cause to be executed and delivered, all other relevant documentation (including opinions of counsel (which shall be substantially similar to those opinions delivered on the Effective Date)) of the type described in Section 6 as such Wholly-Owned Subsidiary would have had to deliver if such Wholly-Owned Subsidiary were a Borrower on the Effective Date.

(h) ~~In the event that the Company does not provide an Acceptable Field Examination as required by Section 6.14(ii) on or prior to the Effective Date, the Company will deliver such Acceptable Field Examination as soon as practicable, but in any event within 90 days following the Effective Date (as such date may be extended from time to time by the Administrative Agent in its sole discretion).~~  
[Reserved].

(i) The Dutch Credit Parties will deliver (i) a Supplemental Security Agreement (as defined in the Dutch Receivables Security Agreement) satisfying the requirements of Section 2.2 of the Dutch Receivables Security Agreement as and when required by Section 2.2 of the Dutch Receivables Security Agreement and (ii) a Supplemental Security Agreement (as defined in the Dutch Inventory Security Agreement) satisfying the requirements of Section 2.2 of the Dutch Inventory Security Agreement as and when required by Section 2.2 of the Dutch Inventory Security Agreement.

9.13. Information Regarding Collateral.

(a) The Company and the other Borrowers will furnish to the Administrative Agent prompt written notice of:

(i) with respect to any U.S. Credit Party, any change in any U.S. Credit Party's (A) legal name, (B) organizational identity, (C) organizational identification number, (D) in the case of any U.S. Credit Party that is not a registered organization for purposes of Section 9-307 of the UCC, its place of business or, if it has more than one place of business, its chief executive office, or (E) its federal taxpayer identification number;

(ii) with respect to any Dutch Credit Party, any change (A) in such Dutch Credit Party's corporate name, (B) in the location of such Dutch Credit Party's chief executive office, its principal place of business, registered office, any office in which it maintains books or records



relating to Collateral (other than de-minimis portions of Collateral) owned by it or any office or facility at which Collateral owned by it is located (including the establishment of any such new office or facility), or (C) in such Dutch Credit Party's identity; and

(iii) with respect to any UK Credit Party, any change (A) in such UK Credit Party's corporate name, (B) in the location of such UK Credit Party's registered office, its principal place of business, any office in which it maintains books or records relating to Collateral (other than de-minimis portions of Collateral) owned by it or any office or facility at which Collateral owned by it is located (including the establishment of any such new office or facility), or (C) in such UK Credit Party's identity.

(b) Within five Business Days prior to any change referred to in clause (a) above, the Company and the other Credit Parties agree to make, or to provide to the Collateral Agent all the information required to enable it to make, all filings under the UCC (or foreign equivalent) or otherwise that are required in order for the Collateral Agent to continue at all times following such change to have a valid, legal and perfected security interest in all the Collateral.

9.14. COMI. Each Credit Party incorporated in a jurisdiction where the Insolvency Regulation applies and each UK Credit Party (to the extent that the Insolvency Regulation is recognized in England and Wales after 31 December 2020), shall maintain its centre of main interest (as that term is used in Section 3(1) of the Insolvency Regulation) in its jurisdiction of incorporation and shall not create or maintain any establishment (as defined in section 2(h) of the Insolvency Regulation) in any other jurisdiction that is a member state of the European Union.

~~9.15. Acknowledgment and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Credit Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Credit Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:~~

~~(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and~~

~~(b) the effects of any Bail-in Action on any such liability, including, if applicable:~~

~~(i) a reduction in full or in part or cancellation of any such liability;~~

~~(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Credit Document; or~~

~~(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of any EEA Resolution Authority.~~

SECTION 10. Negative Covenants. Each of the Company and the other Borrowers hereby covenants and agrees that on and after the Effective Date and until the Total Revolving Loan Commitment and all Letters of Credit have terminated (or have been cash collateralized or backstopped

by another letter of credit, in either case on terms and pursuant to arrangements reasonably satisfactory to the Administrative Agent and the respective Issuing Lenders (which arrangements, in any event, shall require such cash collateral or backstop letter of credit to be in a stated amount equal to at least 102% of the aggregate Stated Amount of all Letters of Credit outstanding at such time)) and the Loans; Notes and Unpaid Drawings (in each case, together with interest thereon), Fees and all other Obligations (other than any indemnities and other contingent payment obligations of the Credit Parties set forth in the Credit Documents and reimbursement obligations under Section 13.01 which, in either case are not then due and payable) incurred hereunder and thereunder, are paid in full:

10.01. **Liens.** The Company will not, and will not permit any of its Subsidiaries to, create, incur, assume or suffer to exist any Lien upon or with respect to any property or assets (real or personal, tangible or intangible) of the Company or any of its Subsidiaries, whether now owned or hereafter acquired or knowingly permit the filing of any financing statement under the UCC or any other similar notice of Lien under any similar recording or notice statute; provided that the provisions of this Section 10.01 shall not prevent the creation, incurrence, assumption or existence of the following (Liens described below are herein referred to as "Permitted Liens"):

(a) (i) Liens for taxes, assessments or governmental charges or levies not yet delinquent or (ii) Liens for taxes, assessments or governmental charges or levies being contested in good faith and by appropriate proceedings for which adequate reserves have been established in accordance with GAAP;

(b) Liens in respect of property or assets of the Company or any of its Subsidiaries imposed by law, which were incurred in the ordinary course of business and do not secure Indebtedness for borrowed money, such as freight carriers' and forwarders', warehousemen's, bailee's, materialmen's and mechanics' liens and other similar Liens arising in the ordinary course of business, and (i) which do not in the aggregate materially detract from the value of the Company's or such Subsidiary's property or assets or materially impair the use thereof in the operation of the business of the Company or such Subsidiary or (ii) which are being contested in good faith by appropriate proceedings, which proceedings have the effect of preventing the forfeiture or sale of the property or assets subject to any such Lien;

(c) Liens in existence on the Effective Date which are listed, and the property subject thereto described, in Schedule 10.01 to the Disclosure Letter, plus renewals, replacements, refinancings and extensions of such Liens; provided that (i) the aggregate principal amount of the Indebtedness, if any, secured by such Liens does not exceed that amount outstanding at the time of any such renewal, replacement, refinancing or extension (plus the sum of (1) accrued and unpaid interest and fees thereon, (2) any prepayment premiums and (3) customary fees and expenses relating to such renewal, replacement, refinancing or extension) and (ii) any such renewal, replacement or extension does not encumber any additional assets or properties of the Company or any of its Subsidiaries;

(d) Liens created by or pursuant to this Agreement and the Security Documents;

(e) (i) licenses, sublicenses, leases or subleases granted by the Company or any of its Subsidiaries to other Persons not materially interfering with the conduct of the business of the Company or any of its Subsidiaries and (ii) any interest or title of a lessor, sublessor or licensor under any lease or license agreement not prohibited by this Agreement to which the Company or any of its Subsidiaries is a party;

(f) Liens upon assets of the Company or any of its Subsidiaries subject to Capitalized Lease Obligations (including the financing of such related installation, maintenance or software licensing charges) and any renewals, replacements, refinancings or extensions thereof for the same or a lesser amount (plus the sum of (1) accrued and unpaid interest and fees thereon, (2) any prepayment premium

and (3) customary fees and expenses relating to such renewal, replacement, refinancing or extension), to the extent such Capitalized Lease Obligations or renewals, replacements, refinancings or extensions thereof are permitted by Section 10.04(d) or Section 10.04(p); provided that (i) such Liens only serve to secure the payment of Indebtedness arising under such Capitalized Lease Obligation or renewal, replacement, refinancing or extension thereof and (ii) the Lien encumbering the asset giving rise to the Capitalized Lease Obligation or renewal, replacement, refinancing or extension thereof does not encumber any other asset of the Company or any of its Subsidiaries (other than accessions to such assets or proceeds thereof and related property);

(g) purchase money Liens (including the interests of vendors and lessors under conditional sale and title retention agreements) placed upon assets (or any improvements thereto) of the Company or any of its Subsidiaries and placed at the time of the acquisition thereof by the Company or such Subsidiary (or in the case of improvements, at the time of construction or repair) or within 365 days thereafter to secure Indebtedness incurred to pay all or a portion of the purchase price thereof, plus related installation, maintenance and software licensing costs, or to secure Indebtedness incurred solely for the purpose of financing the acquisition of any such asset or extensions, renewals, refinancings or replacements of any of the foregoing for the same or a lesser amount (plus the sum of (1) accrued and unpaid interest and fees thereon, (2) any prepayment premium and (3) customary fees and expenses relating to such renewal, replacement, refinancing or extension); provided that (i) the Indebtedness secured by such Liens is permitted by Section 10.04(d) or Section 10.04(p) and (ii) in all events, the Lien encumbering such assets so acquired does not encumber any other asset of the Company or any of its Subsidiaries (other than accessions to such assets or proceeds thereof and related property);

(h) (x) easements, rights-of-way, restrictions, encroachments and other similar charges or encumbrances, and minor title deficiencies, in each case not securing Indebtedness and not materially interfering with the conduct of the business of the Company or any of its Subsidiaries and (y) if applicable, any Permitted Encumbrances;

(i) Liens arising from precautionary UCC financing statement filings (or other foreign equivalent filings) regarding operating leases entered into in the ordinary course of business;

(j) Liens arising out of the existence of judgments or awards that do not otherwise constitute an Event of Default under Section 11.10;

(k) statutory, contractual and common law landlords' liens under leases to which the Company or any of its Subsidiaries is a party;

(l) Liens (other than Liens imposed under ERISA) incurred in the ordinary course of business in connection with workers compensation claims, unemployment insurance and social security benefits and Liens securing the performance of bids, tenders, leases and contracts in the ordinary course of business, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business (exclusive of obligations in respect of the payment for borrowed money);

(m) Liens on property or assets acquired pursuant to an Acquisition, or on property or assets of a Subsidiary of the Company in existence at the time such Subsidiary is acquired pursuant to an Acquisition and any renewals, replacements, refinancings or extensions thereof for the same or a lesser amount (plus the sum of (1) accrued and unpaid interest and fees thereon, (2) any prepayment premium and (3) customary fees and expenses relating to such renewal, replacement, refinancing or extension); provided that (i) any Indebtedness and any renewals, replacements, refinancings or extensions thereof that is secured by such Liens is permitted to exist under Section 10.04(g), and (ii) such Liens are not incurred

in connection with, or in contemplation or anticipation of, such Acquisition (other any renewals, replacements, refinancings or extensions of Indebtedness permitted by Section 10.04(g)) and do not attach to any other asset of the Company or any of its Subsidiaries;

(n) Liens arising out of any conditional sale, title retention, consignment or other similar arrangements for the sale of goods entered into by the Company or any of its Subsidiaries in the ordinary course of business to the extent such Liens do not attach to any assets other than the goods subject to such arrangements;

(o) Liens (i) incurred in the ordinary course of business in connection with the purchase or shipping of goods or assets (or the related assets and proceeds thereof), which Liens are in favor of the seller, broker or shipper of such goods or assets and only attach to such goods or assets, and (ii) in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(p) bankers' Liens, rights of setoff and other similar Liens existing solely with respect to cash and Cash Equivalents on deposit in one or more accounts (other than the Core Dutch Deposit Accounts) maintained by the Company or any of its Subsidiaries, in each case granted in the ordinary course of business in favor of the bank or banks or other financial institutions with which such accounts are maintained, securing amounts owing to such bank or banks with respect to cash management and operating account arrangements;

(q) Liens granted in the ordinary course of business on insurance policies, proceeds thereof and the unearned portion of insurance premiums with respect thereto securing the financing of the unpaid cost of the insurance policies to the extent the financing is permitted under Section 10.04;

(r) Liens on earnest money deposits made in the ordinary course of business in connection with any agreement in respect of an anticipated Acquisition or other Investment;

(s) Liens on Collateral (including Permitted Additional Secured Indebtedness Priority Collateral that is to become Collateral) securing Permitted Additional Secured Indebtedness or Cash Flow Revolving Indebtedness so long as an Intercreditor Agreement is in full force and effect and any Liens on ABL Priority Collateral are junior to the Liens of the Collateral Agent on such ABL Priority Collateral;

(t) Liens on cash and Cash Equivalents to secure (x) the Company's or its respective Subsidiary's reimbursement obligations under letters of credit, bankers' acceptances, bank guarantees, performance bonds, surety bonds and bid bonds or similar bonds permitted under Section 10.04(m) so long as the aggregate amount of such cash and Cash Equivalents pledged to secure such Indebtedness does not exceed at any time 102% of the aggregate outstanding amount of such Indebtedness (or, in the case of undrawn letters of credit, bankers' acceptances or bank guarantees, the aggregate undrawn face amount thereof) or (y) indemnification obligations relating to dispositions not prohibited by this Agreement and entered into in the ordinary course of business;

(u) licensing and cross-licensing arrangements entered into by the Company and its Subsidiaries for purposes of enforcing, defending or settling claims with respect to the intellectual property of the Company and its Subsidiaries;

(v) Liens on [\(i\) Energy Storage Assets and related assets](#), in each case securing Indebtedness permitted by Section 10.04(r) [or \(ii\) Charging Assets and related assets, in each case securing Indebtedness permitted by Section 10.04\(bb\)](#);

(w) (i) Liens on assets and property of Subsidiaries that are not Credit Parties securing Indebtedness permitted by Section 10.04(o) or (v) and (ii) Liens (to the extent expressly contemplated by Section 10.04(v)) on property of Tesla B.V., securing Indebtedness permitted by Section 10.04(v);

(x) Liens on Securitization Related Assets of a Tesla Finance Subsidiary and/or a Securitization Subsidiary in connection with the sale of such Securitization Related Assets pursuant to a Permitted Securitization Facility;

(y) additional Liens on assets or property (other than ABL Priority Collateral) of the Company or any of its Subsidiaries not otherwise permitted by this Section 10.01 that secure ~~outstanding~~ obligations in an aggregate principal amount at any time outstanding not to exceed the greater of \$100,000,000 or 1.0% of Consolidated Total Assets in the aggregate for all such Liens at any time;

(z) customary Liens granted in favor of a trustee pursuant to an indenture relating to Indebtedness not prohibited by this Agreement to the extent such Liens (i) secure only customary compensation, indemnification and reimbursement obligations owing to such trustee under such indenture and any agreements entered into by such trustee (as trustee or collateral agent) in connection therewith and (ii) are limited to the cash or other collateral held by such trustee (excluding cash held in trust for the payment of such Indebtedness);

(aa) Liens securing repurchase obligations permitted by clause (iv) of the definition of Cash Equivalents;

(bb) deposits as security for contested taxes or contested import or customs duties;

(cc) customary rights of first refusal, voting, redemption, transfer or other restrictions with respect to the Equity Interests in any joint venture entities or other Persons that are not Subsidiaries;

(dd) Liens on cash and Cash Equivalents arising in connection with the defeasance, discharge or redemption of Indebtedness not prohibited by this Agreement;

(ee) Liens on Rental Account Assets and related assets, in each case securing Indebtedness permitted by Section 10.04(x);

(ff) Liens on Used Motor Vehicles and related assets (such as proceeds and documents of title in respect thereof, that in the reasonable opinion of the Company are customary for financing transactions related to such assets), in each case securing Indebtedness permitted by Section 10.04(z); ~~and~~

(gg) Liens of the Attributes Buyer or any of its Affiliates on Environmental Attributes and their related intangible rights in connection with the sale of such Environmental Attributes to the Attributes Buyer or any of its Affiliates; and

(hh) Liens securing Indebtedness permitted under Section 10.04(aa); provided, that such Lien extends only to the real property, and any buildings, structures, parking areas, fixtures or other improvements thereon and other property of the type customarily described in a mortgage or deed of trust, comprising the Manufacturing Facility constructed, improved or repaired with the proceeds of such Indebtedness and, if applicable, the Equity Interests in the Subsidiary that has title to the financed Manufacturing Facility.

In connection with the granting of Liens of the type described in clauses (c), (f), (g), (i), (l), (m), (t), (v) and (x) of this Section 10.01 by the Company or any of its Subsidiaries, the Administrative Agent and the

Collateral Agent shall be authorized to take any actions deemed appropriate by it in connection therewith (including by executing appropriate lien releases or lien subordination agreements in favor of the holder or holders of such Liens, in either case solely with respect to the item or items of equipment or other assets subject to such Liens).

10.02. **Fundamental Changes.** (a) The Company will not, and will not permit any of its Subsidiaries to, (x) merge into or consolidate with any other Person, or permit any other Person to merge into or consolidate with it, (y) sell, transfer, license, lease, ~~enter into~~consummate any sale-leaseback transactions with respect to, or otherwise dispose of (in one transaction or in a series of transactions, including pursuant to a Division) all or substantially all of the assets of the Company and its Subsidiaries, taken as a whole, or (z) liquidate or dissolve, except that, if at the time thereof and immediately after giving effect thereto no Default or Event of Default shall have occurred and be continuing:

(i) (x) any Subsidiary or any other Person (other than the Company) may merge into or consolidate with a U.S. Borrower in a transaction in which such U.S. Borrower is the surviving corporation ~~and~~, (y) any Foreign Subsidiary (other than Tesla B.V. or a UK Borrower) or any other Person (other than the Company, Tesla B.V., any UK Borrower or any Domestic Subsidiary) may merge into or consolidate with a Dutch Borrower in a transaction in which such Dutch Borrower is the surviving corporation, ~~and~~ (z) any Foreign Subsidiary (other than Tesla UK or a Dutch Borrower) or any other Person (other than the Company, Tesla UK or a Dutch Borrower or any Domestic Subsidiary) may merge into or consolidate with a UK Borrower in a transaction in which such UK Borrower is the surviving corporation;

(ii) (x) any Person (other than a Borrower) may merge into or consolidate with any Subsidiary in a transaction in which the surviving entity is a Subsidiary (provided that (A) any such merger or consolidation involving a U.S. Credit Party must result in a U.S. Credit Party as the surviving entity and (B) subject to clause (A) above, any such merger or consolidation involving a Dutch Credit Party or a UK Credit Party must result in a Dutch Credit Party or a UK Credit Party, respectively, as the surviving entity);

(iii) the Company or any Subsidiary may sell, transfer, license, lease or otherwise dispose of its assets to the Company or to another Subsidiary;

(iv) any Subsidiary (other than a Borrower) may liquidate or dissolve if the Company determines in good faith that such liquidation or dissolution is in the best interests of the Company and is not materially disadvantageous to the Lenders; and

(v) any Subsidiary may merge into or consolidate with any other Person in a transaction not otherwise prohibited hereunder and all or substantially all of the Equity Interests of any Subsidiary may be sold, transferred or otherwise disposed of, in a transaction not otherwise prohibited hereby.

(b) The Company will not, and will not permit any U.S. Credit Party ~~or~~ Dutch Credit Party or UK Credit Party, to change its jurisdiction of organization to the extent that it involves (i) a U.S. Credit Party ceasing to be organized in the United States ~~or~~, (ii) a Dutch Credit Party ceasing to be organized in the Netherlands or (iii) a UK Credit Party ceasing to be incorporated in England and Wales.

10.03. **Dividends.** The Company will not, and will not permit any of its Subsidiaries to, authorize, declare or pay any Dividends with respect to the Company or any of its Subsidiaries, except that:

(a) any Subsidiary of the Company may pay Dividends to the Company or to any Wholly-Owned Subsidiary of the Company;

(b) any Non-Wholly-Owned Subsidiary of the Company may pay Dividends to its shareholders, members or partners generally, so long as the Company or its respective Subsidiary which owns the Equity Interest in the Subsidiary paying such Dividends receives at least its proportionate share thereof (based upon its relative holding of the Equity Interest in the Subsidiary paying such Dividends and taking into account the relative preferences, if any, of the various classes of Equity Interests of such Subsidiary);

(c) the Company may redeem, repurchase or otherwise acquire for value outstanding shares of Company Common Stock (or options, warrants or other rights to acquire such Company Common Stock) following the death, disability, retirement or termination of employment or service of officers, directors or employees of the Company or any of its Subsidiaries, provided that (x) the aggregate amount of all such redemptions, repurchases and other acquisitions pursuant to this Section 10.03(c) shall not exceed \$50,000,000 in any fiscal year of the Company (less the amount of any such redemption or repurchase effected by the forgiveness of Indebtedness owed to the Company by such officer, director or employee) and (y) at the time of any such redemption or repurchase permitted to be made pursuant to this Section 10.03(c), no Default or Event of Default shall then exist or result therefrom;

(d) the Company may pay regularly scheduled Dividends on its Qualified Preferred Stock pursuant to the terms thereof solely through the issuance of additional shares of such Qualified Preferred Stock (but not in cash), provided that in lieu of issuing additional shares of such Qualified Preferred Stock as Dividends, the Company may increase the liquidation preference of the shares of Qualified Preferred Stock in respect of which such Dividends have accrued;

(e) the Company may pay or make Dividends if the Payment Conditions are satisfied both before and after giving effect to the payment or making of such Dividends; provided that the Company may pay dividends on its capital stock within 60 days of the declaration thereof if, on the declaration date, the Payment Conditions were satisfied;

(f) the Company may acquire shares of its Equity Interests in connection with the exercise of stock options or warrants to the extent such Equity Interests represent a portion of the exercise price of those stock options or warrants by way of cashless exercise;

(g) the Company may make Dividends consisting of the issuance of equity rights convertible into Qualified Preferred Stock in connection with "anti-takeover" and "poison pill" arrangements approved by the Board of Directors of the Company and make redemptions of such rights; provided that (i) such redemptions are in accordance with the terms of such arrangements and (ii) the aggregate amount of all such redemptions made during the term of this Agreement do not exceed \$10,000,000;

(h) the Company may make Dividends to directors, officers and employees of the Company and its Subsidiaries in connection with any incentive plans approved by the Board of Directors of the Company consisting of (i) shares of Company Common Stock (or options, warrants and other equity instruments in respect thereof), (ii) cash incentive bonuses, and (iii) stock appreciation rights or performance units, including any cash payments in connection therewith;

(i) the Company may settle ~~or otherwise~~, perform, repurchase ~~or otherwise~~, terminate or unwind any Issuer Option;

(j) the Company may accrue dividends on its capital stock;

(k) the Company may repurchase or pay cash in lieu of fractional shares of its Equity Interests arising out of stock dividends, splits or combinations, business combinations or conversions of convertible securities or the exercise of warrants;

(l) the Company and its Subsidiaries may pay withholding taxes in connection with the retention of Equity Interests pursuant to equity-based compensation plans;

(m) the Company or any Subsidiary may receive or accept the return to the Company or any Subsidiary of Equity Interests of the Company or any Subsidiary constituting a portion of the purchase price consideration in settlement of indemnification claims;

(n) the Company may make payments or distributions to dissenting stockholders as required by applicable law in connection with a merger, consolidation or transfer of assets permitted by this Agreement;

(o) if no Default or Event of Default then exists or would result therefrom, the Company may pay or make Dividends in an aggregate amount not to exceed, together with any payments, prepayments, redemptions or acquisitions for value made pursuant to Section 10.08(a)(v), ~~\$50,000,000~~ 150,000,000;

(p) any Tesla Lease Finance Subsidiary may pay Dividends to its shareholders, members or partners in accordance with such Subsidiary's operating documents; provided that such Dividends are substantially consistent with Dividends paid in connection with tax equity financings; and

(q) any Tesla Finance Subsidiary may redeem, repurchase or otherwise acquire for value outstanding Equity Interests in any Tesla Lease Finance Subsidiary to effect the termination of any tax equity financing involving such Tesla Lease Finance Subsidiary.

10.04. Indebtedness. The Company will not, and will not permit any of its Subsidiaries to, contract, create, incur, assume or suffer to exist any Indebtedness, except:

(a) Indebtedness incurred pursuant to this Agreement and the other Credit Documents;

(b) Existing Indebtedness outstanding on the Effective Date and, except for intercompany Indebtedness among the Company and its Subsidiaries, listed on Schedule 8.20 to the Disclosure Letter (as reduced by any repayments of principal thereof after the Effective Date for which the obligor thereunder has no right to reborrow pursuant to the terms of such Indebtedness), and any subsequent extension, renewal, replacement or refinancing thereof; provided that the aggregate principal amount of the Indebtedness to be extended, renewed or refinanced or the aggregate commitment in respect of such Indebtedness does not exceed that amount outstanding or commitment then in effect at the time of any such extension, renewal, replacement or refinancing (although in no event shall the amount of any such commitment exceed that amount in effect on the Effective Date, as reduced by any permanent commitment reductions thereafter) (plus the sum of (A) accrued and unpaid interest and fees thereon, (B) any prepayment premium and (C) customary fees and expenses relating to such extension, renewal, replacement or refinancing);

(c) Indebtedness (i) of the Company and its Subsidiaries under Interest Rate Protection Agreements entered into with respect to other Indebtedness permitted under this Section 10.04 and (ii) of the Company and its Subsidiaries under Other Hedging Agreements entered into in the ordinary course of business and providing protection to the Company and its Subsidiaries against fluctuations in currency values or commodity prices in connection with the Company's or any of its Subsidiaries' ordinary course of business operations, in either case so long as the entering into of such Interest Rate Protection



Agreements or Other Hedging Agreements are bona fide hedging activities and are not for speculative purposes;

(d) Indebtedness of the Company and its Subsidiaries evidenced by Capitalized Lease Obligations (including the financing of such related installation, maintenance or software licensing charges) and purchase money Indebtedness secured by Liens described in Sections 10.01(f) and (g) and any subsequent extension, renewal, replacement or refinancing thereof as permitted by such Sections 10.01(f) and (g); provided that Indebtedness incurred in reliance on this clause (d) shall only be permitted to the extent at the time of incurrence it constitutes either Ratio-Related Permitted Indebtedness or Basket-Related Permitted Indebtedness;

(e) Indebtedness constituting Intercompany Loans;

(f) Indebtedness consisting of unsecured guarantees by (i) a U.S. Borrower of the Indebtedness and lease and other contractual obligations of its Wholly-Owned Subsidiaries, (ii) the U.S. Credit Parties of each other's Indebtedness and lease and other contractual obligations (other than obligations in respect of Permitted Convertible Notes), (iii) the Dutch Credit Parties of each other's and its Wholly-Owned Subsidiaries' Indebtedness and lease and other contractual obligations, (iv) the UK Credit Parties of each other's and its Wholly-Owned Subsidiaries' Indebtedness and lease and other contractual obligations and ~~(iv)~~ Subsidiaries of the Company that are not Credit Parties of each other's Indebtedness and lease and other contractual obligations, in each case to the extent that the guaranteed Indebtedness or lease or other contractual arrangement is otherwise ~~permitted under~~ not prohibited by this Agreement;

(g) Indebtedness of a Subsidiary of the Company acquired pursuant to an Acquisition (or Indebtedness assumed at the time of an Acquisition in respect of an asset securing such Indebtedness); provided that (i) such Indebtedness was not incurred in connection with, or in anticipation or contemplation of, such Acquisition and (ii) the aggregate principal amount of all Indebtedness permitted by this clause (g) shall not exceed the greater of (x) \$250,000,000 or (y) 1% of Consolidated Total Assets, in each case, at any one time outstanding;

(h) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business, if such Indebtedness is extinguished within ten Business Days of the incurrence thereof;

(i) Indebtedness of the Company and its Subsidiaries with respect to performance bonds, surety bonds, appeal bonds, guarantees or customs bonds or similar bonds required in the ordinary course of business or in connection with the enforcement of rights or claims of the Company or any of its Subsidiaries or in connection with judgments that do not result in an Event of Default;

(j) Indebtedness owed to any Person providing property, casualty, liability or other insurance to the Company or any of its Subsidiaries, so long as the amount of such Indebtedness is not in excess of the amount of the unpaid cost of, and shall be incurred only to defer the cost of such insurance for the period in which such Indebtedness is incurred and such Indebtedness is outstanding only for a period not exceeding twelve months;

(k) Indebtedness of the Company or any of its Subsidiaries which may be deemed to exist in connection with agreements providing for indemnification, severance arrangements, purchase price adjustments, earnouts, stay bonuses and similar obligations in connection with the acquisition or disposition of assets or Acquisitions, in each case permitted by this Agreement, so long as any such

obligations are those of the Person making the respective acquisition or sale or Acquisition, and are not guaranteed by any other Person except as permitted by Section 10.04(f);

(l) Indebtedness of the Company under (x) the Existing Convertible Notes and (y) any renewal, extension, exchange, replacement or refinancing of any Existing Convertible Notes (including any new issuance of unsecured convertible notes to effect the foregoing), provided that at the time of such renewal, extension, exchange, replacement, refinancing or issuance (i) no Default or Event of Default exists or would result therefrom, (ii) any aggregate net cash proceeds from any such new issuances are promptly (within 60 days) applied to repay, redeem or satisfy all or a portion of any then outstanding Existing Convertible Notes, (iii) such Indebtedness shall not have any scheduled maturity or mandatory redemption, prepayment, amortization, sinking fund or similar obligation (other than pursuant to customary change of control, fundamental change, make-whole fundamental change or other similar event risk provisions and, for the avoidance of doubt, provisions providing for Net Share Settlement) prior to the date which is six months after the Final Maturity Date in effect at the time of such renewal, extension, exchange, replacement, refinancing or issuance, (iv) the aggregate principal amount of such new Indebtedness (or if incurred with original issue discount, the sum of the aggregate issue price and any accreted principal amount) does not exceed the aggregate principal amount (or if incurred with original issue discount, the aggregate issue price plus any accreted amount) of the Existing Convertible Notes to be renewed, extended, exchanged, replaced or refinanced (plus the sum of (A) accrued and unpaid interest thereon, (B) any prepayment or exchange premium, (C) customary premium, fees and expenses relating to such renewal, extension, exchange, replacement, refinancing or issuance), and (D) any amount that would be available to be incurred as either Ratio-Related Permitted Indebtedness or Basket-Related Permitted Indebtedness (and such amount utilized under this clause shall be counted as either Ratio-Related Permitted Indebtedness or Basket-Related Permitted Indebtedness, as applicable), and (v) the covenants and events of default applicable to such Indebtedness are no more restrictive, taken as a whole, than the covenants and events of default set forth in this Agreement (as determined by the Company in good faith), except for (x) provisions applicable only to periods after the Final Maturity Date in effect at the time of renewal, extension or incurrence of such Indebtedness, and (y) provisions related to any equity provisions of such Indebtedness; provided, that cash payments may also be made as part of any exchange transaction permitted under this Section 10.04(l) if (A) such cash payments are in respect of accrued and unpaid interest, (B) if the Payment Conditions are satisfied at the time of such exchange or (C) amounts are available under Section 10.08(a)(v) (it being understood that any cash payments made pursuant to this clause (C) shall be deemed a usage of the amounts available under Section 10.08(a)(v));

(m) Indebtedness of the Company or any of its Subsidiaries for reimbursement obligations relating to letters of credit (other than Letters of Credit, but inclusive of any letters of credit that constitute Existing Indebtedness), bankers' acceptances, bank guarantees, performance bonds, surety bonds and bid bonds, so long as the sum of the aggregate available amount of all such letters of credit, bankers' acceptances and bank guarantees (and any unreimbursed drawings in respect thereof) and the then-outstanding amount of performance bonds, surety bonds and bid bonds does not at any time exceed ~~\$400,000,000~~ 500,000,000;

(n) Indebtedness of any Credit Party (which Indebtedness may be (A) (a) unsecured or (b) to the extent permitted below in this clause (n), secured by a Lien on the Collateral (including any Permitted Additional Secured Indebtedness Priority Collateral that will become Collateral) and (B) guaranteed (other than in respect of Additional Convertible Notes) on a like basis by the other Credit Parties or pursuant to any SolarCity Guarantee), if at the time of issuance or incurrence (i) no Default or Event of Default then exists or would result therefrom, (ii) such Indebtedness does not have a scheduled maturity earlier than six months after the Final Maturity Date in effect at the time of issuance or incurrence of such Indebtedness (other than an earlier maturity date for customary fundamental change, make-whole fundamental change, change of control or other similar event risk provisions or customary bridge

financings which, subject to customary conditions, would either be automatically converted into or required to be exchanged for permanent financing which does not provide for a maturity date earlier than six months after such Final Maturity Date), provided that for the avoidance of doubt, any provision of Permitted Convertible Notes providing for Net Share Settlement thereof shall not cause the Permitted Convertible Notes to fail to satisfy the provisions of this clause (ii), (iii) such Indebtedness does not have any mandatory redemption, prepayment, amortization, sinking fund or similar obligations prior to such Final Maturity Date (other than pursuant to (x) fundamental change, make-whole fundamental change, change of control or other similar event risk provisions and, in the case of term loans or senior notes that are not convertible into Equity Interests only, customary asset sale (or casualty or condemnation event), extraordinary receipts and/or (solely in the case of term loans) excess cash flow offer or repayment provisions and, in the case of any customary bridge financing, prepayments of such bridge financing from the issuance of equity or other Indebtedness permitted hereunder which meets the requirements of this definition and customary asset sale (or casualty or condemnation event) repayment provisions, and (y) in the case of term loans, nominal amortization requirements not to exceed 1% per annum of the initial aggregate principal amount of such Indebtedness), provided that for the avoidance of doubt, any provision of Permitted Convertible Notes providing for Net Share Settlement thereof shall not cause the Permitted Convertible Notes to fail to satisfy the provisions of this clause (iii), (iv) the covenants and events of default set forth in the applicable Permitted Additional Indebtedness Documents are no more restrictive, taken as a whole, than the covenants and events of default set forth in this Agreement (as determined by the Company in good faith), except for (x) provisions applicable only to periods after the Final Maturity Date in effect at the time of effectiveness of the applicable Permitted Additional Indebtedness Documents and (y) provisions related to any equity provisions of such Indebtedness; provided that, any such covenants and events of default may apply to the Company and its subsidiaries (including SolarCity and its subsidiaries) without causing such covenants and events of default to fail to satisfy the provisions of this clause (iv); (v) to the extent such Indebtedness is subordinated, the terms of such Indebtedness provide for customary payment or lien subordination, as applicable, to the Obligations as reasonably determined by the Administrative Agent in good faith, (vi) if such Indebtedness is secured, (x) it shall not be secured by any assets or property other than Collateral securing the Obligations including any assets or property of the Credit Parties that are not covered by the Security Documents on the Effective Date but which will secure the Obligations from and after the issuance of such Indebtedness as contemplated by Section 9.12(e), (y) at the time of the entering into of any such Indebtedness, an Intercreditor Agreement shall have been entered into and shall be in full force and effect and the Credit Parties shall have complied with their obligations under Section 9.12(e), and (z) the Intercreditor Agreement shall provide, inter alia, that the Collateral Agent, for the benefit of the Secured Creditors, shall retain a First Priority Lien on the ABL Priority Collateral and shall have a Second Priority Lien on the Permitted Additional Secured Indebtedness Priority Collateral and (vii) such Indebtedness shall either (x) at the time of incurrence constitute either Ratio-Related Permitted Indebtedness or Basket-Related Permitted Indebtedness or (y) be in an aggregate principal amount not to exceed \$2,000,000,000, and together with Indebtedness incurred and outstanding pursuant to Section 10.04(o), be in an aggregate principal amount not to exceed ~~\$3,000,000,000~~4,000,000,000 at any time outstanding; provided, however, the requirements of the preceding clause (vii) shall not apply to any Indebtedness incurred or issued pursuant to this clause (n) if such Indebtedness is exchanged for or 100% of the net cash proceeds therefrom are applied to repay, repurchase, redeem or defease any then outstanding Ratio-Related Permitted Indebtedness substantially simultaneously with (or if such Ratio-Related Permitted Indebtedness requires notice or other waiting periods to effectuate its repayment, repurchase, redemption or defeasance, then as promptly as practical after) the incurrence or issuance of such Indebtedness (all unsecured Indebtedness incurred or issued under this clause (n) is referred to as "Permitted Additional Unsecured Indebtedness") and all secured Indebtedness incurred or issued under this clause (n) is referred to as "Permitted Additional Secured Indebtedness");

(o) if no Default or Event of Default then exists or would result therefrom, additional Indebtedness incurred by any Subsidiary that is not a Credit Party (or existing at the time such Person becomes a Subsidiary that is not a Credit Party pursuant to an Acquisition (or Indebtedness assumed by a Subsidiary that is not a Credit Party at the time of an Acquisition in respect of an asset securing such Indebtedness) so long as such Indebtedness was not incurred in connection with, or in anticipation or contemplation of, such Acquisition), which Indebtedness may be (A) unsecured or secured and (B) guaranteed (x) on a like basis by any other Subsidiaries that are not Credit Parties or (y) on an unsecured basis by any U.S. Borrower pursuant to Section 10.04(f)(i) in an aggregate principal amount, together with Indebtedness incurred and outstanding pursuant to Section 10.04(n)(vii)(y), not to exceed ~~\$3,000,000,000~~ \$4,000,000,000 at any time outstanding; provided that if such Indebtedness is secured it shall only be secured by assets or property of Subsidiaries that are not Credit Parties (all Indebtedness incurred or issued under this clause (o) is referred to as "Permitted Non-Credit Party Indebtedness");

(p) Indebtedness of the Company and its Subsidiaries evidenced by Capitalized Lease Obligations (including the financing of such related installation, maintenance or software licensing charges) and purchase money Indebtedness (including the financing of such related installation, maintenance or software licensing charges) secured by Liens described in Sections 10.01(f) and (g) and any subsequent extension, renewal, replacement or refinancing thereof as permitted by such Sections 10.01(f) and (g); provided that the applicable Capitalized Lease Obligation is in respect of Equipment or such Indebtedness is incurred to pay all or a portion of the purchase price of Equipment; provided further that in no event shall the sum of the aggregate principal amount of all Indebtedness permitted by this clause (p) exceed \$750,000,000 at any time outstanding;

(q) Indebtedness of any Credit Party in the nature of revolving loans (which Indebtedness may be (A) (1) unsecured or (2) to the extent permitted below in this clause (q), secured by a Lien on the Collateral (including any Permitted Additional Secured Indebtedness Priority Collateral that will become Collateral) and (B) guaranteed on a like basis by the other Credit Parties); provided that (i) no Default or Event of Default then exists or would result therefrom, (ii) the commitments thereunder do not terminate earlier than six months after the Final Maturity Date in effect at the time of incurrence of such Indebtedness, (iii) the covenants and events of default set forth in the applicable Cash Flow Revolving Documents are no more restrictive, taken as a whole, than the covenants and events of default set forth in this Agreement (as determined by the Company in good faith), except for provisions applicable only to periods after the Final Maturity Date in effect at the time of effectiveness of the applicable Cash Flow Revolving Documents, (iv) if such Indebtedness is secured (x) it shall not be secured by any assets or property other than Collateral securing the Obligations (including any assets or property of the Credit Parties that are not covered by the Security Documents on the Effective Date but which will secure the Obligations from and after the issuance of such Indebtedness as contemplated by Section 9.12(e)), (y) at the time of the entering into of any such Indebtedness, an Intercreditor Agreement shall have been entered into and shall be in full force and effect and the Credit Parties shall have complied with their obligations under Section 9.12(e), and (z) the Intercreditor Agreement shall provide, inter alia, that the Collateral Agent, for the benefit of the Secured Creditors, shall retain a First Priority Lien on the ABL Priority Collateral and shall have a Second Priority Lien on the Permitted Additional Secured Indebtedness Priority Collateral, (v) the initial Cash Flow Revolving Documents in respect of the Indebtedness permitted by this clause (q) are entered into (and the revolving commitments in respect of the Indebtedness permitted by this clause (q) become effective) no later than the first anniversary of the Effective Date, (vi) the aggregate principal amount of all Indebtedness incurred and outstanding under this clause (q) does not exceed \$250,000,000 at any time and (vii) prior to the incurrence or issuance of such Indebtedness, the Company shall have delivered to the Administrative Agent a certificate of an Authorized Officer of the Company certifying as to compliance with the requirements of the preceding clauses (i) through (vi) (all Indebtedness incurred or issued under this clause (q) is referred to as "Cash Flow Revolving Indebtedness");

(r) Indebtedness of ~~the Company or any of its Subsidiaries~~ (other than any Credit Party) secured by a Lien on Energy Storage Assets, including an Energy Storage Working Capital Facility; provided that such Indebtedness shall not be secured by any assets other than Energy Storage Assets and other related assets, such as chattel paper and payment intangibles, that in the reasonable opinion of the Company are customary for financing transactions related to such assets;

(s) Indebtedness of Securitization Subsidiaries in respect of Permitted Securitization Facilities and any indemnity in respect thereof described in clause (b) of the definition of Permitted Securitization Facilities;

(t) Indebtedness arising under a declaration of joint and several liability in respect of the Borrowers and/or Guarantors used for the purpose of section 2:403 of the Dutch Civil Code (and any residual liability under such declaration arising pursuant to section 2:402(2) of the Dutch Civil Code);

(u) Indebtedness consisting of the accretion of original issue discount with respect to Additional Convertible Notes;

(v) Indebtedness of Tesla B.V. or any Foreign Subsidiary ~~that is not a Credit Party of the Company~~ secured by assets of Tesla B.V. or such Foreign Subsidiary that are not included in the Dutch Borrowing Base or the UK Borrowing Base and are in-transit (i) for delivery to a Subsidiary that is not a Credit Party, which Subsidiary shall take ownership of such assets no later than upon delivery thereof or (ii) from a Manufacturing Facility not located in a Specified Jurisdiction (such assets, the "Specified Tesla B.V. In-Transit Assets"); provided that there shall be no recourse to Tesla B.V. in respect of, (i) collateral securing such Indebtedness ~~other than with respect to the Specified Tesla B.V. Assets~~; shall be limited to Specified Tesla In-Transit Assets and (ii) the Administrative Agent shall have received prior written notice from the Company of the incurrence of Indebtedness under this clause (v), together with the documentation governing such Indebtedness;

(w) Indebtedness of the Company and its Subsidiaries having an aggregate principal amount that does not at any time exceed the greater of (x) \$100,000,000 and (y) 1% of the Consolidated Total Assets; provided that the outstanding principal amount of Indebtedness incurred under any one facility pursuant to this clause (w) shall not exceed \$100,000,000 at any time outstanding;

(x) Indebtedness of a Tesla Finance Subsidiary secured by a Lien on Rental Account Assets; provided that (i) such Indebtedness shall not be secured by any assets other than Rental Account Assets and other related assets, such as the related Vehicles, chattel paper and payment intangibles, that in the reasonable opinion of the Company are customary for financing transactions related to such assets, (ii) no portion of such Indebtedness shall be guaranteed by the Company or any of its Subsidiaries (other than a Tesla Finance Subsidiary), (iii) there shall be no recourse to, or obligation ~~to~~ of (whether direct, by guarantee or otherwise), the Company or any of its Subsidiaries (other than a Tesla Finance Subsidiary) whatsoever and (iv) none of the Company nor any of its Subsidiaries (other than a Tesla Finance Subsidiary) shall have provided, either directly or indirectly, any other credit support of any kind in connection with such Indebtedness (other than a pledge of the Equity Interests of a Tesla Finance Subsidiary);

(y) unsecured Indebtedness of the Company and its Subsidiaries that does not at any time exceed \$125,000,000 in aggregate principal amount; provided that the net cash proceeds of any Indebtedness incurred pursuant to this Section 10.04(y) may not be deposited or maintained in any Core Deposit Account; ~~and~~

(z) Indebtedness of the Company or any of its Subsidiaries secured by a Lien on Used Motor Vehicles and related assets; provided, that such Indebtedness shall not be secured by any assets other than Used Motor Vehicles and other related assets, such as proceeds therefrom and documents of title in respect thereof, that in the reasonable opinion of the Company are customary for financing transactions related to such assets; provided further that the aggregate principal amount of Indebtedness outstanding at any time pursuant to this clause (z) shall not exceed \$300,000,000.;

(aa) Indebtedness of the Company or any Subsidiary incurred to provide all or a portion of, or to reimburse the Company or any Subsidiary for expenditures relating to, the cost of construction, repair or improvement of any Manufacturing Facility, including a long-term financing of any Manufacturing Facility; provided that if such Indebtedness is recourse to, or an obligation of (whether direct, by guarantee or otherwise), any Credit Party, it shall not (i) mature earlier than 91 days after the Final Maturity Date in effect at the time of incurrence thereof (or, if later, 91 days after the Final Maturity Date in effect at the time of any guarantee by, or recourse granted by, any Credit Party in respect thereof), (ii) have any scheduled maturity or mandatory redemption, prepayment, amortization, sinking fund or similar obligation (other than pursuant to customary due on sale, change of control, fundamental change, make-whole fundamental change or other similar event risk provisions) prior to the date which is 91 days after the Final Maturity Date in effect at the time of incurrence of such Indebtedness (or, if later, 91 days after the Final Maturity Date in effect at the time of any guarantee by, or recourse granted by, any Credit Party in respect thereof) or (iii) be secured by any assets of any Credit Party other than the Manufacturing Facility and related assets; and

(bb) Indebtedness of any Subsidiary (other than a Credit Party) secured by a Lien on Charging Assets, including a Charging Working Capital Facility; provided that such Indebtedness shall not be secured by any assets other than Charging Assets and other related assets, such as chattel paper and payment intangibles, that in the reasonable opinion of the Company are customary for financing transactions related to such assets; provided further that if such Indebtedness is recourse to, or an obligation of (whether direct, by guarantee or otherwise), any Credit Party, it shall not (i) mature earlier than 91 days after the Final Maturity Date in effect at the time of incurrence thereof (or, if later, 91 days after the Final Maturity Date in effect at the time of any guarantee by, or recourse granted by, any Credit Party in respect thereof), (ii) have any scheduled maturity or mandatory redemption, prepayment, amortization, sinking fund or similar obligation (other than pursuant to customary change of control, fundamental change, make-whole fundamental change or other similar event risk provisions) prior to the date which is 91 days after the Final Maturity Date in effect at the time of incurrence of such Indebtedness (or, if later, 91 days after the Final Maturity Date in effect at the time of any guarantee by, or recourse granted by, any Credit Party in respect thereof) or (iii) be secured by any assets of any Credit Party.

10.05. [Reserved].

10.06. Transactions with Affiliates. The Company will not, and will not permit any of its Subsidiaries to, enter into any transaction or series of related transactions with any Affiliate of the Company or any of its Subsidiaries, other than on terms and conditions at least as favorable in all material respects to the Company or such Subsidiary as would reasonably be obtained by the Company or such Subsidiary at that time in a comparable arm's-length transaction with a Person other than an Affiliate, except that the following in any event shall be permitted:

(a) Dividends may be paid to the extent provided in Section 10.03;

(b) loans may be made and other transactions may be entered into by the Company and its Subsidiaries to the extent expressly permitted by Sections 10.02, 10.03, 10.04 and 10.10;

(c) customary fees, indemnities and reimbursements may be paid to directors of the Company and its Subsidiaries;

(d) the Company may issue Permitted Company Stock;

(e) the Company and its Subsidiaries may enter into, and may make payments under, employment agreements, change of control severance agreements, employee benefits plans, stock option plans, indemnification provisions and other similar compensatory arrangements (including for the reimbursement of expenses) with officers, employees and directors of the Company and its Subsidiaries in the ordinary course of business or otherwise approved by the Company's board of directors or shareholders;

(f) the Company and its Subsidiaries may pay management fees, service fees, licensing fees and similar fees to one another in the ordinary course of business (or, in the case of pricing, as otherwise determined by the Company and its Subsidiaries in their respective reasonable business judgment);

(g) transactions solely between or among the Company and its Subsidiaries (including, for purposes of this Section 10.06(g), SolarCity and its Subsidiaries if and for so long as SolarCity is a Subsidiary (as such term is defined herein without giving effect to the proviso in the first sentence of such definition)) ~~either~~ (i) in the ordinary course of business ~~or~~ (ii) ~~in connection with any refinancing of the SolarCity Convertible Notes with Indebtedness incurred in accordance with this Agreement by the Company or its Subsidiaries and, in each case, otherwise not prohibited by the terms of the Credit Documents, and~~ as are customary in establishing new lines of business or (iii) for which the consideration for such transaction (or series of related transactions) is no greater than the greater of \$50,000,000 or 1% of Consolidated Total Assets;

(h) (i) the provision of common stock by the Company to SolarCity to settle conversions of convertible notes issued by SolarCity and (ii) entry by the Company and/or any of its Subsidiaries into, and performance by the Company and/or any of its Subsidiaries under, any definitive agreement relating to any acquisition by the Company and/or any of its Subsidiaries of all or a majority of the Equity Interests or assets of SolarCity and its Subsidiaries and any transactions consummated in connection therewith, in each case on terms fair and reasonable to the Company and/or its Subsidiaries (as determined in good faith by the Company) and otherwise not prohibited by the terms of the Credit Documents; provided that any such acquisition in which the only consideration paid for Equity Interests or assets of SolarCity and its Subsidiaries (other than cash paid for fractional shares and other customary exceptions) consists of Equity Interests of the Company shall be deemed to be on terms fair and reasonable to the Company and/or its Subsidiaries;

(i) the Company or any Subsidiary may make capital contributions in cash to any of its Subsidiaries; provided, that no Event of Default has occurred and is continuing; and

(j) transactions solely between or among Subsidiaries that are not Credit Parties.

10.07. Fixed Charge Coverage Ratio. During each Compliance Period, the Company shall not permit (i) the Fixed Charge Coverage Ratio for the last Test Period ended prior to the beginning of such Compliance Period for which financial statements are available to be less than 1.00:1.00, (ii) the Fixed Charge Coverage Ratio for any Test Period for which financial statements first become available during such Compliance Period to be less than 1.00:1.00 or (iii) the Fixed Charge Coverage Ratio for any Test Period ending during such Compliance Period to be less than 1.00:1.00. Within three Business Days after the beginning of a Compliance Period, the Company shall provide to the Administrative Agent a compliance certificate calculating the Fixed Charge Coverage Ratio for the Test Period for which

financial statements are required to be delivered ended immediately prior to the beginning of such Compliance Period based on the most recent financial statements required to be delivered pursuant to Section 9.01(a) or (b), as applicable.

10.08. Modifications of Certain Agreements; Limitations on Voluntary Payments, etc. The Company will not, and will not permit any of its Subsidiaries to:

(a) make, with respect to any Permitted Convertible Note, SolarCity Convertible Note or other Permitted Additional Indebtedness, (x) any voluntary or optional payment or prepayment on or any voluntary or optional redemption, repurchase or acquisition for value of, or (y) any prepayment or redemption as a result of any change of control or similar event, asset sale, insurance or condemnation event, debt issuance, equity issuance, capital contribution or similar required "repurchase" event of (including by way of depositing with the trustee with respect thereto or any other Person money or securities before due for the purpose of paying when due); provided, however:

(i) the Company may (and may permit its Subsidiaries to) make any payment or prepayment on, or redemption or repurchase or acquisition for value of, (A) any Existing Convertible Notes in accordance with the terms of related Permitted Convertible Notes Indentures, (B) any Additional Convertible Notes upon any conversion thereof by the holders of such Additional Convertible Notes, including any Net Share Settlement, (C) any Permitted Convertible Notes or SolarCity Convertible Notes through the exercise of any call option in respect thereof that is settled in Permitted Company Stock or, in respect of any fractional shares to be issued, in cash and (D) with respect to any payment, prepayment, redemption, repurchase or acquisition for value described in clause (a)(y) above (other than any such payments, prepayments, redemptions, repurchases or acquisitions for value governed by Section 10.08(a)(ii)), any Permitted Convertible Note or Permitted Additional Indebtedness, as and to the extent required by the terms of the Permitted Convertible Notes Documents or Permitted Additional Indebtedness Documents, as applicable, or any SolarCity Convertible Notes as and to the extent required by the terms of the SolarCity Convertible Notes Documents;

(ii) subject to the terms of the Intercreditor Agreement, the Company may (and may permit its Subsidiaries to), in respect of excess cash flow and extraordinary receipts and sale or insurance proceeds of Permitted Additional Secured Indebtedness Priority Collateral, make any payment or prepayment on, or redemption or repurchase or acquisition for value of Permitted Additional Secured Indebtedness with such amounts and proceeds, in each case, as and to the extent required by the terms of the Permitted Additional Secured Indebtedness Documents;

(iii) the applicable Credit Party may (and may permit its Subsidiaries to) make payments or prepayments on, or redemptions or acquisitions for value of, any Permitted Convertible Notes, SolarCity Convertible Notes or Permitted Additional Indebtedness (v) to the extent made with Permitted Company Stock (whether pursuant to any conversion thereof or otherwise), (w) to the extent made with the net cash proceeds from the incurrence or issuance of any Additional Convertible Notes or Permitted Additional Indebtedness if at the time of issuance or incurrence thereof no Default or Event of Default then exists or would result therefrom, (x) to the extent constituting an exchange of such Permitted Convertible Notes, SolarCity Convertible Notes or Permitted Additional Indebtedness (together with any accrued and unpaid interest thereon) for other Additional Convertible Notes or Permitted Additional Indebtedness if at the time of such exchange no Default or Event of Default then exists or would result therefrom, (y) to the extent made with any combination of the consideration in clauses (v), (w) and (x), or (z) at the time thereof, the Payment Conditions are satisfied both before and after giving effect to such payment, prepayment, redemption or acquisition for value;



~~(iv) the applicable Subsidiary may (and may permit its Subsidiaries to) make payments or prepayments on, or redemptions or acquisitions for value of, any Permitted Non-Credit Party Indebtedness (x) to the extent made solely with Permitted Company Stock (whether pursuant to any conversion thereof or otherwise), (y) to the extent made with the net cash proceeds from the incurrence or issuance of, or in exchange for, any Permitted Non-Credit Party Indebtedness if no Default or Event of Default then exists or would result therefrom or (z) if the Payment Conditions are satisfied both before and after giving effect to such payment, prepayment, redemption, repurchase or acquisition for value; provided that the applicable Subsidiary may make any such payment, prepayment, redemption, repurchase or acquisition for value within 60 days after sending any notice of such payment, prepayment, redemption, repurchase or acquisition if, on such notice date, the Payment Conditions were satisfied; and~~

(iv) [reserved]; and

(v) if no Default or Event of Default then exists or would result therefrom, the Company may (and may permit its Subsidiaries to) make any payment or prepayment on, or redemption or repurchase or acquisition for value of, any Permitted Convertible Notes, SolarCity Convertible Notes or Permitted Additional Indebtedness in an aggregate amount not to exceed, together with Dividends paid or made pursuant to Section 10.03(o), ~~\$50,000,000~~ 150,000,000;

(b) amend, modify, change or waive any term or provision of any Permitted Convertible Notes Document in a manner which is either adverse to the interests of the Lenders in any material respect or would be in a form that would not otherwise have been permitted to be entered into or incurred at the time of original incurrence in accordance with Section 10.04(l)(y) or Section 10.04(n) (as reasonably determined, in each case, by the Company);

(c) amend, modify, change or waive any term or provision of any Permitted Additional Indebtedness Document to the extent that the Permitted Additional Indebtedness Document in the amended, modified or changed form would not be able to be entered into (or the related Indebtedness incurred) at such time in accordance with Sections 10.01(s) and 10.04(n) or, in the case of any Permitted Additional Secured Indebtedness Document, also to the extent not permitted at such time in accordance with the terms of the Intercreditor Agreement; or

(d) amend, modify, change or waive any term or provision of the Tax Sharing Agreement in a manner which is adverse to the interests of the Lenders in any material respect (as reasonably determined by the Company in consultation with the Administrative Agent).

For the avoidance of doubt, this Section 10.08 shall not restrict any conversion of any Permitted Convertible Note in accordance with its terms or any Net Share Settlement in connection therewith.

10.09. Limitation on Certain Restrictions on Subsidiaries. The Company will not, and will not permit any of its Subsidiaries to, directly or indirectly, create or otherwise cause or suffer to exist or become effective any encumbrance or restriction on the ability of any such Subsidiary to (a) pay dividends or make any other distributions on its capital stock or any other Equity Interest owned by the Company or any of its Subsidiaries, or pay any Indebtedness owed to the Company or any of its Subsidiaries, (b) make loans or advances to the Company or any of its Subsidiaries or (c) transfer any of its properties or assets to the Company or any of its Subsidiaries, except for such encumbrances or restrictions existing under or by reason of (i) applicable law, (ii) this Agreement and the other Credit Documents, (iii) the Permitted Convertible Notes Indentures and the other Permitted Convertible Notes Documents, (iv) the Permitted Additional Indebtedness Documents, (v) customary provisions restricting subletting or assignment of any lease governing any leasehold interest of the Company or any of its

Subsidiaries, (vi) customary provisions restricting assignment of any licensing agreement (in which the Company or any of its Subsidiaries is the licensee) or any other contract entered into by the Company or any of its Subsidiaries in the ordinary course of business, (vii) restrictions on the transfer of any asset pending the close of the sale of such asset, (viii) restrictions on the transfer of any asset subject to a Lien permitted by Section 10.01(c), (e), (f), (g), (j), (l), (m), (n), (r), (t), (u), (v), (w), (x), (y), (bb), (dd), (ee), (ff)-~~or~~, (gg) or (hh), (ix) any agreement or instrument governing Indebtedness (A) permitted pursuant to Section 10.04(b) (other than Intercompany Debt), provided that, any restrictions contained in any agreement governing any renewal, extension, replacement or refinancing of any Existing Indebtedness are not more restrictive in any material respect than the restrictions contained in the Existing Indebtedness to be renewed, extended, replaced or refinanced (as reasonably determined by the Company in good faith), (B) incurred pursuant to Section 10.04(d), 10.04(p), 10.04(r), 10.04(s), 10.04 (x)-~~or~~, 10.04(z), 10.04(aa), or 10.04(bb); provided that any such restriction contained therein relates only to the assets financed thereby (or, in the case of Section 10.04(r), 10.04 (x)-~~or~~, 10.04(z), or 10.04 (bb) securing such Indebtedness), (C) incurred pursuant to Section 10.04(o), which restriction is only applicable to the transfers of assets (other than cash) or to the transfer of all or substantially all assets (or other similar fundamental change covenant) of the Person that has incurred the subject Indebtedness or (D) incurred or otherwise permitted pursuant to Section 10.04(g), which encumbrance or restriction, in the case of this clause (D), is not applicable to any Person or the properties or assets of any Person, other than the Person or the properties or assets of the Person acquired pursuant to the respective Acquisition and so long as the respective encumbrances or restrictions were not created (or made more restrictive (as reasonably determined by the Company in good faith)) in connection with or in anticipation of the respective Acquisition, (x) restrictions applicable to any joint venture that is a Non-Wholly-Owned Subsidiary of the Company as a result of an Investment not prohibited by this Agreement; provided that the restrictions applicable to such joint venture are not made more burdensome (as reasonably determined by the Company in good faith), from the perspective of the Company and its Subsidiaries, than those as in effect immediately before giving effect to the consummation of the respective Investment (but solely to the extent any are in effect at such time), (xi) encumbrances or restrictions on cash or other deposits or net worth imposed by customers under agreements entered into in the ordinary course of business, (xii) customary net worth or similar financial maintenance provisions contained in real property leases entered into by any Subsidiary, (xiii) arrangements with any Governmental Authority imposed on any Foreign Subsidiary in connection with governmental grants, financial aid, tax holidays or similar benefits, and (xiv) restrictions contained in the operative documents of a Tesla Lease Finance Subsidiary that are customary restrictions for a non-wholly owned subsidiary.

10.10. Limitations on Certain Issuances of Equity Interests. The Company will not, and will not permit any of its Subsidiaries to, issue (i) any Preferred Equity or (ii) any redeemable common stock or other redeemable common Equity Interests, (A) in each case for clauses (i) and (ii) other than (x) common stock or other redeemable common Equity Interests that is or are redeemable at the sole option of the Company or such Subsidiary, as the case may be, unless the purchase thereof is otherwise expressly permitted under Section 10.03, and (y) Qualified Preferred Stock of the Company and (B) for avoidance of doubt, this Section 10.10 shall not prohibit issuances of Equity Interests in a Tesla Lease Finance Subsidiary issued in connection with a tax equity financing which has provisions related to the payment of dividends and the distribution of assets upon any voluntary or involuntary liquidation, dissolution or winding up that are customary for similar tax equity financings.

10.11. No Additional Accounts, etc. The Company will not, and will not permit any other Credit Party to, directly or indirectly, open, maintain or otherwise have any checking, savings, deposit, securities or other accounts at any bank or other financial institution where cash or Cash Equivalents are or may be deposited or maintained with any Person, other than (a) the Core Deposit Accounts set forth on Part A of Schedule 10.11 to the Disclosure Letter, (b) the DB Accounts, (c) the Controlled Securities Accounts set forth on Part B of Schedule 10.11 to the Disclosure Letter and (d) the Excluded Accounts;

provided that, in any event, any such Credit Party may open a new Core Deposit Account not set forth in Schedule 10.11 to the Disclosure Letter, Controlled Securities Account not set forth in such Schedule 10.11 to the Disclosure Letter or any Excluded Account, so long as in the case of a Core Deposit Account or Controlled Securities Account, (i) the Company has delivered an updated Schedule 10.11 to the Disclosure Letter to the Administrative Agent listing such new account and (ii) the financial institution with which such Core Deposit Account or Controlled Securities Account, as applicable, is opened, together with the applicable Credit Party which has opened the Core Deposit Account or the Controlled Securities Account, as applicable, and the Collateral Agent, shall have delivered (within 90 days of opening such Core Deposit Account or Controlled Securities Account) to the Administrative Agent a Cash Management Control Agreement in form and substance reasonably acceptable to the Administrative Agent.

10.12. Use of Proceeds. The Company will not, and will cause its Subsidiaries, and each of their respective directors officers, employees and agents to not, use the proceeds of the Loans or Letters of Credit (i) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation in any material respect of any Anti-Corruption Laws, (ii) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, or (iii) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

10.13. Fiscal Unity. No Dutch Credit Party shall create or become a member of a fiscal unity (*fiscal eenheid*) for Dutch corporate income tax purposes other than (a) a fiscal unity for Dutch corporate income tax purposes among the Dutch Credit Parties only or (b) so long as ~~the~~ Tax Sharing Agreement remains in full force and effect, a fiscal unity for Dutch corporate income tax purposes among the Dutch Credit Parties and other Dutch Affiliates of Tesla B.V. from time to time party to such Tax Sharing Agreement, ~~Tesla Motors Netherlands Coöperatief U.A. and the New B.V.~~

10.14. SolarCity. Notwithstanding anything to the contrary contained herein, until the date that SolarCity is a "Subsidiary" for all purposes of this Agreement:

(a) the Company and its Subsidiaries shall not (subject to the Consent Letter) guarantee or otherwise become directly liable for any Indebtedness of SolarCity or any of its Subsidiaries (it being understood and agreed that this Section 10.14(a) shall not restrict or prohibit (i) any guarantee by a Subsidiary of Indebtedness of the Company and/or its Subsidiaries that is also guaranteed by a SolarCity Guarantee and (ii) any unsecured guarantee by the Company or its Subsidiaries of Indebtedness of SolarCity or any of its Subsidiaries with respect to letters of credit, bankers' acceptances, bank guarantees, performance bonds, surety bonds, appeal bonds, customs bonds or similar instruments required in the ordinary course of business or in connection with the enforcement of rights or claims of SolarCity or any of its Subsidiaries or in connection with judgments that do not result in an Event of Default);

(b) the Company and its Subsidiaries shall not permit SolarCity or any of its Subsidiaries to guarantee or otherwise become directly liable for Indebtedness of the Company or its Subsidiaries; provided that SolarCity and its Subsidiaries may guarantee or otherwise become directly liable for Indebtedness of the Company or its Subsidiaries (a "SolarCity Guarantee") so long as each Person providing a SolarCity Guarantee guarantees the Guaranteed Obligations (as defined in the U.S. Guaranty) on terms no less favorable to the Lenders (as determined by the Company in good faith) than the terms of such SolarCity Guarantee are to the holders of the applicable Indebtedness;

(c) SolarCity and its Subsidiaries shall not create, incur or assume any syndicated credit facilities, bonds or convertible notes other than:

(i) any such Indebtedness that (A) is a renewal, extension, exchange, replacement or refinancing of Indebtedness outstanding on or (B) is Indebtedness that may be incurred pursuant to commitments existing on, the Sixth Amendment Effective Date (and provided that (x) the aggregate principal amount of such renewal, extension, exchange, replacement or refinancing, or commitments in respect thereof (or if incurred with original issue discount, the sum of the aggregate issue price and any accreted principal amount) does not exceed the aggregate principal amount (or if incurred with original issue discount, the aggregate issue price plus any accreted amount) of the Indebtedness to be renewed, extended, exchanged, replaced or refinanced (plus the sum of (1) accrued and unpaid interest thereon, (2) any prepayment or exchange premium and (3) customary premium, fees and expenses relating to such renewal, extension, exchange, replacement, refinancing or issuance) and (y) the terms of the Indebtedness provided in any such renewal, extension, exchange, replacement or refinancing (excluding pricing, fees, rate floors and optional prepayment or redemption terms), taken as a whole, are no more favorable to the lenders or holders of such Indebtedness than those applicable to the Indebtedness to be renewed, extended, exchanged, replaced or refinanced,

(ii) Indebtedness incurred by any special purpose Subsidiary of SolarCity so long as (A) there shall be no recourse to, or obligation ~~to~~ of (whether direct, by guarantee or otherwise), the Company or any of its Subsidiaries or SolarCity or any of its Subsidiaries (other than any special purpose Subsidiary of SolarCity) whatsoever other than (solely in respect of SolarCity and its Subsidiaries) pursuant to representations, warranties, covenants and indemnities entered into in the ordinary course of business in connection with such Indebtedness that in the reasonable opinion of the Company are customary for such transactions and (B) none of the Company nor any of its Subsidiaries nor SolarCity nor any of its Subsidiaries (other than any special purpose Subsidiary of SolarCity) shall have provided, either directly or indirectly, any other credit support of any kind in connection with such Indebtedness, other than as set forth in clause (A) above,

(iii) other Indebtedness in an aggregate principal amount at any time outstanding not to exceed \$25,000,000;

(iv) Indebtedness pursuant to any SolarCity Guarantee; and

(v) any guarantee of the Guaranteed Obligations (as defined in the U.S. Guaranty); and

(d) the Company and its Subsidiaries shall not permit SolarCity or any of its Subsidiaries to pledge any assets to secure any Indebtedness of the Company or its Subsidiaries or any guarantee or liability of SolarCity or any of its Subsidiaries in respect thereof.

#### SECTION 11. Events of Default.

Upon the occurrence of any of the following specified events (each, an "Event of Default"):

11.01. Payments. Any Borrower shall (i) default in the payment when due of any principal of any Loan or any Note or any Unpaid Drawing, (ii) default in the payment of any cash collateral, or the entering into of backstop arrangements, as and when required by Section 3.07 or (iii) default, and such default shall continue unremedied for five days, in the payment when due of any interest on any Loan, Note or any Unpaid Drawing or any Fees or any other amounts owing hereunder or under any other Credit Document; or

11.02. Representations, etc.— Any representation, warranty or statement made or deemed made by any Credit Party herein or in any other Credit Document or in any certificate delivered to the Administrative Agent or any Lender pursuant hereto or thereto shall prove to be untrue in any material respect (or in any respect to the extent qualified by “materiality,” “Material Adverse Effect” or similar language) on the date as of which made or deemed made; or

11.03. Covenants. The Company or any of its Subsidiaries shall (i) default in the due performance or observance by it of any term, covenant or agreement contained in Section 5.03(b), 5.03(c), 5.03(d), 5.03(e), 5.03(f), 5.03(g), 9.01(e)(i), 9.01(h), 9.03(a)(ii) (with respect to a Borrower), 9.04 (as it relates to the existence of a Borrower), 9.11, 9.12(e) or Section 10 (other than Section 10.01(a)) or (ii) default in the due performance or observance by it of any other term, covenant or agreement contained in this Agreement (other than those set forth in Sections 11.01, 11.02 and 11.03(i)) or any other Credit Document and such default shall continue unremedied for a period of 30 days after the earlier of (a) the date on which such default shall first become known to any Responsible Officer of the Company or any other Credit Party or (b) the date on which written notice thereof is given to the defaulting party by the Administrative Agent or the Required Lenders; or

11.04. Default Under Other Agreements. (a) The Company or any of its Subsidiaries shall (i) default in any payment of any Indebtedness (other than the Obligations) beyond the period of grace, if any, provided in an instrument or agreement under which such Indebtedness was created or (ii) default beyond any period of grace in the observance or performance of any agreement or condition relating to any Indebtedness (other than the Obligations) or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event shall occur or condition exist, the effect of which default or other event or condition is to cause, or to permit the holder or holders of such Indebtedness (or a trustee or agent on behalf of such holder or holders) to cause, any such Indebtedness to become due prior to its stated maturity, or (b) any Indebtedness (other than the Obligations) of the Company or any of its Subsidiaries shall be declared to be (or shall become) due and payable, or required to be prepaid, in each case other than (x) by a regularly scheduled required prepayment or pursuant to customary mandatory prepayment provisions in connection with asset sales, casualty and condemnation events, the incurrence of indebtedness, the issuance of Equity Interests or excess cash flow, prior to the stated maturity thereof or any payment on demand in respect of Indebtedness incurred under Section 10.04(y) in accordance with the terms of such Indebtedness and not as a result of a default thereunder, (y) in connection with any payment, prepayment, redemption, repurchase or acquisition for value of Indebtedness permitted under Section 10.08 and (z) any Net Share Settlement of any Permitted Convertible Notes; provided that it shall not be a Default or an Event of Default under this Section 11.04 unless the aggregate principal amount of all Indebtedness as described in preceding clauses (a) and (b) is at least equal to the Threshold Amount; or

11.05. Bankruptcy, etc.— Any Credit Party or any Material Subsidiary of the Company shall commence a voluntary case concerning itself under Title 11 of the United States Code entitled “Bankruptcy,” as now or hereafter in effect, or any successor thereto (the “Bankruptcy Code”); or an involuntary case is commenced against any Credit Party or any Material Subsidiary of the Company, and the petition is not controverted within 30 days, or is not dismissed within 60 days after the filing thereof, provided, however, that during the pendency of such period, each Lender shall be relieved of its obligation to extend credit hereunder; or a custodian (as defined in the Bankruptcy Code) is appointed for, or takes charge of, all or substantially all of the property of any Credit Party or any Material Subsidiary of the Company, to operate all or any substantial portion of the business any Credit Party or any Material Subsidiary of the Company, or any Credit Party or any Material Subsidiary of the Company commences any other proceeding in relation to any reorganization, arrangement, adjustment of debt, relief of debtors, dissolution, bankruptcy, insolvency or any analogous procedure or step is taken in any jurisdiction whether now or hereafter in effect relating to any Credit Party or any Material Subsidiary of the Company (including under any Dutch Insolvency Law or UK Insolvency Law), or there is commenced against any

Credit Party or any Material Subsidiary of the Company any such proceeding which remains undismissed for a period of 60 days after the filing thereof, or any Credit Party or any Material Subsidiary of the Company is adjudicated or deemed under applicable law insolvent or bankrupt; or any order of relief or other order approving any such case or proceeding (including the entry of an order of relief against it or for the appointment of a receiver, controller, receiver-manager, trustee, monitor, custodian or similar official for it or for any substantial part of its property) is entered; or any Credit Party or any Material Subsidiary of the Company makes a general assignment for the benefit of creditors; or any Business action is taken by any Credit Party or any Material Subsidiary of the Company for the purpose of effecting any of the foregoing; or with respect to a Dutch Credit Party, if it files a notice under section 36 of the Tax Collection Act of the Netherlands (*Invorderingswet* 1990); or

11.06. ERISA.

- (a) One or more ERISA Events shall have occurred;
- (b) there is or arises an Unfunded Pension Liability (taking into account only Plans with positive Unfunded Pension Liability);
- (c) any material contribution required to be made with respect to a Foreign Pension Plan has not been timely made; or
- (d) or there is or arises any potential withdrawal liability under Section 4201 of ERISA, if the Company, any Subsidiary of the Company or any of the ERISA Affiliates were to withdraw completely from any and all Multiemployer Plans;

and the liability of any or all of the Company, any Subsidiary of the Company and the ERISA Affiliates contemplated by the foregoing clauses (a), (b), (c), and (d), either individually or in the aggregate, has had, or could be reasonably expected to have, a Material Adverse Effect; or

11.07. [Reserved].

11.08. Security Documents. Any of this Agreement or the Security Documents shall cease to be in full force and effect (other than as permitted by the Credit Documents), or any Credit Party or any Person acting for or on behalf of such Credit Party shall deny or disaffirm such Credit Party's obligations under this Agreement or any Security Document to which it is a party, or the Security Documents shall cease to give the Collateral Agent for the benefit of the Secured Creditors (other than pursuant to, or as permitted by, the terms hereof or thereof (including as a result of a transaction permitted by this Agreement)) a perfected security interest in, and Lien on, the Collateral covered thereby, in favor of the Collateral Agent, superior to and prior to the rights of all third Persons (except as permitted by Section 10.01), and subject to no other Liens (except as permitted by Section 10.01), or any Credit Party shall default in the due performance or observance of any term, covenant or agreement on its part to be performed or observed pursuant to any such Security Document and such default shall continue beyond the period of grace, if any, specifically applicable thereto pursuant to the terms of such Security Document or, if no such period of grace is provided in such Security Document, such default shall continue unremedied for a period of 30 days after the earlier of (a) the date on which such default shall first become known to any Responsible Officer of the Company or (b) the date on which written notice thereof is given to the defaulting party by the Administrative Agent or the Required Lenders; or

11.09. Guaranties. Any Guaranty or any provision thereof shall cease to be in full force or effect as to any Guarantor (except as a result of a release of any Subsidiary Guarantor in accordance with the terms of the Credit Documents), or any Guarantor or any Person acting for or on behalf of such

Guarantor shall deny or disaffirm such Guarantor's obligations under the Guaranty to which it is a party or any Guarantor (a) shall default in the payment when due of any Guaranteed Obligations (as defined in (or any similar term contained in) each applicable Guaranty) or (y) shall default in the due performance or observance of any term, covenant or agreement on its part to be performed or observed pursuant to the Guaranty to which it is a party and such default shall continue beyond the period of grace, if any, specifically applicable thereto pursuant to the terms of such Guaranty, or, if no such period of grace is provided in such Guaranty or such default is of a covenant in this Agreement pursuant to which no grace period is provided in Section 11.03 above, such default shall continue unremedied for a period of 30 days after the earlier of (a) the date on which such default shall first become known to any Responsible Officer of the Company or any other Credit Party or (b) the date on which written notice thereof is given to the defaulting party by the Administrative Agent or the Required Lenders; or

11.10. Judgments. One or more judgments or decrees shall be entered against the Company or any Subsidiary of the Company involving in the aggregate for the Company and its Subsidiaries a liability (to the extent not paid or not covered by a reputable and solvent insurance company) and such judgments and decrees shall not be satisfied, vacated, discharged or stayed or bonded pending appeal for any period of 30 consecutive days, and the aggregate amount of all such judgments equals or exceeds the Threshold Amount; or

11.11. Change of Control. A Change of Control shall occur; or

11.12. Intercreditor Agreement. After the execution and delivery thereof, the Intercreditor Agreement or any provision thereof shall cease to be in full force or effect (except in accordance with its terms), any Credit Party shall assert that the Intercreditor Agreement shall have ceased for any reason to be in full force and effect (except in accordance with its terms) or shall knowingly contest, or knowingly support any other Person in any action that seeks to contest, the validity or effectiveness of the Intercreditor Agreement; ~~or~~

~~11.13. Convertible Notes Maturity Default. A Convertible Notes Maturity Default shall occur;~~

then, and in any such event, and at any time thereafter, if any Event of Default shall then be continuing, the Administrative Agent, upon the written request of the Required Lenders, shall by written notice to the Borrowers, take any or all of the following actions, without prejudice to the rights of the Administrative Agent, any Lender or the holder of any Note to enforce its claims against any Credit Party (provided that, if an Event of Default specified in Section 11.05 shall occur with respect to any Borrower, the result which would occur upon the giving of written notice by the Administrative Agent as specified in clauses (a) and (b) below, shall occur automatically without the giving of any such notice): (a) declare the Total Revolving Loan Commitment terminated, whereupon the Revolving Loan Commitment of each Lender shall forthwith terminate immediately and any Commitment Commission shall forthwith become due and payable without any other notice of any kind; (b) declare the principal of and any accrued and unpaid interest in respect of all Loans and the Notes and all Obligations owing hereunder and thereunder to be, whereupon the same shall become, forthwith due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Credit Party; (c) terminate any Letter of Credit which may be terminated in accordance with its terms; (d) (x) direct the U.S. Borrowers to pay (and the U.S. Borrowers jointly and severally agree that upon receipt of such notice, or upon the occurrence of an Event of Default specified in Section 11.05 with respect to any U.S. Borrower, they will pay) to the Collateral Agent at the Payment Office such additional amount of cash or Cash Equivalents, to be held as security by the Collateral Agent, as is equal to 102% of the aggregate Stated Amount of all Letters of Credit issued for the account of the U.S. Borrowers and then outstanding ~~and~~; (y) direct the Dutch Borrowers to pay (and the Dutch Borrowers agree that upon receipt of such notice, or upon the occurrence of an Event of Default specified in Section 11.05 with respect to any Dutch Borrower, they

will pay) to the Collateral Agent at the Payment Office such additional amount of cash or Cash Equivalents, to be held as security by the Collateral Agent, as is equal to 102% of the aggregate Stated Amount of all Letters of Credit issued for the account of such Dutch Borrowers and then outstanding and (z) direct the UK Borrowers to pay (and the UK Borrowers agree that upon receipt of such notice, or upon the occurrence of an Event of Default specified in Section 11.05 with respect to any UK Borrower, they will pay) to the Collateral Agent at the Payment Office such additional amount of cash or Cash Equivalents, to be held as security by the Collateral Agent, as is equal to 102% of the aggregate Stated Amount of all Letters of Credit issued for the account of such UK Borrowers and then outstanding; (e) enforce, as Collateral Agent, all of the Liens and security interests created pursuant to the Security Documents; (f) enforce each Guaranty; and (g) apply any cash collateral held by the Administrative Agent pursuant to Section 5.02 to the repayment of the Obligations; or

11.13. Convertible Notes Maturity Default. A Convertible Note Maturity Default shall occur.

SECTION 12. The Administrative Agent and the Collateral Agent.

12.01. Appointment. (a) The Lenders (including in their capacity as a Swingline Lender and Issuing Lender) hereby irrevocably designate and appoint DBNY as Administrative Agent (for purposes of this Section 12 and Section 13.01, the term "Administrative Agent" also shall include DBNY in its capacity as Collateral Agent pursuant to the Security Documents and, if in effect, the Intercreditor Agreement) to act as specified herein and in the other Credit Documents. Each Lender hereby irrevocably authorizes, and each holder of any Note by the acceptance of such Note shall be deemed irrevocably to authorize the Administrative Agent to take such action on its behalf under the provisions of this Agreement, the other Credit Documents and any other instruments and agreements referred to herein or therein and to exercise such powers and to perform such duties hereunder and thereunder as are specifically delegated to or required of the Administrative Agent by the terms hereof and thereof and such other powers as are reasonably incidental thereto. The Administrative Agent may perform any of its duties hereunder or under the other Credit Documents by or through its officers, directors, agents, employees or affiliates. For the purposes of the Belgian law Security Documents, the Lenders and the Secured Creditors (i) appoint the Administrative Agent as their representative in accordance with Article 5 of the Belgian Act of 15 December 2004 on financial collateral arrangements and several tax dispositions in relation to security collateral arrangements and loans of financial instruments and Article 3 of Title XVII of Book III of the Belgian Civil Code and (ii) agree that the Administrative Agent shall not be severally and jointly liable with the Lenders and the Secured Creditors.

(b) Each Issuing Lender shall act on behalf of the Lenders with respect to any Letters of Credit issued by it and documents associated therewith, and such Issuing Lender shall have all of the benefits and immunities (i) provided to the Administrative Agent in this Section 12 (other than Section 12.04) with respect to any acts taken or omissions suffered by such Issuing Lender in connection with Letters of Credit issued by it or proposed to be issued by it and the applications and agreements for letters of credit pertaining to such Letters of Credit as fully as if the term "Administrative Agent" as used in this Section 12 included such Issuing Lender with respect to such acts or omissions and (ii) as additionally provided herein with respect to such Issuing Lender.

(c) Each Issuing Lender may, at any time by giving 20 Business Days' prior written notice to the Company and the Administrative Agent, resign from the performance of all its respective functions and duties hereunder and/or under the other Credit Documents as an Issuing Lender and the resigning Issuing Lender (x) shall not be required to issue any further Letters of Credit hereunder, (y) shall maintain all of its rights (including its rights to indemnification) and obligations as Issuing Lender with respect to any Letters of Credit issued by it prior to the date of such resignation and (z) shall remain indemnified to the extent provided in this Agreement and the other Credit Documents and the provisions of this



Section 12 (and the analogous provisions of the other Credit Documents) shall continue in effect for the benefit of such resigning Issuing Bank for all of its actions and inactions while serving as an Issuing Bank hereunder.

12.02. Nature of Duties. (a) The Administrative Agent in its capacity as such shall not have any duties or responsibilities except those expressly set forth in this Agreement and in the other Credit Documents. Neither the Administrative Agent in its capacity as such nor any of its officers, directors, agents, employees or affiliates shall be liable for any action taken or omitted by it or them hereunder or under any other Credit Document or in connection herewith or therewith, unless caused by its or their gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final and non-appealable decision). The duties of the Administrative Agent shall be mechanical and administrative in nature; the Administrative Agent shall have by reason of this Agreement or any other Credit Document a fiduciary relationship in respect of any Lender or the holder of any Note; and nothing in this Agreement or in any other Credit Document, expressed or implied, is intended to or shall be so construed as to impose upon the Administrative Agent any obligations in respect of this Agreement or any other Credit Document except as expressly set forth herein or therein.

(b) Notwithstanding any other provision of this Agreement or any provision of any other Credit Document, the Arrangers, the Syndication Agents and the Co-Documentation Agents are named as such for recognition purposes only, and in its capacity as such shall have no powers, duties, responsibilities or liabilities with respect to this Agreement or the other Credit Documents or the transactions contemplated hereby and thereby; it being understood and agreed that the Arrangers, the Syndication Agents and the Co-Documentation Agents shall be entitled to all indemnification and reimbursement rights in favor of the Administrative Agent as, and to the extent, provided for under Sections 12.06 and 13.01. Without limitation of the foregoing, none of the Arrangers, the Syndication Agents and the Co-Documentation Agents shall, solely by reason of this Agreement or any other Credit Documents, have any fiduciary relationship in respect of any Lender or any other Person.

12.03. Lack of Reliance on the Administrative Agent. Independently and without reliance upon the Administrative Agent, each Lender and the holder of each Note, to the extent it deems appropriate, has made and shall continue to make (a) its own independent investigation of the financial condition and affairs of the Company and its Subsidiaries in connection with the making and the continuance of the Loans and the taking or not taking of any action in connection herewith and (b) its own appraisal of the creditworthiness of the Company and its Subsidiaries and, except as expressly provided in this Agreement, the Administrative Agent shall not have any duty or responsibility, either initially or on a continuing basis, to provide any Lender or the holder of any Note with any credit or other information with respect thereto, whether coming into its possession before the making of the Loans or at any time or times thereafter. The Administrative Agent shall not be responsible to any Lender or the holder of any Note for any recitals, statements, information, representations or warranties herein or in any document, certificate or other writing delivered in connection herewith or for the execution, effectiveness, genuineness, validity, enforceability, perfection, collectability, priority or sufficiency of this Agreement or any other Credit Document or the financial condition of the Company or any of its Subsidiaries or be required to make any inquiry concerning either the performance or observance of any of the terms, provisions or conditions of this Agreement or any other Credit Document, or the financial condition of the Company or any of its Subsidiaries or the existence or possible existence of any Default or Event of Default.

12.04. Certain Rights of the Agents. If the Administrative Agent shall request instructions from the Required Lenders with respect to any act or action (including failure to act) in connection with this Agreement or any other Credit Document, the Administrative Agent shall be entitled to refrain from such act or taking such action unless and until the Administrative Agent shall have received instructions from

the Required Lenders; and the Administrative Agent shall not incur liability to any Lender by reason of so refraining. Without limiting the foregoing, neither any Lender nor the holder of any Note shall have any right of action whatsoever against the Administrative Agent as a result of the Administrative Agent acting or refraining from acting hereunder or under any other Credit Document in accordance with the instructions of the Required Lenders.

12.05. Reliance. The Administrative Agent shall be entitled to rely, and shall be fully protected in relying, upon any note, writing, resolution, notice, statement, certificate, telex, teletype or telecopier message, cablegram, radiogram, order or other document or telephone message signed, sent or made by any Person that the Administrative Agent believed to be the proper Person, and, with respect to all legal matters pertaining to this Agreement and any other Credit Document and its duties hereunder and thereunder, upon advice of counsel selected by the Administrative Agent.

12.06. Indemnification. To the extent the Administrative Agent (or any affiliate thereof) or any Issuing Lender (or any affiliate thereof) is not reimbursed and indemnified by the Borrowers, the Lenders will reimburse and indemnify the Administrative Agent (and any affiliate thereof) or Issuing Lender (or any affiliate thereof), as applicable, in proportion to their respective "percentage" as used in determining the Required Lenders (determined as if there were no Defaulting Lenders) for and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, judgments, costs, expenses or disbursements of whatsoever kind or nature which may be imposed on, asserted against or incurred by the Administrative Agent (or any affiliate thereof) or the applicable Issuing Lender (or an affiliate thereof), as applicable, in performing its duties hereunder, under any other Credit Document or in respect of any Letter of Credit or in any way relating to or arising out of this Agreement, any other Credit Document or any Letter of Credit; provided that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, claims, actions, judgments, suits, costs, expenses or disbursements resulting from the Administrative Agent's (or such affiliates') or the applicable Issuing Lender's (or such affiliates'), as applicable, gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final and non-appealable decision).

12.07. The Administrative Agent in its Individual Capacity. With respect to its obligation to make Loans, or issue or participate in Letters of Credit, under this Agreement, the Administrative Agent shall have the rights and powers specified herein for a "Lender" and may exercise the same rights and powers as though it were not performing the duties specified herein; and the term "Lender," "Required Lenders," "Supermajority Lenders" or any similar terms shall, unless the context clearly indicates otherwise, include the Administrative Agent in its individual capacity. The Administrative Agent and its affiliates may accept deposits from, lend money to, and generally engage in any kind of banking, investment banking, trust or other business with, or provide debt financing, equity capital or other services (including financial advisory services) to any Credit Party or any Affiliate of any Credit Party (or any Person engaged in a similar business with any Credit Party or any Affiliate thereof) as if they were not performing the duties specified herein, and may accept fees and other consideration from any Credit Party or any Affiliate of any Credit Party for services in connection with this Agreement and otherwise without having to account for the same to the Lenders.

12.08.  Holders. The Administrative Agent may deem and treat the payee of any Note as the owner thereof for all purposes hereof unless and until a written notice of the assignment, transfer or endorsement thereof, as the case may be, shall have been filed with the Administrative Agent. Any request, authority or consent of any Person who, at the time of making such request or giving such authority or consent, is the holder of any Note shall be conclusive and binding on any subsequent holder, transferee, assignee or endorsee, as the case may be, of such Note or of any Note or Notes issued in exchange therefor.

12.09. Resignation by the Administrative Agent. (a) The Administrative Agent may resign from the performance of all its respective functions and duties hereunder and/or under the other Credit Documents at any time by giving 20 Business Days' prior written notice to the Lenders and, unless a Default or an Event of Default under Section 11.05 then exists, the Company. Any such resignation by the Administrative Agent hereunder shall also constitute its resignation as an Issuing Lender and the Swingline Lender, in which case the resigning Administrative Agent (x) shall not be required to issue any further Letters of Credit or make any Swingline Loans hereunder and (y) shall maintain all of its rights and obligations as Issuing Lender or Swingline Lender, as the case may be, with respect to any Letters of Credit issued by it, or Swingline Loans made by it, prior to the date of such resignation. Such resignation shall take effect upon the appointment of a successor Administrative Agent pursuant to clauses (b) and (c) below or as otherwise provided below.

(b) Upon any such notice of resignation by the Administrative Agent, the Required Lenders shall appoint a successor Administrative Agent hereunder or under the other Credit Documents who shall be a commercial bank or trust company reasonably acceptable to the Company, which acceptance shall not be unreasonably withheld or delayed (provided that the Company's approval shall not be required if an Event of Default then exists).

(c) If a successor Administrative Agent shall not have been so appointed within such 20 Business Day period, the Administrative Agent, with the consent of the Company (which consent shall not be unreasonably withheld or delayed, provided that the Company's consent shall not be required if an Event of Default then exists), shall then appoint a successor Administrative Agent who shall serve as Administrative Agent hereunder or thereunder until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided in clause (b) above.

(d) If no successor Administrative Agent has been appointed pursuant to clause (b) or (c) above by the 25th Business Day after the date such notice of resignation was given by the Administrative Agent, the Administrative Agent's resignation shall become effective and the Required Lenders shall thereafter perform all the duties of the Administrative Agent hereunder and/or under any other Credit Document until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided in clause (b) above.

(e) Any fees payable under this Agreement or the other Credit Documents by the Credit Parties to any successor Administrative Agent shall be the same as those payable to the predecessor Administrative Agent unless otherwise agreed to between the Company and the successor Administrative Agent.

(f) Upon a resignation of the Administrative Agent pursuant to this Section 12.09, the Administrative Agent shall remain indemnified to the extent provided in this Agreement and the other Credit Documents and the provisions of this Section 12 (and the analogous provisions of the other Credit Documents) shall continue in effect for the benefit of the Administrative Agent for all of its actions and inactions while serving as an Agent hereunder.

12.10. Collateral Matters. (a) Each Lender authorizes and directs the Administrative Agent to enter into for the benefit of the Lenders and the other Secured Creditors (i) the Security Documents and, if applicable, the Intercreditor Agreement and (ii) any amendments provided for under Section 2.14. Each Lender hereby agrees, and each holder of any Note by the acceptance thereof will be deemed to agree, that, except as otherwise set forth herein, any action taken by the Required Lenders in accordance with the provisions of this Agreement, the Security Documents or the Intercreditor Agreement, and the exercise by the Required Lenders of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, shall be authorized and binding upon all of the Lenders. The

Administrative Agent is hereby authorized on behalf of all of the Lenders, without the necessity of any notice to or further consent from any Lender, from time to time prior to an Event of Default, to take any action with respect to any Collateral or Security Documents which may be necessary to perfect and maintain perfected the security interest in and liens upon the Collateral granted pursuant to the Security Documents.

(b) The Lenders hereby authorize the Administrative Agent to promptly upon the request of the Company, and the Administrative Agent and the Lenders hereby agree with the Company to, the automatic release any Lien granted to or held by the Administrative Agent upon any Collateral (i) upon termination of the Total Revolving Loan Commitment (and all Letters of Credit other than Letters of Credit that have been cash collateralized or backstopped by another letter of credit, in either case on terms and pursuant to arrangements reasonably satisfactory to the Administrative Agent and the respective Issuing Lenders (which arrangements, in any event, shall require such cash collateral or backstop letter of credit to be in a stated amount equal to at least 102% of the aggregate Stated Amount of all Letters of Credit outstanding at such time))) and payment and satisfaction of all of the Obligations (other than contingent payment obligations for which no claim has been made) at any time arising under or in respect of this Agreement or the Credit Documents or the transactions contemplated hereby or thereby, (ii) constituting property being sold or otherwise disposed of (to Persons other than a Credit Party) upon the sale or other disposition thereof not prohibited by this Agreement, (iii) if approved, authorized or ratified in writing by the Required Lenders (or all of the Lenders hereunder, to the extent required by Section ~~13.12~~13.13) or (iv) as otherwise may be expressly provided in the relevant Security Documents, the last sentence of Section 10.01 or in the Intercreditor Agreement (if in effect). Upon request by the Administrative Agent at any time, the Lenders will confirm in writing the Administrative Agent's authority to release particular types or items of Collateral pursuant to this Section 12.10.

(c) The Administrative Agent shall have no obligation whatsoever to the Lenders or to any other Person to assure that the Collateral exists or is owned by any Credit Party or is cared for, protected or insured or that the Liens granted to the Administrative Agent herein or pursuant hereto have been properly or sufficiently or lawfully created, perfected, protected or enforced or are entitled to any particular priority, or to exercise or to continue exercising at all or in any manner or under any duty of care, disclosure or fidelity any of the rights, authorities and powers granted or available to the Administrative Agent in this Section 12.10 or in any of the Security Documents, it being understood and agreed that in respect of the Collateral, or any act, omission or event related thereto, the Administrative Agent may act in any manner it may deem appropriate, in its sole discretion, given the Administrative Agent's own interest in the Collateral as one of the Lenders and that the Administrative Agent shall have no duty or liability whatsoever to the Lenders, except for its gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final and non-appealable decision).

(d) The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Credit Document in respect of the Collateral by or through, or delegate any and all such rights and powers to, any one or more sub-agents, trustees or third parties appointed by the Administrative Agent. The Administrative Agent (and any such sub-agent, trustee or third party) may perform any and all of its duties and exercise its rights and powers by or through their respective Affiliates. The exculpatory and indemnification provisions of this Section 12 and Section 13.01 shall apply to any such sub-agent, trustee or third party and to their respective Affiliates to the same extent that such provisions apply to the Administrative Agent.

(e) The Lenders authorize the Administrative Agent to promptly upon the request of the Company, and the Administrative Agent and the Lenders hereby agree with the Company to promptly, release the Mortgage and Lien on any Eligible Real Property so long as (i) no Event of Default has occurred and is continuing, (ii) after giving effect to such release Excess Availability is not less than 20%

of Availability then in effect and (iii) the Credit Parties are not required to provide a Lien on such Eligible Real Property pursuant to Section 9.12. Upon such release, such Real Property shall no longer constitute Eligible Real Property, and shall not be included in the U.S. Borrowing Base until such time, if any, that the requirements set forth in the definition of Eligible Real Property have been satisfied with respect thereto.

12.11. Delivery of Information. The Administrative Agent shall not be required to deliver to any Lender originals or copies of any documents, instruments, notices, communications or other information received by the Administrative Agent from any Credit Party, any Subsidiary thereof, the Required Lenders, any Lender or any other Person under or in connection with this Agreement or any other Credit Document except (a) as specifically provided in this Agreement or any other Credit Document and (b) as specifically requested from time to time in writing by any Lender with respect to a specific document, instrument, notice or other written communication received by and in the possession of the Administrative Agent at the time of receipt of such request and then only in accordance with such specific request.

12.12. Dutch Parallel Debt.

(a) Each Dutch Credit Party irrevocably and unconditionally undertakes to pay to the Collateral Agent amounts equal to, and in the currency or currencies of, its Dutch Corresponding Debt (such amounts, its "Dutch Parallel Debt") on the terms and conditions specified in this Section 12.12.

(b) The Dutch Parallel Debt of each Dutch Credit Party (i) shall become due and payable at the same time as its Dutch Corresponding Debt; and (ii) is independent and separate from, and without prejudice to, its Dutch Corresponding Debt.

(c) For purposes of this Section 12.12, the Collateral Agent (i) is the independent and separate creditor of each Dutch Parallel Debt; (ii) acts in its own name and not as agent, representative or trustee of the Secured Creditors and its claims in respect of each Dutch Parallel Debt shall not be held on trust; and (iii) shall have the independent and separate right to demand payment of each Dutch Parallel Debt in its own name (including, through any suit, execution, enforcement of security, recovery of guarantees and applications for and voting in any kind of insolvency proceeding).

(d) The Dutch Parallel Debt of each Dutch Credit Party shall be (i) decreased to the extent that its Dutch Corresponding Debt has been irrevocably and unconditionally paid or discharged, and (ii) increased to the extent to that its Dutch Corresponding Debt has increased, and the Dutch Corresponding Debt of each Dutch Credit Party shall be (x) decreased to the extent that its Dutch Parallel Debt has been irrevocably and unconditionally paid or discharged, and (y) increased to the extent that its Dutch Parallel Debt has increased, in each case provided that the Dutch Parallel Debt of a Dutch Credit Party shall never exceed its Dutch Corresponding Debt.

(e) Each Dutch Credit Party may not pay any of its Dutch Parallel Debt other than at the instruction of, and in the manner determined by, the Collateral Agent. Without prejudice to the preceding sentence, each Dutch Credit Party shall be obliged to pay the Dutch Parallel Debt (or if such Dutch Credit Party's Dutch Corresponding Debt is due at different times, an amount of the relevant Dutch Parallel Debt corresponding to its relevant Dutch Corresponding Debt) only when its relevant Dutch Corresponding Debt has become due.

(f) All parties to this Agreement have acknowledged and agreed with and/or shall acknowledge and agree with the provisions of this Section 12.12.

(g) For the avoidance of doubt, each Dutch Credit Party and the Collateral Agent acknowledge and agree that the rules applicable in respect of common property (*gemeenschap*) do not apply, whether or not by analogy, to the relation between any relevant parties to the relevant Dutch Security Agreement as a result of the provisions in this Section 12.12.

(h) All amounts received or recovered by the Collateral Agent in connection with this Section 12.12, to the extent permitted by applicable law, shall be applied in accordance with Section ~~13.06~~13.07.

(i) This Section 12.12 applies for the purpose of determining the Secured Obligations in each Dutch Security Agreement.

12.13. Real Property Appraisal. At the request of the Company, the Administrative Agent shall obtain, at the sole cost and expense of the Company, promptly upon request, a Real Property Appraisal.

12.14. Certain ERISA Matters.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and the Arrangers, and not, for the avoidance of doubt, to or for the benefit of any Borrower or any other Credit Party, that at least one of the following is and will be true:

(i) such Lender is not using “plan assets” (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit or this Agreement,

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit and this Agreement,

(iii) (A) such Lender is an investment fund managed by a “Qualified Professional Asset Manager” (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or such Lender has provided another representation, warranty and covenant in accordance with sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of the Administrative Agent and the Arrangers, and not, for the avoidance of doubt, to or for the benefit of any Borrower or any other Credit Party, that the Administrative Agent is not a fiduciary with respect to the assets of such Lender involved in such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Credit Document or any documents related hereto or thereto).

SECTION 13. Miscellaneous.

13.01. Payment of Expenses, etc. Subject to Section 14.07, the Borrowers hereby jointly and severally agree to: (a) whether or not the transactions herein contemplated are consummated, pay all reasonable and documented out-of-pocket costs and expenses (including Expenses) (i) of the Administrative Agent (including the reasonable and documented fees and disbursements of Simpson Thacher & Bartlett LLP as counsel to the Administrative Agent, one local counsel in each relevant jurisdiction and consultants and the reasonable and documented fees and expenses in connection with the appraisals and collateral examinations required pursuant to Section 9.01(j)) in connection with the preparation, execution, delivery and administration of this Agreement and the other Credit Documents and the documents and instruments referred to herein and therein and any amendment, waiver or consent relating hereto or thereto, (ii) of the Administrative Agent and its Affiliates in connection with their syndication efforts with respect to this Agreement, (iii) of the Administrative Agent and each Issuing Lender in connection with the Letter of Credit Back-Stop Arrangements entered into by such Persons and (iv) after the occurrence and during the continuance of an Event of Default, of each of the Administrative Agent, the Issuing Lenders, the Swingline Lender and the other Lenders in connection with the enforcement of this Agreement and the other Credit Documents and the documents and instruments referred to herein and therein or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a "work-out" or pursuant to any insolvency or bankruptcy proceedings (including the reasonable and documented fees and disbursements of (x) counsel and consultants of the Administrative Agent, (y) counsel for the respective Issuing Lenders entering into Letter of Credit Backstop Arrangements and (z) one additional firm of counsel for the Issuing Lenders, the Swingline Lender and the other Lenders as a group in each of the United States and the Netherlands); and (b) indemnify the Arrangers, the Administrative Agent, the Collateral Agent, the Syndication Agents, the Co-Documentation Agents, each Issuing Lender, the Swingline Lender, each other Lender and each of their respective affiliates, and each of their and their affiliates' respective officers, directors, partners, employees, representatives, agents, trustees and investment advisors (each, an "Indemnified Person") from and hold each of them harmless against any and all liabilities, obligations, losses, damages, penalties, claims, actions (including removal or remedial actions), judgments, suits, costs, expenses and disbursements (including reasonable and documented out-of-pocket attorneys' and consultants' fees and disbursements (but limited, in the case of attorneys' fees and disbursements, to one counsel to the Indemnified Persons, taken as a whole, one local counsel for the Indemnified Persons, taken as a whole, in each relevant jurisdiction, and, solely in the case of an actual or perceived conflict of interests, one additional counsel in each relevant jurisdiction to each group of affected Indemnified Persons similarly situated, taken as a whole)) incurred by, imposed on or assessed against any of them as a result of, or arising out of, or in any way related to, or by reason of, (i) any investigation, litigation or other proceeding (whether or not the Arrangers, the Administrative Agent, the Collateral Agent, the Syndication Agents, the Co-Documentation Agents, any Issuing Lender, the Swingline Lender or any

other Lender is a party thereto and whether or not such investigation, litigation or other proceeding is brought by or on behalf of any Credit Party) related to the entering into and/or performance of this Agreement or any other Credit Document or the issuance, amendment, renewal, extension or use of any Letter of Credit or the proceeds of any Loans or Letters of Credit hereunder (including any refusal by any Issuing Lender to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit) or the consummation of the Transaction or any other transactions contemplated herein or in any other Credit Document or the exercise of any of their rights or remedies provided herein or in the other Credit Documents, (ii) the actual or alleged presence of Hazardous Materials in the air, surface water or groundwater or on the surface or subsurface of any Real Property at any time owned, leased or operated by the Company or any of its Subsidiaries, the generation, storage, transportation, handling or disposal of Hazardous Materials by the Company or any of its Subsidiaries at any location, whether or not owned, leased or operated by the Company or any of its Subsidiaries, the non-compliance by the Company or any of its Subsidiaries with any Environmental Law (including applicable permits thereunder) applicable to any Real Property, or any Environmental Claim asserted against the Company, any of its Subsidiaries or any Real Property at any time owned, leased or operated by the Company or any of its Subsidiaries, (iii) (x) the handling of the Credit Account and Collateral of the Borrowers as provided in this Agreement or (y) the Agents', the Swingline Lender's, the Issuing Lenders' and the other Lenders' relying on any instructions of the Company, or (z) any other action taken by the Agents, the Swingline Lender, the Issuing Lenders or the other Lenders hereunder or under the other Credit Documents or in respect of any Letter of Credit, or (iv) the performance by the Administrative Agent of its duties under Section 13.15 including, in each case and subject to the limitations set forth in this Section, the reasonable and documented out-of-pocket fees and disbursements of counsel and other consultants incurred in connection with any such investigation, litigation or other proceeding (but, in each case, excluding from clause (b) above, any losses, liabilities, claims, damages or expenses (A) to the extent incurred by reason of the gross negligence or willful misconduct of the Indemnified Person to be indemnified (as determined by a court of competent jurisdiction in a final and non-appealable decision), (B) constituting taxes (other than any taxes that represent losses, liabilities, claims, damages or expenses arising from any non-tax claim) or (C) arising out of disputes solely between and among Indemnified Persons to the extent such disputes do not involve any act or omission of the Company or any of its Subsidiaries or any of their respective Affiliates (other than claims against an Indemnified Person acting in its capacity as Agent, Arranger, Swingline Lender, Issuing Lender or similar role)). To the extent that the undertaking to indemnify, pay or hold harmless the Administrative Agent, any Issuing Lender, the Swingline Lender or any other Lender set forth in the preceding sentence may be unenforceable because it is violative of any law or public policy, the Borrowers (jointly and severally) shall make the maximum contribution to the payment and satisfaction of each of the indemnified liabilities which is permissible under applicable law.

To the full extent permitted by applicable law, no Borrower or Indemnified Person shall assert, and each hereby waives, any claim against any Borrower or any Indemnified Person, on any theory of liability, for special, indirect, consequential or incidental damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Credit Document or any agreement or instrument contemplated hereby or thereby, the transactions contemplated hereby or thereby, any Loan, Letter of Credit or the use of the proceeds thereof; provided that nothing in this sentence shall limit any Borrower's indemnification obligations to the extent such special, indirect, consequential or incidental damages are included in any third-party claim against an Indemnified Person in connection with which such Indemnified Person is otherwise entitled to indemnification under this Agreement or any other Credit Document. No Indemnified Person shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Credit Documents or the transactions contemplated hereby or thereby, except to the extent the liability of such Indemnified Person results from such Indemnified Person's gross



negligence or willful misconduct (as determined by a court of competent jurisdiction in a final and non-appealable decision). In addition, the U.S. Borrowers jointly and severally agree to reimburse the Administrative Agent for all reasonable and documented out-of-pocket third-party administrative, audit and monetary expenses incurred in connection with the Borrowing Base and determinations thereunder.

13.02. **Right of Setoff.** (a) In addition to any rights now or hereafter granted under applicable law or otherwise, and not by way of limitation of any such rights, upon the occurrence and during the continuance of an Event of Default, the Administrative Agent, each Issuing Lender and each Lender is hereby authorized at any time or from time to time, without presentment, demand, protest or other notice of any kind to any Credit Party or to any other Person, any such notice being hereby expressly waived to the extent permitted by applicable law, to set off and to appropriate and apply any and all deposits (general or special) and any other Indebtedness at any time held or owing by the Administrative Agent, such Issuing Lender or such Lender (including by affiliates, branches and agencies of the Administrative Agent, such Issuing Lender or such Lender wherever located) to or for the credit or the account of any U.S. Credit Party or any Dutch Credit Party or any UK Credit Party against and on account of the Obligations and liabilities of the U.S. Credit Parties or the Dutch Credit Parties or the UK Credit Parties, respectively, to the Administrative Agent, such Issuing Lender or such Lender under this Agreement or under any of the other Credit Documents, including all interests in Obligations purchased by such Lender pursuant to Section ~~13.04~~13.05(b), and all other claims of any nature or description arising out of or connected with this Agreement or any other Credit Document, irrespective of whether or not the Administrative Agent, such Issuing Lender or such Lender shall have made any demand hereunder and although said Obligations, liabilities or claims, or any of them, shall be contingent or unmatured; provided that no amounts received from, or set off with respect to, any Guarantor shall be applied to any Excluded Swap Obligations of such Guarantor. Each of the Administrative Agent, any Issuing Lender or any Lender agrees to promptly notify the Company after any such set-off and application made by the Administrative Agent, such Issuing Lender or such Lender, as applicable, although the failure to provide such notification shall not affect any right of set-off or give rise to any liability on the part of the Administrative Agent, any Issuing Lender or any Lender.

**(b) NOTWITHSTANDING THE FOREGOING SUBSECTION (a), AT ANY TIME THAT THE LOANS OR ANY OTHER OBLIGATION SHALL BE SECURED BY REAL PROPERTY LOCATED IN CALIFORNIA, NO LENDER SHALL EXERCISE A RIGHT OF SETOFF, LIEN OR COUNTERCLAIM OR TAKE ANY COURT OR ADMINISTRATIVE ACTION OR INSTITUTE ANY PROCEEDING TO ENFORCE ANY PROVISION OF THIS AGREEMENT OR ANY NOTE UNLESS IT IS TAKEN WITH THE CONSENT OF THE REQUIRED LENDERS OR APPROVED IN WRITING BY THE ADMINISTRATIVE AGENT, IF SUCH SETOFF OR ACTION OR PROCEEDING WOULD OR MIGHT (PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 580a, 580b, 580d AND 726 OF THE CALIFORNIA CODE OF CIVIL PROCEDURE OR SECTION 2924 OF THE CALIFORNIA CIVIL CODE, IF APPLICABLE, OR OTHERWISE) AFFECT OR IMPAIR THE VALIDITY, PRIORITY OR ENFORCEABILITY OF THE LIENS GRANTED TO THE COLLATERAL AGENT PURSUANT TO THE SECURITY DOCUMENTS OR THE ENFORCEABILITY OF THE NOTES AND OTHER OBLIGATIONS HEREUNDER, AND ANY ATTEMPTED EXERCISE BY ANY LENDER OF ANY SUCH RIGHT WITHOUT OBTAINING SUCH CONSENT OF THE REQUIRED LENDERS OR THE ADMINISTRATIVE AGENT SHALL BE NULL AND VOID. THIS SUBSECTION (b) SHALL BE SOLELY FOR THE BENEFIT OF EACH OF THE LENDERS AND THE ADMINISTRATIVE AGENT HEREUNDER.**

13.03. **Notices.** (a) Except as otherwise expressly provided herein, all notices and other communications provided for hereunder shall be in writing (including telecopier communication) and mailed, emailed, telecopied, or delivered: if to any Credit Party, at the address specified opposite its

signature below or in the other relevant Credit Documents; if to any Lender, at its address specified on Schedule 13.03; and if to the Administrative Agent or the Collateral Agent, at the Notice Office; or, as to any Credit Party or the Administrative Agent, at such other address as shall be designated by such party in a written notice to the other parties hereto and, as to each Lender, at such other address as shall be designated by such Lender in a written notice to the Company and the Administrative Agent. All such notices and communications shall, when mailed, emailed, telecopied, or sent by overnight courier, be effective when received.

(b) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communications pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices pursuant to Section 2 unless otherwise agreed by the Administrative Agent and the applicable Lender. Each of the Administrative Agent, the Company and each of the other Credit Parties may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications.

#### 13.04. Foreign Taxes.

(a) All amounts (including costs and expenses) expressed to be payable under a Credit Document by any Credit Party to a Lender or the Administrative Agent which (in whole or in part) constitute the consideration for any supply for Foreign Tax purposes are deemed to be exclusive of any Foreign Tax which is chargeable on that supply. If Foreign Tax is or becomes chargeable on any supply by any Lender or the Administrative Agent to any Credit Party under a Credit Document and such Lender or Administrative Agent is required to account to the relevant tax authority for the Foreign Tax, that Credit Party must pay to such Lender or Administrative Agent, as the case may be, (in addition to any other consideration for such supply) an amount equal to the amount of the Foreign Tax upon receipt by the Credit Party of a valid Foreign Tax invoice.

(b) If Foreign Tax is or becomes chargeable on any supply made by any Lender or the Administrative Agent (the "Supplier") to any other Lender or the Administrative Agent (the "Recipient") under a Credit Document, and any party other than the Recipient (the "Relevant Party") is required by the terms of any Credit Document to pay an amount equal to the consideration for that supply to the Supplier (rather than being required to reimburse or indemnify the Recipient in respect of that consideration):

(i) (where the Supplier is the Person required to account to the relevant tax authority for the Foreign Tax) the Relevant Party must also pay to the Supplier (at the same time as paying that amount) an additional amount equal to the amount of the Foreign Tax; and

(ii) (where the Recipient is the Person required to account to the relevant tax authority for the Foreign Tax) the Relevant Party must promptly, following demand from the Recipient, pay to the Recipient an amount equal to the Foreign Tax chargeable on that supply.

(c) Where a Credit Document requires any party to reimburse or indemnify a Lender or the Administrative Agent for any cost or expense, that party shall reimburse or indemnify (as the case may be) such Lender or Administrative Agent for the full amount of such cost or expense, including such part thereof as represents Foreign Tax, save to the extent that such Lender or Administrative Agent reasonably determines that it is entitled to credit or repayment in respect of such Foreign Tax from the relevant tax authority.

(d) Any reference in this Section 13.04 to any party shall, at any time when such party is treated as a member of a group for Foreign Tax purposes, include (where appropriate and unless the

context otherwise requires) a reference to the representative member of such group at such time (the term "representative member" to have the same meaning as in the Value Added Tax Act 1994).

~~13.04~~13.05. Benefit of Agreement; Assignments; Participations. (a) This Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective successors and assigns of the parties hereto; provided, however, neither the Company nor any other Borrower may assign or transfer any of their rights, obligations or interest hereunder without the prior written consent of the Lenders except as permitted by Section 10.02 and except for any assignment from any Dutch Borrower to the Company expressly contemplated by Section 2.10(e) or from any UK Borrower to the Company expressly contemplated by Section 2.10(g) and, provided further, that, although any Lender may grant participations to Eligible Transferees in its rights hereunder, such Lender shall remain a "Lender" for all purposes hereunder (and may not transfer or assign all or any portion of its Revolving Loan Commitment hereunder except as provided in Sections 2.13 and ~~13.04~~13.05(b)) and the participant shall not constitute a "Lender" hereunder and, provided further, that no Lender shall transfer or grant any participation under which the participant shall have rights to approve any amendment to or waiver of this Agreement or any other Credit Document except to the extent such amendment or waiver would (i) extend the final scheduled maturity of any Loan, Note or Letter of Credit (unless such Letter of Credit is not extended beyond the Final Maturity Date or is otherwise cash collateralized in accordance with the terms hereof) in which such participant is participating, or reduce the rate or extend the time of payment of interest or Fees thereon (except in connection with a waiver of applicability of any post-default increase in interest rates) or reduce the principal amount thereof (it being understood that any amendment or modification to the financial definitions in this Agreement, to Section 13.07(a) or as contemplated in clause (6) of the second proviso of Section ~~13.12~~13.13(a) shall not constitute a reduction in the rate of interest or Fees payable hereunder), or increase the amount of the participant's participation over the amount thereof then in effect (it being understood that a waiver of any Default or Event of Default or of a mandatory reduction in the Total Revolving Loan Commitment shall not constitute a change in the terms of such participation, and that an increase in any Revolving Loan Commitment (or the available portion thereof) or Loan shall be permitted without the consent of any participant if the participant's participation is not increased as a result thereof), (ii) consent to the assignment or transfer by any Borrower of any of its rights and obligations under this Agreement or (iii) release all or substantially all of the Collateral under any or all of the Security Documents (except as expressly provided in the Credit Documents) or all or substantially all of the value of the Guaranty (except as expressly provided in the Credit Documents) supporting the Loans or Letters of Credit hereunder in which such participant is participating. The Borrowers agree that each participant shall be entitled to the benefits of Sections 2.10, 3.06, 2.11 and 5.04 (subject to the requirements and limitations therein, including the requirements under Section 5.04(e) (it being understood that the documentation required under Section 5.04(e) shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section; provided that such participant (A) agrees to be subject to the provisions of Sections 2.12(b) and 2.13 as if it were an assignee under paragraph (b) of this Section; and (B) shall not be entitled to receive any greater payment under Sections 2.10, 3.06 or 5.04, with respect to any participation, than its participating Lender would have been entitled to receive, unless the sale of the participation to such Participant is made with the Borrowers' prior written consent (not to be unreasonably withheld or delayed). Each Lender that sells a participation agrees, at the Borrowers' request and expense, to use reasonable efforts to cooperate with the Borrowers to effectuate the provisions of Section 2.13 with respect to any Participant.

(b) Notwithstanding the foregoing, any Lender (or any Lender together with one or more other Lenders) may (x) assign all or a portion of its Revolving Loan Commitment and related outstanding Obligations (or, if the Revolving Loan Commitment has terminated, outstanding Obligations) hereunder to (i) (A) its parent company and/or any affiliate of such Lender which is at least 50% owned by such Lender or its parent company or (B) to one or more other Lenders or any affiliate of any such other

Lender which is at least 50% owned by such other Lender or its parent company (provided that any fund that invests in loans and is managed or advised by the same investment advisor of another fund which is a Lender (or by an Affiliate of such investment advisor) shall be treated as an affiliate of such other Lender for the purposes of this sub-clause (x)(i)(B)), provided, that no such assignment may be made to any such Person that is, or would at such time constitute, a Defaulting Lender or (ii) in the case of any Lender that is a fund that invests in loans, any other fund that invests in loans and is managed or advised by the same investment advisor of any Lender or by an Affiliate of such investment advisor or (y) assign all, or if less than all, a portion equal to at least \$5,000,000 (or such lesser amount as the Administrative Agent and the Company may otherwise agree) in the aggregate for the assigning Lender or assigning Lenders, of such Revolving Loan Commitments and related outstanding Obligations (or, if the Revolving Loan Commitments have terminated, outstanding Obligations) hereunder to one or more Eligible Transferees, each of which assignees shall become a party to this Agreement as a Lender by execution of an Assignment and Assumption Agreement, provided that (i) at such time, Schedule 1.01(a) shall be deemed modified to reflect the Revolving Loan Commitments and/or outstanding Revolving Loans, as the case may be, of such new Lender and of the existing Lenders, (ii) upon the surrender of any Notes by the assigning Lender (or, upon such assigning Lender's indemnifying the relevant Borrower or Borrowers for any lost Note pursuant to a customary indemnification agreement) new Notes will be issued, at the Borrowers' joint and several expense, to such new Lender and to the assigning Lender upon the request of such new Lender or assigning Lender, such new Notes to be in conformity with the requirements of Section 2.05 (with appropriate modifications) to the extent needed to reflect the revised Revolving Loan Commitments and/or outstanding Revolving Loans, as the case may be, (iii) so long as no Event of Default then exists, the consent of the Company shall be required in connection with any such assignment pursuant to clause (y) above (such consent, in any case, not to be unreasonably withheld, delayed or conditioned), provided that the Company shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within ten Business Days after having received notice thereof, (iv) the consent of the Administrative Agent, each Issuing Lender and the Swingline Lender shall be required in connection with any such assignment of Revolving Loan Commitments (and related Obligations) (such consent, in any case, not to be unreasonably withheld, delayed or conditioned), (v) the Administrative Agent shall receive at the time of each such assignment, from the assigning or assignee Lender, the payment of a non-refundable assignment fee of \$3,500 (provided that only one such fee shall be payable in the case of one or more concurrent assignments by or to investment funds managed or advised by the same investment advisor or an affiliated investment advisor; provided further that the Administrative Agent may waive the payment of such fee in its sole discretion), and (vi) no such transfer or assignment will be effective until recorded by the Administrative Agent on the Register pursuant to Section ~~13.15~~13.16; provided in all cases that the transferee Lender does not form part of the public (as such term is understood under the Dutch Financial Markets Supervision Act). To the extent of any assignment pursuant to this Section ~~13.04~~13.05(b), the assigning Lender shall be relieved of its obligations hereunder with respect to its assigned Revolving Loan Commitment and outstanding Revolving Loans. At the time of each assignment pursuant to this Section ~~13.04~~13.05(b) to a Person which is not already a Lender hereunder and which is not a United States Person for U.S. federal income tax purposes, the respective assignee Lender shall, to the extent legally entitled to do so, provide to the Company and the Administrative Agent the appropriate Internal Revenue Service Forms (and, if applicable, a U.S. Tax Compliance Certificate) described in Section 5.04(e) to the extent such forms would provide a complete exemption from or reduction in U.S. federal withholding tax. In addition, each assignee Lender that is a United States Person and not already a Lender, if requested by the relevant Borrower or the Administrative Agent, shall deliver such documentation (including Internal Revenue Service Form W-9) prescribed by applicable law as will enable the relevant Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. To the extent that an assignment of all or any portion of a Lender's Revolving Loan Commitment and related outstanding Obligations pursuant to Section 2.13 or this Section ~~13.04~~13.05(b) would, at the time of such assignment, result in increased costs under Section 2.10,

3.06 or 5.04 from those being charged by the respective assigning Lender prior to such assignment, then no Borrower shall be obligated to pay such increased costs (although the Borrowers, in accordance with and pursuant to the other provisions of this Agreement, shall be obligated to pay any other increased costs of the type described above resulting from changes after the date of the respective assignment).

(c) Nothing in this Agreement shall prevent or prohibit any Lender from pledging its Loans and Notes hereunder including to a Federal Reserve Bank in support of borrowings made by such Lender from such Federal Reserve Bank and, with prior notification to the Administrative Agent, any Lender which is a fund may pledge all or any portion of its Loans and Notes to its trustee or to a collateral agent providing credit or credit support to such Lender in support of its obligations to such trustee, such collateral agent or a holder of such obligations, as the case may be. No pledge pursuant to this clause (c) shall release the transferor Lender from any of its obligations hereunder.

(d) Any Lender which assigns all of its Revolving Loan Commitment and/or Loans hereunder in accordance with Section ~~13-04~~13.05(b) shall cease to constitute a "Lender" hereunder, except with respect to indemnification provisions under this Agreement (including Sections 2.10, 2.11, 3.06, 5.04, 12.06, 13.01 and ~~13-06~~13.07), which shall survive as to such assigning Lender solely with respect to events or circumstances that occurred prior to such assignment.

(e) Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrowers, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Credit Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Credit Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(f) A transfer or assignment under Section ~~13-04~~13.05(b) may, with respect to a Dutch Borrower, only be made to a person who is a Professional Lender.

~~13-05~~13.06. No Waiver; Remedies Cumulative. No failure or delay on the part of the Administrative Agent, the Collateral Agent, any Issuing Lender or any Lender in exercising any right, power or privilege hereunder or under any other Credit Document and no course of dealing between the Company, any other Borrower or any other Credit Party and the Administrative Agent, the Collateral Agent, any Issuing Lender or any Lender shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or under any other Credit Document preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder or thereunder. The rights, powers and remedies herein or in any other Credit Document expressly provided are cumulative and not exclusive of any rights, powers or remedies which the Administrative Agent, the Collateral Agent, any Issuing Lender or any Lender would otherwise have. No notice to or demand on any Credit Party in any case shall entitle any Credit Party to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of the Administrative Agent, the Collateral Agent, any Issuing Lender or any Lender to any other or further action in any circumstances without notice or demand.

~~13-06~~13.07. Payments Pro Rata. (a) Except as otherwise provided in this Agreement, the Administrative Agent agrees that promptly after its receipt of each payment from or on behalf of any Borrower in respect of any Obligations hereunder, the Administrative Agent shall distribute such payment to the Lenders entitled thereto (other than any Lender that has consented in writing to waive its pro rata share of any such payment) pro rata based upon their respective shares, if any, of the Obligations with respect to which such payment was received.

(b) Each of the Lenders agrees that, if it should receive (other than in connection with an assignment made pursuant to Section ~~13-04~~13.05) any amount hereunder (whether by voluntary payment, by realization upon security, by the exercise of the right of setoff or banker's lien, by counterclaim or cross action, by the enforcement of any right under the Credit Documents, or otherwise), which is applicable to the payment of the principal of, or interest on, the Loans, Unpaid Drawings, Commitment Commission or Letter of Credit Fees, of a sum which with respect to the related sum or sums received by other Lenders is in a greater proportion than the total of such Obligation then owed and due to such Lender bears to the total of such Obligation then owed and due to all of the Lenders immediately prior to such receipt, then such Lender receiving such excess payment shall purchase for cash without recourse or warranty from the other Lenders an interest in the Obligations of the respective Credit Party to such Lenders in such amount as shall result in a proportional participation by all the Lenders in such amount; provided that if all or any portion of such excess amount is thereafter recovered from such Lenders, such purchase shall be rescinded and the purchase price restored to the extent of such recovery, but without interest.

(c) Notwithstanding anything to the contrary contained herein, (i) the provisions of the preceding Sections ~~13-06~~13.07(a) and (b) shall be subject to the express provisions of this Agreement which require, or permit, differing payments to be made to Non-Defaulting Lenders as opposed to Defaulting Lenders and (ii) the provisions of the preceding Section ~~13-06~~13.07(b) shall be subject to the express provisions of this Agreement which require payments to be allocated to a particular Lender or Lenders.

~~13-07~~13.08. Calculations; Computations. (a) The financial statements to be furnished to the Lenders pursuant hereto shall be made and prepared in accordance with GAAP consistently applied throughout the periods involved (except as set forth in the notes thereto or as otherwise disclosed in writing by the Company to the Lenders); provided that, (i) except as otherwise specifically provided herein, all computations and all definitions (including accounting terms) used in determining the Fixed Charge Coverage Ratio and the Total Leverage Ratio in determining compliance with Section 10 shall (x) utilize GAAP and policies in conformity with those used to prepare the audited financial statements of the Company referred to in Section 8.05(a) for its fiscal year ended, and otherwise in effect as of, December 31, 2014 and (y) be made in a manner such that any obligations relating to a lease that was accounted for by such Person as an operating lease as of the Effective Date and any similar lease entered into after the Effective Date by the Company or any Subsidiary shall be accounted for as obligations relating to an operating lease and not as Capital Lease Obligations, (ii) notwithstanding anything to the contrary contained herein, all such financial statements shall be prepared, and all financial covenants contained herein or in any other Credit Document shall be calculated, in each case, without giving effect to (x) any election under FASB ASC 825 (or any similar accounting principle permitting a Person to value its financial liabilities at the fair value thereof), or (y) any treatment of Indebtedness in respect of convertible debt instruments under Accounting Standards Codification 470-20 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any such Indebtedness in a reduced or bifurcated manner as described therein, and such Indebtedness shall at all times be valued at the full stated principal amount thereof, (iii) to the extent expressly provided herein, certain calculations shall be made on a Pro Forma Basis and (iv) for purposes of determining compliance with any incurrence or expenditure tests set forth herein, amounts so incurred or expended (to the extent

incurred or expended in a currency other than U.S. Dollars) shall be converted into U.S. Dollars on the basis of the exchange rates (as shown for the prior day as published on Bloomberg or, if same does not provide such exchange rates, on such other basis as is reasonably satisfactory to the Administrative Agent) as in effect on the date of such incurrence or expenditure under any provision of any such Section that has an aggregate U.S. Dollar limitation provided for therein (and to the extent the respective incurrence or expenditure test regulates the aggregate amount outstanding at any time and it is expressed in terms of U.S. Dollars, all outstanding amounts originally incurred or spent in currencies other than U.S. Dollars shall be converted into U.S. Dollars on the basis of the exchange rates (as shown for the prior day as published on Bloomberg or, if same does not provide such exchange rates, on such other basis as is reasonably satisfactory to the Administrative Agent) as in effect on the date of any new incurrence or expenditures made under any provision of any such Section that regulates the U.S. Dollar amount outstanding at any time).

(b) All computations of interest (except as otherwise expressly provided herein), Commitment Commission and other Fees hereunder shall be made on the basis of a year of 360 days (except for interest calculated by reference to the Prime Lending Rate, which shall be based on a year of 365 or 366 days, as applicable) for the actual number of days (including the first day but excluding the last day; except that in the case of Letter of Credit Fees and Facing Fees, the last day shall be included) occurring in the period for which such interest, Commitment Commission or Fees are payable.

~~13-08~~13.09. GOVERNING LAW; SUBMISSION TO JURISDICTION; VENUE; WAIVER OF JURY TRIAL. (a) **THIS AGREEMENT AND THE OTHER CREDIT DOCUMENTS AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THEREUNDER SHALL, EXCEPT AS OTHERWISE PROVIDED IN ANY OTHER CREDIT DOCUMENT, BE CONSTRUED IN ACCORDANCE WITH AND BE GOVERNED BY THE LAW OF THE STATE OF NEW YORK (OR, IN RESPECT OF SECTION 12.12, NETHERLANDS LAW) (WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES THAT WOULD RESULT IN THE APPLICATION OF ANY LAW OTHER THAN THE LAW OF THE STATE OF NEW YORK). ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT SHALL (EXCEPT AS OTHERWISE PERMITTED BELOW) BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK OR OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK, IN EACH CASE WHICH ARE LOCATED IN THE COUNTY OF NEW YORK, BOROUGH OF MANHATTAN (OR, IN RESPECT OF SECTION 12.12, THE COURTS OF AMSTERDAM, THE NETHERLANDS), AND, BY EXECUTION AND DELIVERY OF THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT, EACH OF THE COMPANY AND EACH OTHER BORROWER HEREBY IRREVOCABLY ACCEPTS FOR ITSELF AND IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE EXCLUSIVE JURISDICTION OF THE AFORESAID COURTS. WITHOUT LIMITING THE OTHER PROVISIONS OF THIS SECTION ~~13-08~~13.09 AND IN ADDITION TO THE SERVICE OF PROCESS PROVIDED FOR HEREIN, EACH DUTCH BORROWER AND EACH UK BORROWER HEREBY IRREVOCABLY DESIGNATES, APPOINTS AND EMPOWERS THE COMPANY (AND THE COMPANY HEREBY IRREVOCABLY ACCEPTS SUCH APPOINTMENT), AS ITS AUTHORIZED DESIGNEE, APPOINTEE AND AGENT TO RECEIVE, ACCEPT AND ACKNOWLEDGE FOR AND ON ITS BEHALF, AND IN RESPECT OF ITS PROPERTY, SERVICE OF ANY AND ALL LEGAL PROCESS, SUMMONS, NOTICES AND DOCUMENTS WHICH MAY BE SERVED IN ANY SUCH ACTION OR PROCEEDING. IF FOR ANY REASON THE COMPANY SHALL CEASE TO BE AVAILABLE TO ACT AS SUCH, EACH DUTCH BORROWER AND EACH UK BORROWER AGREES TO DESIGNATE A NEW AUTHORIZED DESIGNEE, APPOINTEE AND AGENT IN NEW YORK CITY ON THE TERMS AND FOR THE PURPOSES OF THIS PROVISION REASONABLY SATISFACTORY**

TO THE ADMINISTRATIVE AGENT UNDER THIS AGREEMENT. EACH OF THE COMPANY AND EACH OTHER BORROWER HEREBY FURTHER IRREVOCABLY WAIVES ANY CLAIM THAT ANY SUCH COURTS LACK PERSONAL JURISDICTION OVER THE COMPANY OR ANY SUCH OTHER BORROWER, AND AGREES NOT TO PLEAD OR CLAIM, IN ANY LEGAL ACTION PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT BROUGHT IN ANY OF THE AFOREMENTIONED COURTS, THAT SUCH COURTS LACK PERSONAL JURISDICTION OVER THE COMPANY OR ANY SUCH OTHER BORROWER. EACH OF THE COMPANY AND EACH OTHER BORROWER FURTHER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OUT OF ANY OF THE AFOREMENTIONED COURTS IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO THE COMPANY OR SUCH OTHER BORROWER AT ITS ADDRESS SET FORTH OPPOSITE ITS SIGNATURE BELOW, SUCH SERVICE TO BECOME EFFECTIVE 30 DAYS AFTER SUCH MAILING. EACH DUTCH BORROWER AND EACH UK BORROWER EXPRESSLY AND IRREVOCABLY AGREES THAT SUCH SERVICE OF PROCESS MAY BE MADE DIRECTLY ON IT NOTWITHSTANDING ITS APPOINTMENT OF THE COMPANY TO RECEIVE SERVICE OF PROCESS AS PROVIDED ABOVE IN THIS SECTION ~~13.08~~13.09(a) AND EITHER OR BOTH PROCEDURES FOR SERVICE OF PROCESS MAY BE IMPLEMENTED. EACH OF THE COMPANY AND EACH OTHER BORROWER HEREBY IRREVOCABLY WAIVES ANY OBJECTION TO SUCH SERVICE OF PROCESS AND FURTHER IRREVOCABLY WAIVES AND AGREES NOT TO PLEAD OR CLAIM IN ANY ACTION OR PROCEEDING COMMENCED HEREUNDER OR UNDER ANY OTHER CREDIT DOCUMENT THAT SERVICE OF PROCESS WAS IN ANY WAY INVALID OR INEFFECTIVE. NOTHING HEREIN SHALL AFFECT THE RIGHT OF THE ADMINISTRATIVE AGENT, THE COLLATERAL AGENT, ANY LENDER OR THE HOLDER OF ANY NOTE TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST THE COMPANY OR ANY OTHER BORROWER IN ANY OTHER JURISDICTION.

(b) EACH OF THE COMPANY AND EACH OTHER BORROWER HEREBY IRREVOCABLY WAIVES ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY OF THE AFORESAID ACTIONS OR PROCEEDINGS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT BROUGHT IN THE COURTS REFERRED TO IN CLAUSE (a) ABOVE THAT ARE LOCATED IN THE COUNTY OF NEW YORK AND HEREBY FURTHER IRREVOCABLY WAIVES AND AGREES NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(c) EACH OF THE PARTIES TO THIS AGREEMENT HEREBY IRREVOCABLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER CREDIT DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

~~13.09~~13.10. Counterparts. This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument. A set of counterparts executed by all the parties hereto shall be lodged with the Company and the



Administrative Agent. Delivery of an executed counterpart hereof by facsimile or electronic transmission shall be as effective as delivery of an original executed counterpart hereof.

~~13.10~~13.11. Effectiveness. This Agreement shall become effective on the date (the “Effective Date”) on which (i) the Company, the Subsidiaries of the Company that are other Borrowers on the Effective Date, the Administrative Agent, the Collateral Agent and each of the Lenders shall have signed a counterpart hereof (whether the same or different counterparts) and shall have delivered the same to the Administrative Agent at the Notice Office or, in the case of the Lenders, shall have given to the Administrative Agent telephonic (confirmed in writing), written notice (actually received) at such office that the same has been signed and mailed to it and (ii) the conditions contained in Section 6 have been met to the reasonable satisfaction of the Administrative Agent. Unless the Administrative Agent has received actual notice from any Lender that the conditions described in clause (ii) of the preceding sentence have not been met to its satisfaction, upon the satisfaction of the condition described in clause (i) of the immediately preceding sentence and upon the Administrative Agent’s good faith determination that the conditions described in clause (ii) of the immediately preceding sentence have been met, then the Effective Date shall have occurred, regardless of any subsequent determination that one or more of the conditions thereto had not been met (although the occurrence of the Effective Date shall not release any Borrower from any liability for failure to satisfy one or more of the applicable conditions contained in Section 6, other than any condition that must be satisfied to the Administrative Agent’s satisfaction or other subjective standard of similar effect). The Administrative Agent will give the Company, the other Borrowers and each Lender prompt written notice of the occurrence of the Effective Date.

~~13.11~~13.12. Headings Descriptive. The headings of the several sections and subsections of this Agreement are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Agreement.

~~13.12~~13.13. Amendment or Waiver; etc. (a) Neither this Agreement nor any other Credit Document nor any terms hereof or thereof may be changed, waived, discharged or terminated (other than in accordance with ~~the last paragraph of~~ Section 2.10(ab) or Section 2.19) unless such change, waiver, discharge or termination is in writing signed by the respective Credit Parties party hereto or thereto and the Required Lenders (or by the Administrative Agent at the written direction of the Required Lenders) (although additional parties may be added to (and annexes may be modified to reflect such additions), and Subsidiaries of the Company (other than the Borrowers) may be released from, the relevant Guaranty and the relevant Security Documents in accordance with the provisions hereof and thereof (without the consent of the other Credit Parties party thereto or the Required Lenders)), provided that no such change, waiver, discharge or termination shall, without the consent of each Lender (other than, except with respect to the following clause (i), a Defaulting Lender) (with Obligations being directly affected in the case of following clauses (i), (iii), (iv) and (vii)), (i) extend the final scheduled maturity of any Loan or Note or extend the stated expiration date of any Letter of Credit beyond the Final Maturity Date (unless otherwise cash collateralized in accordance with the terms hereof), or reduce the rate or extend the time of payment of interest or Fees thereon (except in connection with the waiver of applicability of any post-default increase in interest rates), or reduce (or forgive) the principal amount thereof (it being understood that any amendment or modification to the financial definitions in this Agreement, ~~to the last paragraph of~~ pursuant to Section 2.10(ab), Section 13.07(a) or as contemplated in clause (6) of the second proviso of this Section ~~13.12~~13.13(a) shall not constitute a reduction in the rate of interest or Fees for the purposes of this clause (i)), (ii) release all or substantially all of the Collateral under all the Security Documents (except as expressly provided in the Credit Documents) or release all or substantially all of the value of the Guaranty made by the Guarantors (except as expressly provided in the Credit Documents), (iii) amend, modify or waive any provision of this Section ~~13.12~~13.13(a) (except for technical amendments with respect to additional extensions of credit pursuant to this Agreement which afford the protections to

such additional extensions of credit of the type provided to the Revolving Loan Commitments and the Loans on the Effective Date), Section ~~13.06~~13.07 or any provision of Section 2.09 that expressly requires the consent of all Lenders, (iv) reduce the “majority” voting threshold specified in the definition of Required Lenders (it being understood that, with the consent of the Required Lenders, additional extensions of credit pursuant to this Agreement may be included in the determination of the Required Lenders on substantially the same basis as the extensions of Revolving Loan Commitments are included on the Effective Date), (v) increase the advance rates applicable to any Borrowing Base over those in effect on the Effective Date (it being understood that the establishment, modification or elimination of Reserves and adjustment, establishment and elimination of criteria for Eligible Accounts and Eligible Inventory, in each case by the Administrative Agent in accordance with the terms hereof, will not be deemed such an increase in advance rates), (vi) consent to the release, assignment or transfer by any Borrower of any of its rights and obligations under this Agreement, or (vii) amend, modify or waive the order of application of payments set forth in Section 5.03(~~de~~), Section 5.03(f), Section 5.03(~~eg~~), Section 5.4 of the U.S. Security Agreement, Section 5.4 of the Dutch General Security Agreement, Section 5.3 of the Dutch Inventory Security Agreement or Section 6.3 of the Dutch Receivables Security Agreement or Section 17.1 of the UK Security Agreement; provided further, that no such change, waiver, discharge or termination shall (1) increase the Revolving Loan Commitment of any Lender over the amount thereof then in effect or extend the scheduled maturity date of the Revolving Loan Commitment of any Lender then in effect without the consent of such Lender (it being understood that waivers or modifications of conditions precedent, covenants, Defaults or Events of Default or of a mandatory reduction in the Total Revolving Loan Commitment shall not constitute an increase of the Revolving Loan Commitment of any Lender, and that an increase in the available portion of the Revolving Loan Commitment of any Lender shall not constitute an increase of the Revolving Loan Commitment of such Lender), (2) without the consent of each Issuing Lender, amend, modify or waive any provision of Section 3 or alter such Issuing Lenders’ rights or obligations with respect to Letters of Credit issued by such Issuing Lender, (3) without the consent of the Swingline Lender, alter the Swingline Lender’s rights or obligations with respect to Swingline Loans, (4) without the consent of the Administrative Agent, amend, modify or waive any provision of Section 12 or any other provision of this Agreement or any other Credit Document as same relates to the rights or obligations of the Administrative Agent, (5) without the consent of the Collateral Agent, amend, modify or waive any provision of the Agreement or any other Credit Documents relating to the rights or obligations of the Collateral Agent, (6) without the consent of the Supermajority Lenders, (x) amend the definition of Supermajority Lenders (it being understood that, with the consent of the Required Lenders, additional extensions of credit pursuant to this Agreement may be included in the determination of the Supermajority Lenders on substantially the same basis as the extensions of Loans and Revolving Loan Commitments are included on the Effective Date) or (y) amend or expand any of the following definitions, in each case the effect of which would be to increase the amounts available for borrowing hereunder: any Borrowing Base, Eligible Accounts, Eligible Cash and Cash Equivalents, Eligible Machinery and Equipment and Eligible Inventory (including, in each case, the defined terms used therein) (it being understood that the establishment, modification or elimination of Reserves and adjustment, establishment and elimination of criteria for Eligible Accounts, Eligible Cash and Cash Equivalents, Eligible Machinery and Equipment and Eligible Inventory, in each case by the Administrative Agent in accordance with the terms hereof, will not be deemed to require a Supermajority Lender consent).

(b) If, in connection with any proposed change, waiver, discharge or termination of or to any of the provisions of this Agreement as contemplated by clauses (i) through (vii), inclusive, of the first proviso to Section ~~13.12~~13.13(a), the consent of the Required Lenders is obtained but the consent of one or more of such other Lenders whose consent is required is not obtained, then the Borrowers shall have the right, so long as all non-consenting Lenders whose individual consent is required are treated as described in either clause (A) or (B) below, to either (A) replace each such non-consenting Lender or Lenders with one or more Replacement Lenders pursuant to Section 2.13 so long as at the time of such

replacement, each such Replacement Lender consents to the proposed change, waiver, discharge or termination or (B) terminate such non-consenting Lender's Revolving Loan Commitment and/or repay all outstanding Revolving Loans of such Lender and/or cash collateralize its applicable RL Percentage of the Letter of Credit Outstandings in accordance with Sections 4.02(b) and/or 5.01(b), provided that, unless the Revolving Loan Commitments which are terminated and Revolving Loans which are repaid pursuant to preceding clause (B) are immediately replaced in full at such time through the addition of one or more Replacement Lenders or the increase of the Revolving Loan Commitments and/or outstanding Revolving Loans of one or more existing Lenders (who in each case must specifically consent thereto), then in the case of any action pursuant to preceding clause (B), the Required Lenders (determined after giving effect to the proposed action) shall specifically consent thereto, provided further, that no Borrower shall have any right to replace a Lender, terminate its Revolving Loan Commitment or repay its Revolving Loans solely as a result of the exercise of such Lender's rights (and the withholding of any required consent by such Lender) pursuant to the second proviso to Section ~~13.12~~13.13(a).

(c) Notwithstanding the foregoing, any provision of this Agreement may be amended by an agreement in writing entered into by the Company, the other Borrowers, the Required Lenders and the Administrative Agent (and, if their rights or obligations are affected thereby, each Issuing Lender and the Swingline Lender) if (i) by the terms of such agreement the Revolving Loan Commitment of each Lender not consenting to the amendment provided for therein shall terminate upon the effectiveness of such amendment and (ii) at the time such amendment becomes effective, each Lender not consenting thereto receives payment (including pursuant to an assignment to a replacement Lender in accordance with Section ~~13.04~~13.05) in full of the principal of and interest accrued on each Loan made by it and all other amounts owing to it or accrued for its account under this Agreement.

(d) Notwithstanding anything to the contrary contained in this Section ~~13.12~~13.13, (x) Security Documents and related documents executed by the Credit Parties in connection with this Agreement may be in a form reasonably determined by the Administrative Agent and may be amended, restated, amended and restated, supplemented and waived with the consent of the Administrative Agent and the Company without the need to obtain the consent of any other Person if such amendment, supplement or waiver is delivered (i) in order to comply with local law or advice of local counsel, (ii) in order to cause such Security Document or other document to be consistent with this Agreement and the other Credit Documents or (iii) in connection with the incurrence of any Permitted Additional Secured Indebtedness or any Cash Flow Revolving Indebtedness (and, in each case, the addition of Permitted Additional Secured Indebtedness Priority Collateral as Collateral) and the entry by the Collateral Agent into intercreditor arrangements in connection therewith and (y) if following the Effective Date, the Administrative Agent and any Credit Party shall have jointly identified an ambiguity, inconsistency, obvious error or any error or omission of a technical or immaterial nature, in each case, in any provision of the Credit Documents, then the Administrative Agent and the Credit Parties shall be permitted to amend such provision and such amendment shall become effective without any further action or consent of any other party to any Credit Documents if the same is not objected to in writing by the Required Lenders within five Business Days following receipt of notice thereof.

(e) Notwithstanding any provision herein to the contrary, this Agreement and the other Credit Documents may be amended in accordance with Section 2.19 to effectuate an Extension and to provide for non-pro rata borrowings and payments of any amounts hereunder as between the Loans and any commitments in connection therewith, in each case with the consent of the Administrative Agent but without the consent of any Lender (except as expressly provided in Section 2.19) required.

~~13.13~~13.14. Survival. All indemnities set forth herein including in Sections 2.10, 2.11, 3.06, 5.04, 12.06 and 13.01 shall survive the execution, delivery and termination of this Agreement and the Notes and the making and repayment of the Obligations.

~~13-14~~13.15. Domicile of Loans. Each Lender may transfer and carry its Loans at, to or for the account of any office, Subsidiary or Affiliate of such Lender. Notwithstanding anything to the contrary contained herein, to the extent that a transfer of Loans pursuant to this Section 13.14 would, at the time of such transfer, result in increased costs or taxes under Section 2.10, 2.11, 3.06 or 5.04 from those being charged by the respective Lender prior to such transfer, then no Borrower shall be obligated to pay such increased costs or taxes (although the Borrowers shall be jointly and severally obligated to pay any other increased costs and taxes of the type described above resulting from changes after the date of the respective transfer).

~~13-15~~13.16. Register. Each Borrower hereby designates the Administrative Agent to serve as its agent, solely for purposes of this Section ~~13-15~~13.16, to maintain a register (the "Register") on which it will record the Revolving Loan Commitments from time to time of each of the Lenders, the Loans made by each of the Lenders and each repayment in respect of the principal amount of, and stated interest on, the Loans of each Lender. Failure to make any such recordation, or any error in such recordation, shall not affect any Borrower's obligations in respect of such Loans. With respect to any Lender, the transfer of the Revolving Loan Commitment of such Lender and the rights to the principal of, and interest on, any Loan made pursuant to such Revolving Loan Commitment shall not be effective until such transfer is recorded on the Register maintained by the Administrative Agent with respect to ownership of such Revolving Loan Commitment and Loans and prior to such recordation all amounts owing to the transferor with respect to such Revolving Loan Commitment and Loans shall remain owing to the transferor. The registration of assignment or transfer of all or part of any Revolving Loan Commitments and Loans shall be recorded by the Administrative Agent on the Register only upon the acceptance by the Administrative Agent of a properly executed and delivered Assignment and Assumption Agreement pursuant to Section ~~13-04~~13.05(b). Upon such acceptance and recordation, the assignee specified therein shall be treated as a Lender for all purposes of this Agreement. Coincident with the delivery of such an Assignment and Assumption Agreement to the Administrative Agent for acceptance and registration of assignment or transfer of all or part of a Loan, or as soon thereafter as practicable, the assigning or transferor Lender shall surrender the Note (if any) evidencing such Loan, and thereupon one or more new Notes in the same aggregate principal amount shall be issued to the assigning or transferor Lender and/or the new Lender at the request of any such Lender. The Register shall be available for inspection by each Borrower at any reasonable time and from time to time upon reasonable prior notice. The Register shall be available for inspection by any Lender at the office of the Administrative Agent at any reasonable time and from time to time upon reasonable prior notice.

~~13-16~~13.17. Confidentiality. (a) Subject to the provisions of clause (b) of this Section ~~13-16~~13.17, each Agent and each Lender agrees not to disclose without the prior consent of the Company (other than on a need to know basis to such Agent's or such Lender's directors, officers, employees, insurers, re-insurers and agents, including auditors, advisors or counsel, in connection with this Agreement and the transactions contemplated hereby or to another Agent or Lender if such Lender or such Lender's holding or parent company in its sole discretion determines that any such party should have access to such information, provided such Persons shall be subject to the provisions of this Section ~~13-16~~13.17 to the same extent as such Lender) any information with respect to the Company or any of its Subsidiaries which is now or in the future furnished pursuant to this Agreement or any other Credit Document by or on behalf of a Credit Party, provided that any Agent or Lender may disclose any such information (i) as has become generally available to the public other than by virtue of a breach of this Section ~~13-16~~13.17(a) by the respective Agent or Lender, (ii) as may be required or appropriate in any report, statement or testimony submitted to any municipal, state or Federal regulatory body (including any self-regulatory body, such as the National Association of Insurance Commissioners) having or claiming to have jurisdiction over such Agent or Lender or to the Board or the Federal Deposit Insurance Corporation or similar organizations (whether in the United States or elsewhere) or their successors (in which case such Agent or Lender, as applicable, to the extent permitted by law, agrees to use

commercially reasonable efforts to provide the Company notice thereof except in connection with any request as part of any regulatory audit or examination conducted by accountants or any Governmental Authority having jurisdiction over such Agent or Lender), (iii) as may be required or appropriate in respect to any summons or subpoena or in connection with any litigation, (iv) in order to comply with any law, order, regulation or ruling applicable to such Lender, (v) to the Administrative Agent or the Collateral Agent, (vi) to any direct or indirect contractual counterparty in any swap, hedge or similar agreement (or to any such contractual counterparty's professional advisor) under which payments are to be made by reference to the Obligations or to the Borrowers and their respective obligations or to this Agreement or payments hereunder, so long as such contractual counterparty (or such professional advisor) agrees to be bound by the provisions of this Section ~~13.16~~13.17, (vii) to any prospective or actual transferee, pledgee or participant in connection with any contemplated transfer, pledge or participation of any of the Notes or Revolving Loan Commitments or any interest therein by such Lender, provided that such prospective transferee, pledgee or participant agrees to be bound by confidentiality provisions at least as restrictive as those contained in this Section ~~13.16~~13.17, (viii) to any other party to this Agreement, (ix) to the extent applicable and reasonably necessary or advisable, for purposes of establishing a "due diligence" defense or the enforcement of remedies hereunder or under the other Credit Documents, (x) to the extent it is information pertaining to the terms of this Agreement routinely provided to market data collectors (including league table providers) for the lending industry, to such market data collectors, (xi) to the extent it is information pertaining to the terms of this Agreement, to any nationally recognized rating agency that requires access to information about a Lender's investment portfolio in connection with ratings issued with respect to such Lender and (xii) with the consent of the Company (not to be unreasonably withheld, delayed or conditioned) to (I) the CUSIP Service Bureau or any similar agency or organization or similar service providers to the lending industry, (II) service providers to the Administrative Agent and the Lenders in connection with the administration and management of this Agreement, the other Credit Documents, the Revolving Loan Commitments and the Loans, (III) any credit insurers, (IV) any nationally recognized rating agency (to the extent consisting of information not governed by clause (xi) above) or (V) otherwise to the extent consisting of general portfolio information that does not identify the Credit Parties.

(b) Each of the Company and each other Borrower hereby acknowledges and agrees that each Agent and each Lender may share with any of its affiliates, and such affiliates may share with such Agent or Lender, as applicable, any information related to the Company or any of its Subsidiaries (including any non-public customer information regarding the creditworthiness of the Company and its Subsidiaries), provided such Persons shall be subject to the provisions of this Section ~~13.16~~13.17 to the same extent as such Agent or Lender.

(c) Each Agent and each of the Lenders acknowledges that (i) the information referred to in clause (a) above may include material non-public information concerning the Company or a Subsidiary thereof, as the case may be, (ii) it has developed compliance procedures regarding the use of material non-public information and (iii) it will handle such material non-public information in accordance with such compliance procedures and applicable law, including United States federal and state securities laws.

~~13.17~~13.18. No Fiduciary Duty. Each Agent, each Lender, each Issuing Lender and their respective Affiliates (collectively, solely for purposes of this paragraph, the "Lenders"), may have economic interests that conflict with those of the Credit Parties, their stockholders and/or their respective affiliates. Each Credit Party agrees that nothing in the Credit Documents or otherwise will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between any Lender, on the one hand, and any Credit Party, its respective stockholders or its respective affiliates, on the other. The Credit Parties acknowledge and agree that: (i) the transactions contemplated by the Credit Documents (including the exercise of rights and remedies hereunder and thereunder) are arm's-length commercial transactions between the Lenders, on the one hand, each Credit Party, on the other, and (ii) in

connection therewith and with the process leading thereto, (x) no Lender has assumed an advisory or fiduciary responsibility in favor of any Credit Party, its respective stockholders or its respective affiliates with respect to the transactions contemplated hereby (or the exercise of rights or remedies with respect thereto) or the process leading thereto (irrespective of whether any Lender has advised, is currently advising or will advise any Credit Party, its respective stockholders or its respective Affiliates on other matters) or any other obligation to any Credit Party except the obligations expressly set forth in the Credit Documents and (y) each Lender is acting solely as principal and not as the agent or fiduciary of such Credit Party, its respective management, stockholders, creditors or any other Person. Each Credit Party acknowledges and agrees that such Credit Party has consulted its own legal and financial advisors to the extent it deemed appropriate and that it is responsible for making its own independent judgment with respect to such transactions and the process leading thereto. Each Credit Party agrees that it will not claim that any Lender has rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to such Credit Party, in connection with such transaction or the process leading thereto.

~~13.18~~13.19. Patriot Act. Each Lender subject to the USA PATRIOT ACT (Title III of Pub. L. 107-56 (signed into law October 26, 2011)) (as amended from time to time, the "Patriot Act") hereby notifies the Company and the other Borrowers that pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies the Company, the other Borrowers and the other Credit Parties and such other information that will allow such Lender to identify the Company, the other Borrowers and the other Credit Parties in accordance with the Patriot Act.

~~13.19~~13.20. Waiver of Sovereign Immunity. Each of the Credit Parties, in respect of itself, its Subsidiaries, its process agents, and its properties and revenues, hereby irrevocably agrees that, to the extent that such Credit Party, its Subsidiaries or any of its properties has or may hereafter acquire any right of immunity, whether characterized as sovereign immunity or otherwise, from any legal proceedings, whether in the United States, the Netherlands, the United Kingdom or elsewhere, to enforce or collect upon the Loans or any Credit Document or any other liability or obligation of such Credit Party or any of its Subsidiaries related to or arising from the transactions contemplated by any of the Credit Documents, including immunity from service of process, immunity from jurisdiction or judgment of any court or tribunal, immunity from execution of a judgment, and immunity of any of its property from attachment prior to any entry of judgment, or from attachment in aid of execution upon a judgment, such Credit Party, for itself and on behalf of its Subsidiaries, hereby expressly waives, to the fullest extent permissible under applicable law, any such immunity, and agrees not to assert any such right or claim in any such proceeding, whether in the United States, the Netherlands, the United Kingdom or elsewhere. Without limiting the generality of the foregoing, each Credit Party further agrees that the waivers set forth in this Section ~~13.19~~13.20 shall have the fullest extent permitted under the Foreign Sovereign Immunities Act of 1976 of the United States and are intended to be irrevocable for purposes of such Act.

~~13.20~~13.21. Judgment Currency. (a) The Credit Parties' obligations hereunder and under the other Credit Documents to make payments in the respective Available Currency (the "Obligation Currency") shall not be discharged or satisfied by any tender or recovery pursuant to any judgment expressed in or converted into any currency other than the Obligation Currency, except to the extent that such tender or recovery results in the effective receipt by the Administrative Agent, the Collateral Agent, the respective Issuing Lender or the respective Lender of the full amount of the Obligation Currency (and the conversion of any such payments shall be calculated in accordance with the provisions of this Section ~~13.20~~13.21) expressed to be payable to the Administrative Agent, the Collateral Agent, such Issuing Lender or such Lender under this Agreement or the other Credit Documents. If for the purpose of obtaining or enforcing judgment against any Credit Party in any court or in any jurisdiction, it becomes necessary to convert into or from any currency other than the Obligation Currency (such other currency being hereinafter referred to as the "Judgment Currency") an amount due in the Obligation Currency, the conversion shall be made, at the rate of exchange (as quoted by the Administrative Agent or if the

Administrative Agent does not quote a rate of exchange on such currency, by a known dealer in such currency designated by the Administrative Agent in its reasonable discretion) determined, in each case, as of the day on which the judgment is given (such day being hereinafter referred to as the "Judgment Currency Conversion Date").

(b) If there is a change in the rate of exchange prevailing between the Judgment Currency Conversion Date and the date of actual payment of the amount due, each Borrower covenants and agrees to pay, or cause to be paid, such additional amounts, if any (but in any event not a lesser amount), as may be necessary to ensure that the amount paid in the Judgment Currency, when converted at the rate of exchange prevailing on the date of payment, will produce the amount of the Obligation Currency which could have been purchased with the amount of Judgment Currency stipulated in the judgment or judicial award at the rate or exchange prevailing on the Judgment Currency Conversion Date.

(c) For purposes of determining any rate of exchange for this Section, such amounts shall include any premium and costs payable in connection with the purchase of the Obligation Currency.

~~13.21~~13.22. OTHER LIENS ON COLLATERAL; TERMS OF INTERCREDITOR AGREEMENT; ETC. (a) EACH LENDER UNDERSTANDS, ACKNOWLEDGES AND AGREES THAT LIENS MAY BE CREATED ON THE COLLATERAL PURSUANT TO THE PERMITTED ADDITIONAL SECURED INDEBTEDNESS DOCUMENTS, WHICH LIENS SHALL BE SUBJECT TO THE TERMS AND CONDITIONS OF THE INTERCREDITOR AGREEMENT. THE EXPRESS TERMS OF THE INTERCREDITOR AGREEMENT SHALL PROVIDE, IN THE EVENT OF ANY CONFLICT BETWEEN THE TERMS OF THE INTERCREDITOR AGREEMENT AND ANY OF THE CREDIT DOCUMENTS, THE PROVISIONS OF THE INTERCREDITOR AGREEMENT SHALL GOVERN AND CONTROL.

(b) EACH LENDER AUTHORIZES AND INSTRUCTS THE ADMINISTRATIVE AGENT AND THE COLLATERAL AGENT TO ENTER INTO THE INTERCREDITOR AGREEMENT ON BEHALF OF THE LENDERS, AND TO TAKE ALL ACTIONS (AND EXECUTE ALL DOCUMENTS) REQUIRED (OR DEEMED ADVISABLE) BY IT IN ACCORDANCE WITH THE TERMS OF THE INTERCREDITOR AGREEMENT.

THE PROVISIONS OF THIS SECTION ~~13.21~~13.22 ARE NOT INTENDED TO SUMMARIZE ALL RELEVANT PROVISIONS OF THE INTERCREDITOR AGREEMENT. REFERENCE MUST BE MADE TO THE INTERCREDITOR AGREEMENT ITSELF TO UNDERSTAND ALL TERMS AND CONDITIONS THEREOF. EACH LENDER IS RESPONSIBLE FOR MAKING ITS OWN ANALYSIS AND REVIEW OF THE INTERCREDITOR AGREEMENT AND THE TERMS AND PROVISIONS THEREOF, AND NEITHER THE ADMINISTRATIVE AGENT NOR ANY OF ITS AFFILIATES MAKES ANY REPRESENTATION TO ANY LENDER AS TO THE SUFFICIENCY OR ADVISABILITY OF THE PROVISIONS CONTAINED IN THE INTERCREDITOR AGREEMENT.

~~13.22~~13.23. Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Credit Document, the interest paid or agreed to be paid under the Credit Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable law (the "Maximum Rate"). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Company. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate,

allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

~~13.23~~ 13.24. MIRE Events. Each of the parties hereto acknowledges and agrees that, solely in the event that there are any Mortgaged Properties at the time of any increase, extension or renewal of any of the Commitments or Loans (including the provision of Incremental Commitments or any other incremental credit facilities hereunder, but excluding (i) any continuation or conversion of borrowings, (ii) the making of any Revolving Loans or (iii) the issuance, renewal, extension, amendment or modification of Letters of Credit) shall be subject to (and conditioned upon) delivery of all flood hazard determination certifications and, if otherwise required by this Credit Agreement, evidence of flood insurance and other flood-related documentation with respect to such Mortgaged Properties as required by Flood Insurance Laws and as otherwise reasonably requested by the Administrative Agent or the Lenders (through the Administrative Agent). The Administrative Agent shall provide notice to the Lenders of any such delivery prior to the consummation of such event.

13.25. Acknowledgment and Consent to Bail-In of Affected Financial Institutions. Notwithstanding anything to the contrary in any Credit Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Credit Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Credit Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of the applicable Resolution Authority.

13.26. Acknowledgment Regarding Any Supported QFCs. To the extent that the Credit Documents provide support, through a guarantee or otherwise, for Secured Hedging Agreements or any other agreement or instrument that is a QFC (such support "QFC Credit Support" and each such QFC a "Supported QFC"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "U.S. Special Resolution Regimes") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Credit Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):



In the event a Covered Entity that is party to a Supported QFC (each, a "Covered Party") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Credit Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Credit Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

SECTION 14. Nature of Obligations.

14.01. Nature of Obligations. Notwithstanding anything to the contrary contained elsewhere in this Agreement, it is understood and agreed by the various parties to this Agreement that:

(a) all U.S. Borrower Obligations to repay principal of, interest on, and all other amounts with respect to, all U.S. Borrower Revolving Loans, U.S. Borrower Swingline Loans, Letters of Credit issued for the account of any U.S. Borrower and all other U.S. Borrower Obligations pursuant to this Agreement and each other Credit Document (including all fees, indemnities, taxes and other U.S. Borrower Obligations in connection therewith or in connection with the related Commitments) shall constitute the joint and several obligations of each of the U.S. Borrowers. In addition to the direct (and joint and several) obligations of the U.S. Borrowers with respect to the U.S. Borrower Obligations as described above, all such U.S. Borrower Obligations shall be guaranteed pursuant to, and in accordance with the terms of, the U.S. Guaranty, provided that the obligations of a U.S. Borrower with respect to the U.S. Borrower Obligations as described above shall not be limited by any provision of the U.S. Guaranty entered into by such U.S. Borrower; ~~and~~

(b) all Dutch Borrower Obligations to repay principal of, interest on, and all other amounts with respect to, all Dutch Borrower Revolving Loans, Dutch Borrower Swingline Loans, Letters of Credit issued for the account of any Dutch Borrower and all other Dutch Borrower Obligations pursuant to this Agreement and each other Credit Document (including all fees, indemnities, taxes and other Dutch Borrower Obligations in connection therewith or in connection with the related Commitments) shall constitute the joint and several obligations of each of the Dutch Borrowers. In addition to the direct (and joint and several) obligations of the Dutch Borrowers with respect to Dutch Borrower Obligations as described above, all such Dutch Borrower Obligations shall be guaranteed pursuant to, and in accordance with the terms of, each of the U.S. Guaranty and the Dutch Guaranty; and the UK Guaranty; and

(c) all UK Borrower Obligations to repay principal of, interest on, and all other amounts with respect to, all UK Borrower Revolving Loans, Letters of Credit issued for the account of any UK Borrower and all other UK Borrower Obligations pursuant to this Agreement and each other Credit Document (including all fees, indemnities, taxes and other UK Borrower Obligations in connection therewith or in connection with the related Commitments) shall constitute the joint and several obligations of each of the UK Borrowers. In addition to the direct (and joint and several) obligations of the UK Borrowers with respect to UK Borrower Obligations as described above, all such UK Borrower

14.02. Independent Obligation. The obligations of each Borrower with respect to its Borrower Obligations are independent of the Obligations of each other Borrower or any Guarantor under its Guaranty of such Borrower Obligations, and a separate action or actions may be brought and prosecuted against each Borrower, whether or not any other Borrower or any Guarantor is joined in any such action or actions. Each Borrower waives, to the fullest extent permitted by law, the benefit of any statute of limitations affecting its liability hereunder or the enforcement thereof. Any payment by any Borrower or other circumstance which operates to toll any statute of limitations as to any Borrower shall, to the fullest extent permitted by law, operate to toll the statute of limitations as to each Borrower.

14.03. Authorization. Each of the Borrowers authorizes the Administrative Agent, the Collateral Agent, the Issuing Lenders and the Lenders without notice or demand (except as shall be required by applicable statute and cannot be waived), and without affecting or impairing its liability hereunder, from time to time to, to the maximum extent permitted by applicable law and the Credit Documents:

- (a) exercise or refrain from exercising any rights against any other Borrower or any Guarantor or others or otherwise act or refrain from acting;
- (b) release or substitute any other Borrower, endorsers, Guarantors or other obligors;
- (c) settle or compromise any of the Borrower Obligations of any other Borrower or any other Credit Party, any security therefor or any liability (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof, and may subordinate the payment of all or any part thereof to the payment of any liability (whether due or not) of any Borrower to its creditors other than the Lenders;
- (d) apply any sums paid by any other Borrower or any other Person, howsoever realized to any liability or liabilities of such other Borrower or other Person regardless of what liability or liabilities of such other Borrower or other Person remain unpaid; and/or
- (e) consent to or waive any breach of, or act, omission or default under, this Agreement or any of the instruments or agreements referred to herein, or otherwise, by any other Borrower or any other Person.

14.04. Reliance. It is not necessary for the Administrative Agent, the Collateral Agent, any Issuing Lender or any Lender to inquire into the capacity or powers of the Company, any other Borrower or any of their respective Subsidiaries or the officers, directors, members, partners or agents acting or purporting to act on its behalf, and any Borrower Obligations made or created in reliance upon the professed exercise of such powers shall constitute the joint and several obligations of the respective Borrowers hereunder.

14.05. Contribution; Subrogation. No Borrower shall exercise any rights of contribution or subrogation with respect to any other Borrower as a result of payments made by it hereunder, in each case unless and until (a) the Total Revolving Loan Commitment and all Letters of Credit have been terminated (or have been cash collateralized or backstopped by another letter of credit, in either case on terms and pursuant to arrangements reasonably satisfactory to the Administrative Agent and the respective Issuing Lenders (which arrangements, in any event, shall require such cash collateral or backstop letter of credit to be in a stated amount equal to not more than 102% of the aggregate Stated Amount of all Letters of Credit outstanding at such time)) and (b) all of the Obligations have been paid in full in cash (other than

any indemnities or other contingent payment obligations of the Credit Parties set forth in the Credit Documents and reimbursement obligations under Section 13.01 which, in either case are not then due and payable). To the extent that any Dutch Credit Party or [UK Credit Party](#) or U.S. Credit Party shall be required to pay a portion of the Obligations which shall exceed the amount of loans, advances or other extensions of credit received by such Credit Party and all interest, costs, fees and expenses attributable to such loans, advances or other extensions of credit, then such Credit Party shall be reimbursed by the other Credit Parties within its group (Dutch or U.S. [or UK](#)) for the amount of such excess, subject to the restrictions of the previous sentence. This Section 14.05 is intended only to define the relative rights of Credit Parties, and nothing set forth in this Section 14.05 is intended or shall impair the obligations of each Credit Party to pay the Obligations as and when the same shall become due and payable in accordance with the terms hereof.

14.06. Waiver. Each Borrower waives any right to require the Administrative Agent, the Collateral Agent, the Issuing Lenders or the Lenders to (a) proceed against any other Borrower, any Guarantor or any other party, (b) proceed against or exhaust any security held from any Borrower, any Guarantor or any other party or (c) pursue any other remedy in the Administrative Agent's, the Collateral Agent's, any Issuing Lender's or Lenders' power whatsoever. Each Borrower waives any defense based on or arising out of suretyship or any impairment of security held from any Borrower, any Guarantor or any other party or on or arising out of any defense of any other Borrower, any Guarantor or any other party other than payment in full in cash of its Borrower Obligations, including any defense based on or arising out of the disability of any other Borrower, any Guarantor or any other party, or the unenforceability of its Borrower Obligations or any part thereof from any cause, or the cessation from any cause of the liability of any other Borrower, in each case other than as a result of the payment in full in cash of its Borrower Obligations.

14.07. Limitation on Dutch Borrower Obligations. Notwithstanding anything to the contrary herein or in any other Credit Document (including provisions that may override any other provision), in no event shall the Dutch Borrowers or any other Dutch Credit Party guarantee or be deemed to have guaranteed or become liable or obligated on a joint and several basis or otherwise for, or to have pledged any of its assets to secure, any direct U.S. Borrower Obligation [or any direct UK Borrower Obligation](#) under this Agreement or under any of the other Credit Documents. All provisions contained in any Credit Document shall be interpreted consistently with this Section 14.07 to the extent possible, and where such other provisions conflict with the provisions of this Section 14.07, the provisions of this Section 14.07 shall govern.

14.08. Rights and Obligations. The obligations of the Swingline Lender, each Issuing Lender and each Lender under this Agreement bind each of them severally. Failure by the Swingline Lender, any Issuing Lender or any Lender, as the case may be, to perform its obligations under this Agreement does not affect the obligations of any other party under this Agreement. The Swingline Lender, each Issuing Lender or each Lender is not responsible for the obligations of any other Swingline Lender, Issuing Lender or Lender, as the case may be, under this Agreement. The rights, powers and remedies of the Swingline Lender, each Issuing Lender and each Lender in connection with this Agreement are separate and independent rights, powers and remedies and any debt arising under this Agreement to or for the account of the Swingline Lender, any Issuing Lender or any Lender from a Credit Party is a separate and independent debt.

\* \* \*

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized officers to execute and deliver this Agreement as of the date first above written.

Address:

Attention:   
Facsimile:

TESLA, INC.

with a copy to:

Attention:   
Facsimile:

By:  
Name:  
Title:

Attention:   
Facsimile:

TESLA MOTORS NETHERLANDS B.V.

with a copy to:

Attention:   
Facsimile:

By:  
Name:  
Title:

Attention:   
Facsimile:

TESLA MOTORS LIMITED

~~DEUTSCHE BANK AG NEW YORK BRANCH, Individually, as  
Administrative Agent, as Collateral Agent and as Issuing Lender~~

~~By:  
Name:—  
Title:—~~

with a copy to:

By:  
Name:—  
Title:—

\_\_\_\_\_  
as a Lender

Attention:   
Facsimile:

By:  
Name:  
Title:

\_\_\_\_\_  
as a Lender

By:  
Name:—  
Title:—

DEUTSCHE BANK AG NEW YORK BRANCH, Individually, as  
Administrative Agent, as Collateral Agent and as Issuing Lender

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

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

as a Lender

By:

Name:

Title:

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as a Lender

By:

Name:

Title:

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[To be attached]

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FORM OF UK BORROWER REVOLVING NOTE

\$ \_\_\_\_\_

New York, New York

\_\_\_\_\_  
20\_\_

FOR VALUE RECEIVED, Tesla Motors Limited, a company organized in England and Wales ("Tesla UK", and together with each Wholly-Owned UK Subsidiary (as defined in the Credit Agreement referred to below) of Tesla UK that becomes a Borrower under the Credit Agreement referred to below, each a "UK Borrower" and, collectively, the "UK Borrowers"), hereby jointly and severally promise to pay to [ \_\_\_\_\_ ] or its registered assigns (the "Lender"), in lawful money of the relevant Available Currency (as defined in the Credit Agreement) in immediately available funds, at the Payment Office (as defined in the Credit Agreement referred to below), on the Final Maturity Date (as defined in the Credit Agreement) the principal sum of \_\_\_\_\_ U.S. DOLLARS (\$ \_\_\_\_\_) or, if less, the unpaid principal amount of all UK Borrower Revolving Loans (as defined in the Credit Agreement) made by the Lender pursuant to the Credit Agreement, payable at such times and in such amounts as are specified in the Credit Agreement; provided that, notwithstanding the fact that the principal amount of this Note is denominated in U.S. Dollars, to the extent provided in the Credit Agreement, all payments hereunder with respect to UK Borrower Revolving Loans shall be made in the respective Available Currency, whether or not the U.S. Dollar Equivalent (as defined in the Credit Agreement) of such amounts would exceed the stated principal amount of this Note.

The UK Borrowers also jointly and severally promise to pay interest on the unpaid principal amount of each UK Borrower Revolving Loan made by the Lender in like money at said office from the date hereof until paid, and payable at the rates and at the times provided in Section 2.08 of the Credit Agreement.

This Note is one of the UK Borrower Revolving Notes referred to in the Amended and Restated ABL Credit Agreement, dated as of March 6, 2019 (as amended by the First Amendment to Amended and Restated ABL Credit Agreement, dated as of December 23, 2020 (the "First Amendment"), and as further amended, restated, modified and/or supplemented from time to time, the "Credit Agreement"), among the UK Borrowers (after giving effect to the First Amendment), Tesla, Inc. (the "Company", and together with each Wholly-Owned Domestic Subsidiary of the Company that becomes a U.S. Borrower pursuant to the terms of the Credit Agreement, collectively, the "U.S. Borrowers"), Tesla Motors Netherlands B.V. ("Tesla B.V.", and together with each Wholly-Owned Dutch Subsidiary of Tesla B.V. that becomes a Borrower pursuant to the terms of the Credit Agreement, collectively, the "Dutch Borrowers"; and the UK Borrowers, together with the Dutch Borrowers and the U.S. Borrowers, collectively, the "Borrowers"), the lenders party thereto from time to time (including the Lender), Deutsche Bank AG New York Branch, as Collateral Agent and as Administrative Agent, and the other agents party thereto and is entitled to the benefits thereof and of the other Credit Documents (as defined in the Credit Agreement). This Note is secured by the Security Documents (as defined in the Credit Agreement) and is entitled to the benefits of the Guaranties (as defined in the Credit Agreement). As provided in the Credit Agreement, this Note is subject to voluntary prepayment and mandatory repayment prior to the Final Maturity Date, in whole or in part, and UK Borrower Revolving Loans may be converted from one Type (as defined in the Credit Agreement) of UK Borrower Revolving Loans into another Type of UK Borrower Revolving Loans to the extent provided in the Credit Agreement.

In case an Event of Default (as defined in the Credit Agreement) shall occur and be continuing, the principal of and accrued interest on this Note may be declared to be due and payable in the manner and with the effect provided in the Credit Agreement.

The UK Borrowers hereby waive, to the fullest extent permitted by applicable law, presentment, demand, protest or notice of any kind in connection with this Note.

**THIS NOTE SHALL BE CONSTRUED IN ACCORDANCE WITH AND BE GOVERNED BY THE LAW OF THE STATE OF NEW YORK (WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES THAT WOULD RESULT IN THE APPLICATION OF ANY LAW OTHER THAN THE LAW OF THE STATE OF NEW YORK).**

**TESLA MOTORS LIMITED**

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

**[NAME OF OTHER BORROWERS]<sup>2</sup>**

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

<sup>2</sup> \_\_\_\_\_ Include a signature block for each other UK Borrower (if any) party to the Note.

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[To be attached]

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FORM OF BORROWING BASE CERTIFICATE

The undersigned hereby certifies that:

(1) I am the duly elected [CHIEF FINANCIAL OFFICER][TITLE OF AUTHORIZED OFFICER] of TESLA MOTORS, INC., a Delaware corporation (the "Company").

(2) In accordance with Section 9.01(h) of that certain Amended and Restated ABL Credit Agreement, dated as of March 6, 2019 (as amended by the First Amendment to Amended and Restated ABL Credit Agreement, dated as of December 23, 2020 (the "First Amendment"), and as further amended, restated, modified and/or supplemented from time to time, the "Credit Agreement"; capitalized terms defined therein and not otherwise defined herein being used herein as therein defined), by and among Tesla, Inc. (the "Company", and together with each Wholly-Owned Domestic Subsidiary of the Company that becomes a U.S. Borrower pursuant to the terms of the Credit Agreement, collectively, the "U.S. Borrowers"), Tesla Motors Netherlands B.V. ("Tesla B.V.", and together with each other Wholly-Owned Dutch Subsidiary of Tesla B.V. that becomes a Dutch Borrower pursuant to the terms of the Credit Agreement, collectively, the "Dutch Borrowers"), Tesla Motors Limited ("Tesla UK", and together with each other Wholly-Owned Dutch Subsidiary of Tesla UK that becomes a UK Borrower pursuant to the terms of the Credit Agreement, collectively, the "UK Borrowers"; and the UK Borrowers, together with the U.S. Borrowers and the Dutch Borrowers, collectively, the "Borrowers"), the lenders from time to time party thereto, Deutsche Bank AG New York Branch, as Collateral Agent and as Administrative Agent, and the other agents party thereto, attached hereto as Annex 1 is a true and accurate calculation, in all material respects, of each of the U.S. Borrowing Base, the Dutch Borrowing Base and the UK Borrowing Base as of [\_\_\_\_], 20[\_\_\_\_], each determined in accordance with the requirements of the Credit Agreement.

IN WITNESS WHEREOF, the undersigned has caused this certificate to be duly executed as of [\_\_\_\_], 20[\_\_\_\_].

TESLA MOTORS, INC.

By:

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

Title:

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**ANNEX 1 TO  
BORROWING BASE CERTIFICATE**

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[See attached]

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[To be attached]

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FORM OF UK GUARANTY

GUARANTY (as amended, modified, restated and/or supplemented from time to time, this "Guaranty"), dated as of December 23, 2020, made by and among each of the undersigned guarantors (each, a "Guarantor" and, together with any other entity that becomes a guarantor hereunder pursuant to Section 23 hereof, collectively, the "Guarantors") in favor of Deutsche Bank AG New York Branch, as administrative agent (together with any successor administrative agent, the "Administrative Agent"), for the benefit of the Secured Creditors (as defined below). Certain capitalized terms as used herein are defined in Section 1 hereof. Except as otherwise defined herein, all capitalized terms used herein and defined in the Credit Agreement (as defined below) shall be used herein as therein defined.

WITNESSETH:

WHEREAS, Tesla, Inc., a Delaware corporation (the "Company"), together with each Wholly-Owned Domestic Subsidiary of the Company that becomes a U.S. Borrower pursuant to the terms of the Credit Agreement, collectively, the "U.S. Borrowers"), Tesla Motors Netherlands B.V., a company organized under the laws of the Netherlands ("Tesla B.V.") and together with each other Wholly-Owned Dutch Subsidiary of Tesla B.V. that becomes a Dutch Borrower pursuant to the terms of the Credit Agreement, collectively, the "Dutch Borrowers"), the lenders from time to time party thereto (the "Lenders"), Goldman Sachs Bank USA, Morgan Stanley Senior Funding Inc. and Bank of America, N.A., as Syndication Agents, Société Générale and Wells Fargo Bank, National Association, as Documentation Agents, and Deutsche Bank AG New York Branch, as Collateral Agent (together with any successor collateral agent, the "Collateral Agent") and as Administrative Agent (in such capacity, the "Administrative Agent"), have entered into an Amended and Restated ABL Credit Agreement, dated as of March 6, 2019 (as amended by the Amendment (as defined below) and as further amended, modified, restated and/or supplemented from time to time, the "Credit Agreement"), providing for the making of Loans to the Borrowers, and the issuance of, and participation in, Letters of Credit for the account of the Borrowers, all as contemplated therein (the Lenders, each Issuing Lender, the Administrative Agent and the Collateral Agent are herein called the "Secured Creditors");

WHEREAS, pursuant to that certain First Amendment to Amended and Restated Credit Agreement, to be dated on or about the date hereof (the "Amendment"), among the Company, Tesla B.V., Tesla Motors Limited, a company incorporated in England and Wales with registered number 04384008 and having its registered office at 197 Horton Road, West Drayton, England UB7 8JD ("Tesla UK") and, together with each other Wholly-Owned English Subsidiary of Tesla UK that becomes a Borrower pursuant to the terms of the Credit Agreement, collectively, the "UK Borrowers"; and the UK Borrowers, together with the Dutch Borrowers and the U.S. Borrowers, collectively, the "Borrowers"), the Lenders party thereto, the Administrative Agent and the Collateral Agent, Tesla UK shall become a party to the Credit Agreement and other Credit Documents as a Borrower;

WHEREAS, each Guarantor (other than Tesla UK) is a Wholly-Owned UK Subsidiary of Tesla UK;

WHEREAS, it is a condition precedent to the making of Loans to the Borrowers, and the issuance of (and participation in) Letters of Credit for the account of the Borrowers, in each case under the Credit Agreement, that each Guarantor shall have executed and delivered to the Administrative Agent this Guaranty; and WHEREAS, each Guarantor will benefit from the incurrence of Loans by the UK Borrowers and the issuance of (and participation in) Letters of Credit for the account of the UK Borrowers under the Credit Agreement and, accordingly, desires to execute this Guaranty in order to (i) satisfy the

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condition described in the preceding paragraph and (ii) induce the Lenders to make Loans to the UK Borrowers and issue (and/or participate in) Letters of Credit for the account of the UK Borrowers;

NOW, THEREFORE, in consideration of the foregoing and other benefits accruing to each Guarantor, the receipt and sufficiency of which are hereby acknowledged, each Guarantor hereby makes the following representations and warranties to the Administrative Agent for the benefit of the Secured Creditors and hereby covenants and agrees with each other Guarantor and the Administrative Agent for the benefit of the Secured Creditors as follows:

1. **GUARANTY.** Each Guarantor, jointly and severally, irrevocably, absolutely and unconditionally guarantees as a primary obligor and not merely as surety to the Secured Creditors the full and prompt payment when due (whether at the stated maturity, by required prepayment, declaration, acceleration, demand or otherwise) of (i) the principal of, premium, if any, and interest on the Notes issued by, and the Loans made to, the UK Borrowers under the Credit Agreement, and all reimbursement obligations and Unpaid Drawings with respect to Letters of Credit issued for the account of a UK Borrower and (ii) all other obligations (including, without limitation, obligations which, but for the automatic stay under Section 362(a) of the Bankruptcy Code, would become due), liabilities and indebtedness owing by the UK Borrowers to the Secured Creditors under the Credit Agreement and each other Credit Document to which any UK Borrower is a party (including, without limitation, indemnities, Fees and expenses in respect of which a UK Borrower is obligated and interest thereon (including, without limitation, in each case any interest, fees or expenses accruing after the commencement of any bankruptcy, insolvency, receivership or similar proceeding at the rate provided for in the Credit Agreement, whether or not such interest, fees or expenses are an allowed claim in any such proceeding)), whether now existing or hereafter incurred under, arising out of or in connection with each such Credit Document (all such principal, premium, interest, reimbursement obligations, Unpaid Drawings, liabilities, indebtedness and obligations being herein collectively called the "**Guaranteed Obligations**"). For the avoidance of doubt, in no event shall the Guaranteed Obligations of any Guarantor include any Obligations of any U.S. Borrower, any U.S. Subsidiary Guarantor, any Dutch Borrower or any Dutch Subsidiary Guarantor.

Each Guarantor understands, agrees and confirms that the Secured Creditors may enforce this Guaranty up to the full amount of the Guaranteed Obligations against such Guarantor without proceeding against any other Guarantor or any other guarantor of the Guaranteed Obligations, or any Borrower, or against any security for the Guaranteed Obligations, or under any other guaranty covering all or a portion of the Guaranteed Obligations. This Guaranty is a guaranty of prompt payment and performance and not of collection. For purposes of this Guaranty, the term "Guarantor" as applied to any Borrower shall refer to such Borrower as a guarantor of indebtedness incurred by another Borrower, and not indebtedness directly incurred by such Borrower.

The following capitalized terms used herein shall have the definitions specified below: "**Termination Date**" shall mean the date upon which the Total Revolving Loan Commitment under the Credit Agreement has been terminated, no Note is outstanding (and all Loans and Unpaid Drawings have been paid in full), all Letters of Credit have been terminated (or have been cash collateralized or backstopped by another letter of credit, in either case on terms and pursuant to arrangements reasonably satisfactory to the Administrative Agent and the respective Issuing Lenders (which arrangements, in any event, shall require such cash collateral or backstop letter of credit to be in a stated amount equal to at least 102% of the aggregate Stated Amount of all Letters of Credit outstanding at such time)), and all other Guaranteed Obligations (other than indemnities and other contingent payment obligations under the Credit Documents which are not then due and payable) then due and payable have been paid in full.

Additionally, each Guarantor, jointly and severally, unconditionally, absolutely and irrevocably, guarantees the payment of any and all Guaranteed Obligations whether or not due and payable by any UK

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Borrower upon the occurrence, in respect of any Borrower, of any of the events specified in Section 11.05 of the Credit Agreement, and unconditionally, absolutely and irrevocably, jointly and severally, promises to pay such Guaranteed Obligations to the Secured Creditors, or order, on demand.

2. **LIABILITY OF GUARANTORS ABSOLUTE.** The liability of each Guarantor hereunder is primary, absolute, joint and several, and unconditional and is exclusive and independent of any security for or other guaranty of the indebtedness of the UK Borrowers whether executed by such Guarantor, any other Guarantor, any other guarantor or by any other party, and the liability of each Guarantor hereunder shall not be affected or impaired by any circumstance or occurrence whatsoever, including, without limitation: (a) any direction as to application of payment by any UK Borrower or any other party, (b) any other continuing or other guaranty, undertaking or maximum liability of a Guarantor or of any other party as to the Guaranteed Obligations, (c) any payment on or in reduction of any such other guaranty or undertaking, (d) any dissolution, termination or increase, decrease or change in personnel by any Borrower, (e) the failure of a Guarantor to receive any benefit from or as a result of its execution, delivery and performance of this Guaranty, (f) any payment made to any Secured Creditor on the indebtedness which any Secured Creditor repays any UK Borrower or any other party pursuant to court order in any bankruptcy, reorganization, arrangement, moratorium or other debtor relief proceeding, and each Guarantor waives any right to the deferral or modification of its obligations hereunder by reason of any such proceeding, (g) any action or inaction by the Secured Creditors as contemplated in Section 5 hereof or (h) any invalidity, rescission, irregularity or unenforceability of all or any part of the Guaranteed Obligations or of any security therefor.

3. **OBLIGATIONS OF GUARANTORS INDEPENDENT.** The obligations of each Guarantor hereunder are independent of the obligations of any other Guarantor, any other guarantor or any Borrower, and a separate action or actions may be brought and prosecuted against each Guarantor whether or not action is brought against any other Guarantor, any other guarantor or any UK Borrower and whether or not any other Guarantor, any other guarantor or any Borrower is joined in any such action or actions. Each Guarantor waives (to the fullest extent permitted by applicable law) the benefits of any statute of limitations affecting its liability hereunder or the enforcement thereof. Any payment by any UK Borrower or other circumstance which operates to toll any statute of limitations as to any UK Borrower shall operate to toll the statute of limitations as to each Guarantor.

4. **WAIVERS BY GUARANTORS.** (a) Each Guarantor hereby waives (to the fullest extent permitted by applicable law) notice of acceptance of this Guaranty and notice of the existence, creation or incurrence of any new or additional liability to which it may apply, and waives (to the fullest extent permitted by applicable law) promptness, diligence, presentment, demand of payment, demand for performance, protest, notice of dishonor or nonpayment of any such liabilities, suit or taking of other action by the Administrative Agent or any other Secured Creditor against, and any other notice to, any party liable thereon (including such Guarantor, any other Guarantor, any other guarantor or any Borrower) and each Guarantor further hereby waives (to the fullest extent permitted by applicable law) any and all notice of the creation, renewal, extension or accrual of any of the Guaranteed Obligations and notice or proof of reliance by any Secured Creditor upon this Guaranty, and the Guaranteed Obligations shall conclusively be deemed to have been created, contracted or incurred, or renewed, extended, amended, modified, supplemented or waived, in reliance upon this Guaranty.

(b) Each Guarantor waives any right (except as shall be required by applicable law and cannot be waived) to require the Secured Creditors to: (i) proceed against any UK Borrower, any other Guarantor, any other guarantor of the Guaranteed Obligations or any other party; (ii) proceed against or exhaust any security held from any UK Borrower, any other Guarantor, any other guarantor of the Guaranteed Obligations or any other party; or (iii) pursue any other remedy in the Secured Creditors' power whatsoever. Each Guarantor waives any defense based on or arising out of any defense of any UK Borrower, any other Guarantor, any other guarantor of the Guaranteed Obligations or any other party other

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than the occurrence of the Termination Date, including, without limitation, any defense based on or arising out of the disability of any UK Borrower, any other Guarantor, any other guarantor of the Guaranteed Obligations or any other party, or the unenforceability of the Guaranteed Obligations or any part thereof from any cause, or the cessation from any cause of the liability of any UK Borrower other than the occurrence of the Termination Date. The Secured Creditors may, at their election, upon the occurrence and during the continuance of an Event of Default, foreclose on any collateral serving as security held by the Administrative Agent, the Collateral Agent or the other Secured Creditors by one or more judicial or nonjudicial sales, whether or not every aspect of any such sale is commercially reasonable (to the extent such sale is permitted by applicable law), or exercise any other right or remedy the Secured Creditors may have against any UK Borrower or any other party, or any security, without affecting or impairing in any way the liability of any Guarantor hereunder except to the extent the Termination Date has occurred. Each Guarantor waives (to the fullest extent permitted by applicable law) any defense arising out of any such election by the Secured Creditors, even though such election may operate to impair or extinguish any right of reimbursement, contribution, indemnification or subrogation or other right or remedy of such Guarantor against any UK Borrower, any other guarantor of the Guaranteed Obligations or any other party or any security.

(c) Each Guarantor has knowledge and assumes all responsibility for being and keeping itself informed of each UK Borrower's and each other Guarantor's financial condition, affairs and assets, and of all other circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations and the nature, scope and extent of the risks which such Guarantor assumes and incurs hereunder, and has adequate means to obtain from each UK Borrower and each other Guarantor on an ongoing basis information relating thereto and each UK Borrower's and each other Guarantor's ability to pay and perform its respective Guaranteed Obligations, and agrees to assume the responsibility to keep so informed for so long as such Guarantor is a party to this Guaranty. Each Guarantor acknowledges and agrees that (x) the Secured Creditors shall have no obligation to investigate the financial condition or affairs of any UK Borrower or any other Guarantor for the benefit of such Guarantor nor to advise such Guarantor of any fact respecting, or any change in, the financial condition, assets or affairs of any UK Borrower or any other Guarantor that might become known to any Secured Creditor at any time, whether or not such Secured Creditor knows or believes or has reason to know or believe that any such fact or change is unknown to such Guarantor, or might (or does) increase the risk of such Guarantor as guarantor hereunder, or might (or would) affect the willingness of such Guarantor to continue as a Guarantor hereunder and (y) the Secured Creditors shall have no duty to advise any Guarantor of information known to them regarding any of the aforementioned circumstances or risks.

(d) Each Guarantor hereby acknowledges and agrees that no Secured Creditor nor any other Person shall be under any obligation (a) to marshal any assets in favor of such Guarantor or in payment of any or all of the liabilities of any UK Borrower under the Credit Documents or the obligation of such Guarantor hereunder or (b) to pursue any other remedy that such Guarantor may or may not be able to pursue itself any right to which such Guarantor hereby waives.

(e) Each Guarantor warrants and agrees that each of the waivers set forth in Section 3 hereof and in this Section 4 is made with full knowledge of its significance and consequences and that if any of such waivers are determined to be contrary to any applicable law or public policy, such waivers shall be effective only to the maximum extent permitted by applicable law.

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5. RIGHTS OF SECURED CREDITORS. Any Secured Creditor may (except as shall be required by applicable law and cannot be waived) at any time and from time to time without the consent of, or notice to, any Guarantor, without incurring responsibility to such Guarantor, without impairing or releasing the obligations or liabilities of such Guarantor hereunder, upon or without any terms or conditions and in whole or in part:

(a) change the manner, place or terms of payment of, and/or change, increase or extend the time of payment of, renew, increase, accelerate or alter, any of the Guaranteed Obligations (including, without limitation, any increase or decrease in the rate of interest thereon or the principal amount thereof), any security therefor, or any liability incurred directly or indirectly in respect thereof, and the guaranty herein made shall apply to the Guaranteed Obligations as so changed, extended, increased, accelerated, renewed or altered;

(b) take and hold security for the payment of the Guaranteed Obligations and sell, exchange, release, surrender, impair, realize upon or otherwise deal with in any manner and in any order any property or other collateral by whomsoever at any time pledged or mortgaged to secure, or howsoever securing, the Guaranteed Obligations or any liabilities (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof, and/or any offset there against;

(c) exercise or refrain from exercising any rights against any UK Borrower, any other Credit Party, any Subsidiary thereof, any other guarantor of any UK Borrower or others or otherwise act or refrain from acting;

(d) release or substitute any one or more endorsers, Guarantors, other guarantors, any UK Borrower or other obligors;

(e) settle or compromise any of the Guaranteed Obligations, any security therefor or any liability (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof, and may subordinate the payment of all or any part thereof to the payment of any liability (whether due or not) of any UK Borrower to creditors of any UK Borrower other than the Secured Creditors;

(f) apply any sums by whomsoever paid or howsoever realized to any liability or liabilities of any UK Borrower to the Secured Creditors regardless of what liabilities of such UK Borrower remain unpaid;

(g) consent to or waive any breach of, or any act, omission or default under, any of the Credit Documents or any of the instruments or agreements referred to therein, or otherwise amend, modify or supplement any of the Credit Documents or any of such other instruments or agreements;

(h) act or fail to act in any manner which may deprive such Guarantor of its right to subrogation against any UK Borrower to recover full indemnity for any payments made pursuant to this Guaranty; and/or

(i) take any other action or omit to take any other action which would, under otherwise applicable principles of common law, give rise to a legal or equitable discharge of such Guarantor from its liabilities under this Guaranty (including, without limitation, any action or omission whatsoever that might otherwise vary the risk of such Guarantor or constitute a

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legal or equitable defense to or discharge of the liabilities of a guarantor or surety or that might otherwise limit recourse against such Guarantor).

No invalidity, illegality, irregularity or unenforceability of all or any part of the Guaranteed Obligations, the Credit Documents or any other agreement or instrument relating to the Guaranteed Obligations or of any security or guarantee therefor shall affect, impair or be a defense to this Guaranty, and this Guaranty shall be primary, absolute and unconditional notwithstanding the occurrence of any event or the existence of any other circumstances which might constitute a legal or equitable discharge of a surety or guarantor except the occurrence of the Termination Date.

6. CONTINUING GUARANTY. This Guaranty is a continuing one and all liabilities to which it applies or may apply under the terms hereof shall be conclusively presumed to have been created in reliance hereon. No failure or delay on the part of any Secured Creditor in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein expressly specified are cumulative and not exclusive of any rights or remedies which any Secured Creditor would otherwise have. No notice to or demand on any Guarantor in any case shall entitle such Guarantor to any other further notice or demand in similar or other circumstances or constitute a waiver of the rights of any Secured Creditor to any other or further action in any circumstances without notice or demand. It is not necessary for any Secured Creditor to inquire into the capacity or powers of any UK Borrower or the officers, directors, partners or agents acting or purporting to act on its or their behalf, and any indebtedness made or created in reliance upon the professed exercise of such powers shall be guaranteed hereunder.

7. SUBORDINATION OF INDEBTEDNESS HELD BY GUARANTORS. Any indebtedness of any UK Borrower now or hereafter held by any Guarantor is hereby subordinated to the Guaranteed Obligations of such UK Borrower to the Secured Creditors; and the indebtedness of such UK Borrower to any Guarantor, if the Administrative Agent or the Collateral Agent, after an Event of Default has occurred and is continuing, so requests, to the extent such indebtedness constitutes Collateral shall be collected, enforced and received by such Guarantor as trustee for the Secured Creditors and be paid over to the Secured Creditors on account of the Guaranteed Obligations of such UK Borrower to the Secured Creditors, but without affecting or impairing in any manner the liability of such Guarantor under the other provisions of this Guaranty. Without limiting the generality of the foregoing, each Guarantor hereby agrees with the Secured Creditors that it will not exercise any right of subrogation which it may at any time otherwise have as a result of this Guaranty (whether contractual, under Section 509 of the Bankruptcy Code or under any equivalent provisions under applicable law or otherwise) until the Termination Date; provided, that if any amount shall be paid to such Guarantor on account of such subrogation rights at any time prior to the Termination Date, such amount shall be held in trust for the benefit of the Secured Creditors and shall promptly be paid to the Secured Creditors to be credited and applied upon the Guaranteed Obligations, whether matured or unmatured, in accordance with the terms of the Credit Documents or, if the Credit Documents do not provide for the application of such amount, to be held by the Secured Creditors as collateral security for any Guaranteed Obligations thereafter existing.

8. GUARANTY ENFORCEABLE BY ADMINISTRATIVE AGENT OR COLLATERAL AGENT. Notwithstanding anything to the contrary contained elsewhere in this Guaranty, the Secured Creditors agree (by their acceptance of the benefits of this Guaranty) that this Guaranty may be enforced only by the action of the Administrative Agent or the Collateral Agent, in each case acting upon the instructions of the Required Lenders and that no other Secured Creditor shall have any right individually to seek to enforce or to enforce this Guaranty or to realize upon the security to be granted by the Security Documents, it being understood and agreed that such rights and remedies may be exercised by the Administrative Agent or the Collateral Agent, as the case may be, for the benefit of the Secured

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Creditors upon the terms of this Guaranty and the Security Documents. The Secured Creditors further agree that this Guaranty may not be enforced against any director, officer, employee, partner, member or stockholder of any Guarantor (except to the extent such partner, member or stockholder is also a Guarantor hereunder). It is understood and agreed that the agreement in this Section 8 is among and solely for the benefit of the Secured Creditors and that, if the Required Lenders so agree (without requiring the consent of any Guarantor), this Guaranty may be directly enforced by any Secured Creditor.

9. REPRESENTATIONS, WARRANTIES AND COVENANTS OF GUARANTORS. In order to induce the Lenders to make Loans to, and issue Letters of Credit for the account of, the UK Borrowers pursuant to the Credit Agreement, each Guarantor represents and warrants that:

(a) such Guarantor (i) is a duly organized and validly existing Business, (ii) has the Business power and authority to own its property and assets and to transact the business in which it is engaged and presently proposes to engage and (iii) is duly qualified and is authorized to do business and is in good standing in each jurisdiction where the nature of its business requires such qualification, except for failures to be in good standing or so qualified which, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect;

(b) such Guarantor has the Business power and authority to execute, deliver and perform the terms and provisions of each of the Credit Documents to which it is a party and has taken all necessary Business action to authorize the execution, delivery and performance by it of each of the Credit Documents to which it is a party;

(c) such Guarantor has duly executed and delivered each of the Credit Documents to which it is a party, and each such Credit Documents to which it is a party constitutes the legal, valid and binding obligation of such Guarantor enforceable in accordance with its terms, except to the extent that the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws generally affecting creditors' rights and by equitable principles (regardless of whether enforcement is sought in equity or at law);

(d) neither the execution, delivery or performance by such Guarantor of the Credit Documents to which it is a party, nor compliance by it with the terms and provisions thereof, will (i) contravene any provision of any applicable law, statute, rule or regulation or any applicable order, writ, injunction or decree of any court or Governmental Authority, (ii) conflict with or result in any breach of any of the terms, covenants, conditions or provisions of, or constitute a default under, or result in the creation or imposition of (or the obligation to create or impose) any Lien (except pursuant to the Security Documents) upon any of the property or assets of any Guarantor pursuant to the terms of any material indenture, mortgage, deed of trust, credit agreement, or loan agreement, or any other material agreement, contract or instrument, in each case, to which any Guarantor or any of its Subsidiaries is a party or by which it or any of its property or assets is bound or to which it may be subject or (iii) violate any provision of the certificate or articles of incorporation, by-laws, partnership agreement or limited liability company agreement (or equivalent organizational documents), as applicable, of such Guarantor or any of its respective Subsidiaries;

(e) no order, consent, approval, license, authorization or validation of, or filing, recording or registration with (except for (x) those that have otherwise been obtained or made prior to the First Amendment Effective Date and which remain in full force and effect on the First Amendment Effective Date and (y) filings which are necessary to perfect the security

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interests created or intended to be created under the Security Documents), or exemption by, any Governmental Authority is required to be obtained, or made by, or on behalf of the Guarantor to authorize, or is required to be obtained, or made by, or on behalf of the Guarantor in connection with, (i) the execution, delivery and performance by such Guarantor of the Credit Documents to which such Guarantor is a party or (ii) the legality, validity, binding effect or enforceability against such Guarantor of any Credit Document to which such Guarantor is a party; and

(f) there are no actions, suits or proceedings pending or, to the knowledge of any Responsible Officer of such Guarantor, threatened in writing (i) that purports to affect the legality, validity or enforceability of any Credit Document to which such Guarantor is a party or (ii) with respect to such Guarantor or any of its Subsidiaries that, either individually or in the aggregate, could reasonably be expected to have, a Material Adverse Effect.

Until the Termination Date, such Guarantor will comply, and will cause each of its Subsidiaries to comply, with all of the applicable provisions, covenants and agreements contained in Sections 9 and 10 of the Credit Agreement which are expressly applicable to such Guarantor and/or such Guarantor's Subsidiaries, and will take, or will refrain from taking, as the case may be, all actions that are necessary to be taken or not taken so that no violation of any provision, covenant or agreement contained in Sections 9 and 10 of the Credit Agreement which are expressly applicable to such Guarantor and/or such Guarantor's Subsidiaries, and so that no Default or Event of Default, is caused by the actions of such Guarantor or any of its Subsidiaries.

10. EXPENSES. The Guarantors hereby jointly and severally agree to pay all reasonable and documented out-of-pocket costs and expenses of the Collateral Agent, the Administrative Agent and each other Secured Creditor following the occurrence and during the continuance of an Event of Default in connection with the enforcement of this Guaranty and the protection of the Secured Creditors' rights hereunder and any amendment, waiver or consent relating hereto (including, in each case, without limitation, the reasonable and invoiced fees and disbursements of consultants and counsel employed by the Collateral Agent, the Administrative Agent and each other Secured Creditor (but limited, in the case of attorneys' fees and disbursements, to one counsel to the Secured Creditors, taken as a whole, one local counsel for the Collateral Agent and Administrative Agent and the Secured Creditors, taken as a whole, in each relevant jurisdiction, and, solely in the case of an actual or perceived conflict of interests, one additional counsel in each relevant jurisdiction to each group of affected Secured Creditors similarly situated, taken as a whole)).

11. BENEFIT AND BINDING EFFECT. This Guaranty shall be binding upon each Guarantor and its successors and assigns and shall inure to the benefit of the Secured Creditors and their successors and assigns.

12. AMENDMENTS; WAIVERS. Neither this Guaranty nor any provision hereof may be changed, waived, discharged or terminated except with the written consent of each Guarantor directly affected thereby (it being understood that the addition or release of any Guarantor hereunder shall not constitute a change, waiver, discharge or termination affecting any Guarantor other than the Guarantor so added or released) and with the written consent of the Required Lenders (or, to the extent required by Section 13.13 of the Credit Agreement, with the written consent of each Lender) at all times prior to the Termination Date.

13. SET OFF. In addition to any rights now or hereafter granted under applicable law (including, without limitation, Section 151 of the New York Debtor and Creditor Law) and not by way of limitation of any such rights, upon the occurrence and during the continuance of an Event of Default, each

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Secured Creditor, with the consent of the Administrative Agent, is hereby authorized, at any time or from time to time, without notice to any Guarantor or to any other Person, any such notice being expressly waived (to the extent permitted by applicable law), to set off and to appropriate and apply any and all deposits (general or special) and any other indebtedness at any time held or owing by such Secured Creditor to or for the credit or the account of such Guarantor, against and on account of the obligations and liabilities of such Guarantor to such Secured Creditor under this Guaranty, irrespective of whether or not such Secured Creditor shall have made any demand hereunder and although said obligations, liabilities, deposits or claims, or any of them, shall be contingent or unmaturing. Each Secured Creditor (by its acceptance of the benefits hereof) acknowledges and agrees that the provisions of this Section 13 are subject to the sharing provisions set forth in Section 13.07 of the Credit Agreement.

14. NOTICE. Except as otherwise specified herein, all notices, requests, demands or other communications to or upon the respective parties hereto shall be sent or delivered by mail, email, telecopy or courier service and all such notices and communications shall, when mailed, emailed, telecopied or sent by courier, be effective when received by the Administrative Agent or such Guarantor, as the case may be. All notices and other communications shall be in writing and addressed to such party at (i) in the case of any Secured Creditor, as provided in the Credit Agreement and (ii) in the case of any Guarantor, at its address set forth opposite its signature page below; or in any case at such other address as any of the Persons listed above may hereafter notify the others in writing.

15. REINSTATEMENT. Notwithstanding anything to the contrary contained herein, if any claim is ever made upon any Secured Creditor for repayment or recovery of any amount or amounts received in payment or on account of any of the Guaranteed Obligations and any of the aforesaid payees repays all or part of said amount by reason of (i) any judgment, decree or order of any court or administrative body having jurisdiction over such payee or any of its property or (ii) any settlement or compromise of any such claim effected by such payee with any such claimant (including, without limitation, any UK Borrower), then and in such event each Guarantor agrees that any such judgment, decree, order, settlement or compromise shall be binding upon such Guarantor, notwithstanding any revocation hereof or the cancellation of any Note, any other Credit Document or any other instrument evidencing any liability of any UK Borrower, and such Guarantor shall be and remain liable to the aforesaid payees hereunder for the amount so repaid or recovered to the same extent as if such amount had never originally been received by any such payee.

16. CONSENT TO JURISDICTION; SERVICE OF PROCESS; AND WAIVER OF TRIAL BY JURY. (a) THIS GUARANTY AND THE RIGHTS AND OBLIGATIONS OF THE SECURED CREDITORS AND OF THE UNDERSIGNED HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF NEW YORK (WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES THAT WOULD RESULT IN THE APPLICATION OF ANY LAW OTHER THAN THE LAW OF THE STATE OF NEW YORK). ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS GUARANTY OR ANY OTHER CREDIT DOCUMENT TO WHICH ANY GUARANTOR IS A PARTY SHALL BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK OR OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF NEW YORK, IN EACH CASE LOCATED WITHIN THE COUNTY OF NEW YORK, BOROUGH OF MANHATTAN, AND, BY EXECUTION AND DELIVERY OF THIS GUARANTY, EACH GUARANTOR HEREBY IRREVOCABLY ACCEPTS FOR ITSELF AND IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE EXCLUSIVE JURISDICTION OF THE AFORESAID COURTS. EACH GUARANTOR HEREBY FURTHER IRREVOCABLY WAIVES ANY CLAIM THAT ANY SUCH COURTS LACK PERSONAL JURISDICTION OVER SUCH GUARANTOR, AND AGREES NOT TO PLEAD OR CLAIM, IN ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS GUARANTY OR ANY OTHER CREDIT DOCUMENT TO WHICH SUCH GUARANTOR IS A PARTY BROUGHT IN ANY OF THE AFORESAID COURTS, THAT ANY SUCH COURT LACKS PERSONAL JURISDICTION OVER

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SUCH GUARANTOR. EACH GUARANTOR FURTHER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OUT OF ANY OF THE AFOREMENTIONED COURTS IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO EACH GUARANTOR AT ITS ADDRESS SET FORTH OPPOSITE ITS SIGNATURE BELOW, SUCH SERVICE TO BECOME EFFECTIVE 30 DAYS AFTER SUCH MAILING. EACH GUARANTOR HEREBY IRREVOCABLY WAIVES ANY OBJECTION TO SUCH SERVICE OF PROCESS AND FURTHER IRREVOCABLY WAIVES AND AGREES NOT TO PLEAD OR CLAIM IN ANY ACTION OR PROCEEDING COMMENCED HEREUNDER OR UNDER ANY OTHER CREDIT DOCUMENT TO WHICH SUCH GUARANTOR IS A PARTY THAT SUCH SERVICE OF PROCESS WAS IN ANY WAY INVALID OR INEFFECTIVE. NOTHING HEREIN, HOWEVER, SHALL AFFECT THE RIGHT OF ANY OF THE SECURED CREDITORS TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST EACH GUARANTOR IN ANY OTHER JURISDICTION.

(b) EACH GUARANTOR HEREBY IRREVOCABLY WAIVES (TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW) ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY OF THE AFORESAID ACTIONS OR PROCEEDINGS ARISING OUT OF OR IN CONNECTION WITH THIS GUARANTY OR ANY OTHER CREDIT DOCUMENT TO WHICH SUCH GUARANTOR IS A PARTY BROUGHT IN THE COURTS REFERRED TO IN CLAUSE (A) ABOVE THAT ARE LOCATED IN THE COUNTY OF NEW YORK, BOROUGH OF MANHATTAN, AND HEREBY FURTHER IRREVOCABLY WAIVES AND AGREES NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT SUCH ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(c) EACH GUARANTOR AND EACH SECURED CREDITOR (BY ITS ACCEPTANCE OF THE BENEFITS OF THIS GUARANTY) HEREBY IRREVOCABLY WAIVES ALL RIGHTS TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS GUARANTY, THE OTHER CREDIT DOCUMENTS TO WHICH SUCH GUARANTOR IS A PARTY OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

17. RELEASE OF LIABILITY OF GUARANTOR. In the event that all of the Equity Interests of one or more Guarantors (other than a UK Borrower) is sold or otherwise disposed of in a transaction not prohibited by the Credit Agreement or liquidated in compliance with the requirements of Section 10.02 of the Credit Agreement (or such sale, other disposition or liquidation has been approved in writing by the Required Lenders (or all the Lenders if required by Section 13.13 of the Credit Agreement)), to the extent applicable, such Guarantor shall, or upon consummation of such sale or other disposition (except to the extent that such sale or disposition is to the Company or another Subsidiary thereof), as applicable, shall be released from this Guaranty automatically and without further action and this Guaranty shall, as to each such Guarantor or Guarantors, terminate, and have no further force or effect (it being understood and agreed that the sale of one or more Persons that own, directly or indirectly, all of the Equity Interests of any Guarantor shall be deemed to be a sale of such Guarantor for the purposes of this Section 17). Subject to Section 15, on the Termination Date this Guaranty shall terminate (provided that all indemnities set forth herein shall survive such termination) and each Guarantor shall be released from its obligations under this Guaranty.

18. CONTRIBUTION. At any time a payment in respect of the Guaranteed Obligations is made under this Guaranty, the right of contribution of each Guarantor against each other Guarantor shall be determined as provided in the immediately following sentence, with the right of contribution of each Guarantor to be revised and restated as of each date on which a payment (a

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“Relevant Payment”) is made on the Guaranteed Obligations under this Guaranty. At any time that a Relevant Payment is made by a Guarantor that results in the aggregate payments made by such Guarantor in respect of the Guaranteed Obligations to and including the date of the Relevant Payment exceeding such Guarantor’s Contribution Percentage (as defined below) of the aggregate payments made by all Guarantors in respect of the Guaranteed Obligations to and including the date of the Relevant Payment (such excess, the “Aggregate Excess Amount”), each such Guarantor shall have a right of contribution against each other Guarantor who has made payments in respect of the Guaranteed Obligations to and including the date of the Relevant Payment in an aggregate amount less than such other Guarantor’s Contribution Percentage of the aggregate payments made to and including the date of the Relevant Payment by all Guarantors in respect of the Guaranteed Obligations (the aggregate amount of such deficit, the “Aggregate Deficit Amount”) in an amount equal to (x) a fraction the numerator of which is the Aggregate Excess Amount of such Guarantor and the denominator of which is the Aggregate Excess Amount of all Guarantors multiplied by (y) the Aggregate Deficit Amount of such other Guarantor. A Guarantor’s right of contribution pursuant to the preceding sentences shall arise at the time of each computation, subject to adjustment to the time of each computation; provided that no Guarantor may take any action to enforce such right until the Termination Date, it being expressly recognized and agreed by all parties hereto that any Guarantor’s right of contribution arising pursuant to this Section 18 against any other Guarantor shall be expressly junior and subordinate to such other Guarantor’s obligations and liabilities in respect of the Guaranteed Obligations and any other obligations owing under this Guaranty. As used in this Section 18: (i) each Guarantor’s “Contribution Percentage” shall mean the percentage obtained by dividing (x) the Adjusted Net Worth (as defined below) of such Guarantor by (y) the aggregate Adjusted Net Worth of all Guarantors; (ii) the “Adjusted Net Worth” of each Guarantor shall mean the greater of (x) the Net Worth (as defined below) of such Guarantor and (y) zero; and (iii) the “Net Worth” of each Guarantor shall mean the amount by which the fair saleable value of such Guarantor’s assets on the date of any Relevant Payment exceeds its existing debts and other liabilities (including contingent liabilities, but without giving effect to any Guaranteed Obligations arising under this Guaranty or any guaranteed obligations arising under any guaranty of any Permitted Additional Indebtedness) on such date. Notwithstanding anything to the contrary contained above, any Guarantor that is released from this Guaranty pursuant to Section 17 hereof shall thereafter have no contribution obligations, or rights, pursuant to this Section 18, and at the time of any such release, if the released Guarantor had an Aggregate Excess Amount or an Aggregate Deficit Amount, same shall be deemed reduced to \$0, and the contribution rights and obligations of the remaining Guarantors shall be recalculated on the respective date of release (as otherwise provided above) based on the payments made hereunder by the remaining Guarantors. All parties hereto recognize and agree that, except for any right of contribution arising pursuant to this Section 18, each Guarantor who makes any payment in respect of the Guaranteed Obligations shall have no right of contribution or subrogation against any other Guarantor in respect of such payment until the Termination Date. Each of the Guarantors recognizes and acknowledges that the rights to contribution arising hereunder shall constitute an asset in favor of the party entitled to such contribution. In this connection, each Guarantor has the right to waive its contribution right against any Guarantor to the extent that after giving effect to such waiver such Guarantor would remain solvent, in the determination of the Required Lenders.

19. LIMITATION ON GUARANTEED OBLIGATIONS. Each Guarantor and each Secured Creditor (by its acceptance of the benefits of this Guaranty) hereby confirms that it is its intention that this Guaranty not constitute a fraudulent transfer or conveyance for purposes of the Bankruptcy Code, the Uniform Fraudulent Conveyance Act of any similar Federal or state law. To effectuate the foregoing intention, each Guarantor and each Secured Creditor (by its acceptance of the benefits of this Guaranty) hereby irrevocably agrees that the Guaranteed Obligations guaranteed by such Guarantor shall be limited to such amount as will, after giving effect to such maximum amount and all other (contingent or otherwise) liabilities of such Guarantor that are relevant under such laws and after giving effect to any rights to

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contribution pursuant to any agreement providing for an equitable contribution among such Guarantor and the other Guarantors, result in the Guaranteed Obligations of such Guarantor in respect of such maximum amount not constituting a fraudulent transfer or conveyance.

20. **COUNTERPARTS.** This Guaranty may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered shall be deemed an original, and all of which, when taken together, shall constitute one and the same instrument. A set of counterparts executed by all the parties hereto shall be lodged with the Company and the Administrative Agent. Delivery of an executed counterpart of a signature page hereof by facsimile, scan, photograph or other electronic transmission shall be as effective as delivery of a manually executed counterpart hereof. The words "execution," "signed," "signature," "delivery," and words of like import in or relating to this Guaranty and the transactions contemplated hereby shall be deemed to include Electronic Signatures (as defined below), deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paperbased recordkeeping system, as the case may be. "Electronic Signatures" means any electronic symbol or process attached to, or associated with, any contract or other record and adopted by a person with the intent to sign, authenticate or accept such contract or record.

21. **PAYMENTS.** All payments made by any Guarantor hereunder will be made without setoff, counterclaim or other defense and on the same basis as payments are made by the applicable Borrowers under Sections 5.03 and 5.04 of the Credit Agreement.

22. **JUDGMENT CURRENCY.** (a) The Guarantors' obligations hereunder to make payments in the Obligation Currency shall not be discharged or satisfied by any tender or recovery pursuant to any judgment expressed in or converted into any currency other than the Obligation Currency, except to the extent that such tender or recovery results in the effective receipt by the Administrative Agent or the other Secured Creditors of the full amount of the Obligation Currency expressed to be payable to the Administrative Agent or the other Secured Creditors under this Guaranty. If for the purpose of obtaining or enforcing judgment against any Guarantor in any court or in any jurisdiction, it becomes necessary to convert into or from the Judgment Currency an amount due in the Obligation Currency, the conversion shall be made, at the rate of exchange (as quoted by the Administrative Agent or if the Administrative Agent does not quote a rate of exchange on such currency, by a known dealer in such currency designated by the Administrative Agent) determined, in each case, as of the Judgment Currency Conversion Date.

(b) If there is a change in the rate of exchange prevailing between the Judgment Currency Conversion Date and the date of actual payment of the amount due, each Guarantor covenants and agrees to pay, or cause to be paid, such additional amounts, if any (but in any event not a lesser amount), as may be necessary to ensure that the amount paid in the Judgment Currency, when converted at the rate of exchange prevailing on the date of payment, will produce the amount of the Obligation Currency which could have been purchased with the amount of Judgment Currency stipulated in the judgment or judicial award at the rate or exchange prevailing on the Judgment Currency Conversion Date.

(c) For purposes of determining any rate of exchange for this Section 22, such amounts shall include any premium and costs payable in connection with the purchase of the Obligation Currency.

23. **ADDITIONAL GUARANTORS.** It is understood and agreed that any Wholly-Owned UK Subsidiary of Tesla UK that is required to execute a counterpart of this Guaranty after the date hereof pursuant to the Credit Agreement shall become a Guarantor hereunder by (x) executing and delivering a counterpart hereof, or a Joinder Agreement and delivering same to the Administrative Agent and (y) taking all actions as specified in this Guaranty as would have been taken by such Guarantor had it

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been an original party to this Guaranty, in each case with all documents required above to be delivered to the Administrative Agent and actions required to be taken above to be taken to the reasonable satisfaction of the Administrative Agent.

24. HEADINGS DESCRIPTIVE. The headings of the several Sections of this Guaranty are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Guaranty.

25. INTERCREDITOR AGREEMENT. This Guaranty is subject to the Intercreditor Agreement at any time such Intercreditor Agreement is in effect and applicable to the UK Borrowers and the UK Subsidiary Guarantors. In the event of a conflict between the terms of this Guaranty and the Intercreditor Agreement, the Intercreditor Agreement shall control.

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IN WITNESS WHEREOF, each Guarantor has caused this Guaranty to be executed and delivered as of the date first above written.

**GUARANTORS:**

TESLA MOTORS LIMITED

By:  
Name:  
Title:

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Accepted and Agreed to:

DEUSTCHE BANK AG NEW YORK BRANCH,  
as Administrative Agent

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

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

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[To be attached]

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**DATED** 2020

**TESLA MOTORS LIMITED**

as the Original Chargor and  
**DEUTSCHE BANK AG NEW YORK BRANCH**

as Collateral Agent

**SECURITY AGREEMENT**

**SIMPSON THACHER & BARTLETT LLP LONDON**

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THIS DEED is made on

2020

**BETWEEN:**

- (1) **TESLA MOTORS LIMITED**, a company incorporated in England and Wales with registered number 04384008 and having its registered office at 197 Horton Road, West Drayton, England UB7 8JD (the "**Original Chargor**"); and
- (2) **DEUTSCHE BANK AG NEW YORK BRANCH** as collateral agent for the banks and other financial institutions or entities from time to time parties to the Credit Agreement (as defined below) (in such capacity, the "**Collateral Agent**").

**IT IS AGREED:**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Deed:

- (a) terms defined in, or construed for the purposes of the Credit Agreement (as defined below) have the same meanings when used in this Deed (unless the same are otherwise defined in this Deed); and
- (b) at all times the following terms have the following meanings:

**"Accession Deed"** means an accession deed substantially in the form set out in Schedule 5 (*Form of Accession Deed*);

**"Account Control Agreement"** means an account notice set out in Schedule 4 (*Form of Notice and Acknowledgement of assignment*) or in such other form as the Collateral Agent may agree, acting reasonably, which has been acknowledged and countersigned by the relevant UK Collection Bank.

**"Account Control Event"** means any time during a Dominion Period;

**"Administrative Agent"** means Deutsche Bank AG New York Branch in its capacity as Administrative Agent under, and as defined in, the Credit Agreement;

**"Act"** means the Law of Property Act 1925;

**"Assigned Assets"** means all property and assets from time to time assigned (or expressed to be assigned) pursuant to Clause 4.2 (*Security assignments*);

**"Business Day"** has the meaning given to that term in the Credit Agreement;

**"Charged Accounts"** means each Core UK Deposit Account including, without limitation, the accounts specified in Schedule 1 (*Details of Security Assets*) or in the schedule of any Accession Deed and/or such other accounts as the Collateral Agent and the relevant Chargor shall agree from time to time (acting reasonably and taking into account the provisions of Clause 8 (*Excluded Assets*)), in each case together with any replacements account or subdivision or sub-account of any such account;

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**“Chargor Intellectual Property Rights”** means all Intellectual Property Rights owned by Chargor, or licensable or sublicensable by Chargor without payment of any material consideration to any third party;

**“Chargors”** means:

- (a) the Original Chargor; and
- (b) any other company which accedes to this Deed pursuant to an Accession Deed; **“Company”** means Tesla, Inc. a Delaware corporation;

**“Credit Agreement”** means the Amended and Restated ABL Credit Agreement, dated as of March 6, 2019 (as amended by the First Amendment to Amended and Restated ABL Credit Agreement, dated on or about the date of this Deed) between, among others, the Company as a borrower, Tesla Motors Netherlands B.V., as a borrower, the banks and other financial institutions or entities from time to time parties thereto as lenders and the Collateral Agent;

**“Credit Documents”** has the meaning given to that term in the Credit Agreement; **“Credit Party”** has the meaning given to that term in the Credit Agreement;

**“Delegate”** means any delegate, sub-delegate, agent, attorney or co-trustee appointed by the Collateral Agent or by a Receiver;

**“Dominion Period”** has the meaning given to that term in the Credit Agreement;

**“Equipment”** means any “equipment” as such term is defined in the Uniform Commercial Code as in effect on the date hereof in the State of New York, and in any event, shall include, but shall not be limited to, all machinery, equipment, furnishings and fittings now or hereinafter owned by any Chargor, together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto;

**“Event of Default”** has the meaning given to that term in the Credit Agreement;

**“Fixed Security Assets”** means all property and assets from time to time mortgaged or charged (or expressed to be mortgaged or charged) pursuant to Clause 4.1 (*Fixed Charges*);

**“General Intangibles”** means “general intangibles” as such term is defined in the Uniform Commercial Code as in effect on the date hereof in the State of New York; and

**“Group”** means the Company and each of its Subsidiaries;

**“Indemnitee”** has the meaning given to that term in Clause 25.1 (*Indemnity*);

**“Insurances”** means the benefits arising from all policies of insurance either now or in the future held by, or written in favour of, a Chargor or in which it is otherwise interested, in each case to the extent covering any Security Asset, but excluding any third party liability insurance, public liability insurance and any directors’ and officers’ insurance;

**“Intellectual Property Rights”** means any and all rights, anywhere in the world, related to, associated with or constituting:

- (a) patents, patent applications and patent rights;
  - (b) works of authorship, including copyrights, copyright applications, copyright registrations, mask work rights, mask work applications and mask work registrations;
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- (c) trade secrets, know-how, inventions, methods, processes, data, software (including source code and object code) and confidential information;
- (d) trademarks, service marks and trade names, trade dress, logos, designs, fictitious business names, domain names, social media and mobile identifiers and other business identifiers and other designations of origin ("**Trademarks**");
- (e) any right analogous to those set forth in this definition and any other intellectual property rights or proprietary rights anywhere in the world; and
- (f) registrations, recordations, applications, divisionals, continuations, continuations-in-part, renewals, reissues and extensions of the foregoing (as and to the extent applicable);

**"Inventory"** means all merchandise, inventory and goods, and all additions, substitutions and replacements thereof and all accessions thereto, wherever located, together with all goods, supplies, incidentals, packaging materials, labels, materials and any other items used or usable in manufacturing, processing, packaging or shipping same, in all stages of production from raw materials through work in process to finished goods, and all products and proceeds of whatever sort and wherever located any portion thereof which may be returned, rejected, reclaimed or repossessed by the Collateral Agent from any Chargor's customers, and shall specifically include all "inventory" as such term is defined in the Uniform Commercial Code as in effect on the date hereof in the State of New York;

**"Legal Reservations"** means:

- (a) the principle that equitable remedies may be granted or refused at the discretion of a court and the limitation of enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors;
  - (b) the time barring of claims under the Limitation Acts, the possibility that an undertaking to assume liability for or indemnify a person against non-payment of UK stamp duty may be void and defences of set-off or counterclaim; and
  - (c) the principle that in certain circumstances Security granted by way of fixed charge may be re-characterised as a floating charge or that Security purported to be constituted by an assignment may be re-characterised as a charge;
  - (d) the principle that any provision for the payment of compensation or additional interest imposed pursuant to any relevant agreement may be held to be unenforceable on the grounds that it is a penalty and thus void;
  - (e) the principle that an English court may not give effect to a provision dealing with the cost of litigation where the litigation is unsuccessful or the court itself has made an order for costs;
  - (f) the principle that the creation or purported creation of Security over any contract or agreement which is subject to a prohibition on transfer, assignment or charging may be void, ineffective or invalid and may give rise to a breach of the contract or agreement over which such security has been granted;
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- (g) the principle that the legality, validity, binding nature of enforceability of any Security which is not governed by the laws of the jurisdiction where the asset or assets purported to be secured under the relevant Security Document is situated may be flawed; and
- (h) similar principles, rights and defences under the laws of any Relevant Jurisdiction;

**“Limitation Acts”** means the Limitation Act 1980 and the Foreign Limitation Periods Act 1984;

**“Non-Eligible Motor Vehicles”** shall mean all motor vehicles other than those constituting Eligible Inventory;

**“Original Jurisdiction”** means, in relation to an Original Chargor, the jurisdiction under whose laws that Original Chargor is incorporated as at the date of this Deed or, in the case of a Chargor which accedes to this Deed pursuant to an Accession Deed, as at the date on which that Chargor becomes Party as a Chargor;

**“Party”** means a party to this Deed;

**“Perfection Requirements”** means the making or procuring of appropriate registrations, filings, endorsements, notarisations, stampings and/or notifications of this Deed and/or Security expressed to be created under this Deed determined by the legal advisers to the Secured Creditors in any Relevant Jurisdiction for the enforceability or production in evidence of this Deed;

**“Permitted Encumbrance”** means any Quasi-Security or Security that is not prohibited by any Credit Document;

**“Quasi-Security”** means a transaction in which a Chargor:

- (a) sells, transfers or otherwise disposes of any of its assets on terms whereby they are or may be leased to or re-acquired by a Chargor or any other member of the Group;
- (b) sells, transfers or otherwise disposes of any of its receivables on recourse terms;
- (c) enters into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
- (d) enters into any other preferential arrangement having a similar effect,

in circumstances where the arrangement or transaction is entered into primarily as a method of raising indebtedness or of financing the acquisition of an asset;

**“Receivables”** means all present and future book debts and other debts, rentals, royalties, fees, VAT, monetary claims, intercompany trading balances and all other amounts at any time recoverable or receivable by, or due or owing to, any Chargor (whether actual or contingent and whether arising under contract or in any other manner whatsoever) together with:

- (a) the benefit of all rights, guarantees, Security and remedies relating to any of the foregoing (including, without limitation, negotiable instruments, indemnities, reservations of property rights, rights of tracing and unpaid vendor’s liens and similar associated rights); and
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- (b) all proceeds of any of the foregoing;

**"Receiver"** means a receiver or receiver and manager or administrative receiver of the whole or any part of the Security Assets appointed by the Collateral Agent under this Deed and that term will include any appointee made under a joint and/or several appointment;

**"Relevant Jurisdiction"** means, in relation to a Chargor:

- (a) its Original Jurisdiction;
- (b) any jurisdiction where any asset subject to or intended to be subject to the Security to be created by it is situated; and
- (c) any jurisdiction where it conducts its business;

**"Secured Creditors"** means the Collateral Agent, the Administrative Agent, the Lenders, each Issuing Lender and any Receiver or Delegate to which Secured Obligations are owed;

**"Secured Obligations"** means, with respect to any Chargor:

- (a) the full and prompt payment when due (whether at stated maturity, by acceleration or otherwise) of all obligations, liabilities and indebtedness (including, without limitation, principal, premium, interest, reimbursement obligations under Letters of Credit, cash collateralization of outstanding Letters of Credit, fees, costs and indemnities (including, without limitation, all interest, fees and expenses that accrue after the commencement of any case, proceeding or other action relating to the bankruptcy, insolvency, reorganization or similar proceeding of such Chargor at the rate provided for in the respective documentation, whether or not a claim for post-petition interest, fees or expenses is allowed in any such proceeding)) of such Chargor to the Secured Creditors, whether now existing or hereafter incurred under, arising out of, or in connection with, each Credit Document to which such Chargor is a party (including, without limitation, in the event such Chargor is a Guarantor, all such obligations, liabilities and indebtedness of such Chargor under its Guaranty) and the due performance and compliance by such Chargor with all of the terms, conditions and agreements contained in each such Credit Document;
  - (b) any and all sums advanced by the Collateral Agent in order to preserve the Security Assets or preserve its security interest in the Security Assets;
  - (c) in the event of any proceeding for the collection or enforcement of any indebtedness, obligations, or liabilities of such Chargor referred to in clauses (a) and (b) above, after an Event of Default shall have occurred and be continuing, the reasonable expenses of retaking, holding, preparing for sale or lease, selling or otherwise disposing of or realizing on the Security Assets, or of any exercise by the Collateral Agent of its rights hereunder, together with reasonable attorneys' fees and court costs;
  - (d) all amounts paid by any Indemnitee as to which such Indemnitee has the right to reimbursement under Clause 25 (*Indemnity*) of this Deed; and
  - (e) all amounts owing to any Agent pursuant to any of the Credit Documents in its capacity as such,
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it being acknowledged and agreed that the **"Secured Obligations"** shall include extensions of credit of the types described above, whether now existing or hereinafter incurred or extended from time to time after the date of this Deed;

**"Security"** means any mortgage, charge (fixed or floating), pledge, lien or other security interest securing any obligation of any person and any other agreement entered into for the purpose and having the effect of conferring security;

**"Security Assets"** means the Assigned Assets and the Fixed Security Assets; **"Security Documents"** has the meaning given to that term in the Credit Agreement;

**"Security Period"** means the period beginning on the date of this Deed and ending on the date on which:

- (a) all the Secured Obligations have been unconditionally and irrevocably paid and discharged in full; and
- (b) no Secured Creditor has any further commitment, obligation or liability under or pursuant to the Credit Documents; and

**"Trademarks"** has the meaning given to that term in the definition of **"Intellectual Property Rights"**.

## 1.2 Interpretation

- (a) Unless a contrary indication appears, in this Deed the provisions of clause 1.02 (*Other Definitional Provisions*) of the Credit Agreement apply to this Deed as though they were set out in full in this Deed, except that references to "this Agreement" will be construed as references to this Deed.
  - (b) Unless a contrary indication appears, any reference in this Deed to:
    - (i) a **"Chargor"** the **"Collateral Agent"** or any other **"Secured Creditor"** or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees and in the case of the Collateral Agent, any person for the time being appointed as Collateral Agent or additional Collateral Agent or trustee in accordance with the Credit Documents;
    - (ii) **"this Deed"**, any **"Credit Document"** or any other agreement or instrument is a reference to this Deed, that Credit Document or that other agreement or instrument as amended, supplemented, extended, restated, novated and/or replaced in any manner from time to time (however fundamentally and even if any of the same increases the obligations of any member of the Group or provides for further advances); and
    - (iii) **"Secured Obligations"** includes obligations and liabilities which would be treated as such but for the liquidation, administration or dissolution of or similar event affecting any Chargor.
  - (c) An Event of Default is *"continuing"* if it has not been remedied or waived.
  - (d) Each undertaking of a Chargor (other than a payment obligation) contained in this Deed:
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- (i) must be complied with at all times during the Security Period; and
  - (ii) is given by such Chargor for the benefit of the Collateral Agent and each other Secured Creditor.
- (e) If the Collateral Agent reasonably considers that an amount paid by any Chargor to a Secured Creditor under a Credit Document is capable of being avoided or otherwise set aside on the liquidation or administration of such Chargor, then that amount shall not be considered to have been irrevocably paid for the purposes of this Deed.
- (f) The Parties intend that this document shall take effect as a deed notwithstanding the fact that a Party may only execute this document under hand.
- (g) The Collateral Agent is acting in this Deed as trustee on behalf of the Secured Creditors on the terms of the Credit Agreement and this Deed.
- (h) The absence of or incomplete details relating to any Security Asset in any schedule or appendix hereto or any Accession Deed does not affect the validity or enforceability of any Security or the scope of Security Assets under this Deed or any Accession Deed.

### **1.3 Agreement to be bound**

The liabilities and obligations of each Chargor under this Deed are joint and several. Each Chargor agrees to be bound by this Deed notwithstanding that any other Chargor which was intended to sign or be bound by this Deed did not so sign or is not bound by this Deed.

### **1.4 Inconsistency between this Deed and the Credit Agreement**

In the event of any inconsistency between this Deed and the Credit Agreement, the Credit Agreement shall prevail.

### **1.5 Trust**

- (a) All Security and dispositions made or created, and all obligations and undertakings contained, in this Deed to, in favour of or for the benefit of the Collateral Agent are made, created and entered into in favour of the Collateral Agent as trustee for the Secured Creditors from time to time on the terms of the Credit Agreement.
- (b) The Collateral Agent hereby declares that it holds the Security, covenants, representations, warranties and undertakings made or given, or to be made or given, to it or in its favour under or pursuant to this Deed for the benefit of each of the Secured Creditors in respect of the Secured Obligations owed to each of them and subject to the terms of this Deed.
- (c) The Chargors hereby acknowledge the security trust created under this Deed.

### **1.6 Third party rights**

Subject to any provision to the contrary in a Credit Document, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Deed.

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## **1.7 Obligations secured by this Deed**

By entering into or, as the case may be, acceding to this Deed, each Chargor expressly confirms and agrees that:

- (a) the Security created or intended to be created by it under or evidenced by this Deed is intended as security for the payment and discharge of all of its Secured Obligations and without any need or requirement for any amendment or supplement to this Deed at any time after the date of this Deed (or, as the case may be, the date upon which such Chargor accedes to this Deed) notwithstanding any change in or to its Secured Obligations from time to time after such date; and
- (b) the Security created or intended to be created under or evidenced by this Deed is intended as security for the payment and discharge of its Secured Obligations notwithstanding any change of the Collateral Agent and/or any change of the Secured Creditors from time to time (including, without limitation, a change to all or substantially all of the Secured Creditors) and/or any amendment (however fundamental), novation, termination, replacement, supplement of any Credit Document (including, without limitation, the terms upon which the Collateral Agent holds the Security created or intended to be created under or evidenced by this Deed) and/or any other Credit Document.

The Security created under or evidenced by this Deed does not apply to any liability to the extent that would result in this Security constituting unlawful financial assistance within the meaning of Section 677 of the Companies Act 2006 or any equivalent provision of any applicable law.

## **2. COVENANT TO PAY**

- (a) Each Chargor covenants, as a primary obligor and not merely as a surety, for the benefit of the Collateral Agent (as Collateral Agent for itself and on behalf of the other Secured Creditors), by way of an independent obligation, that it will pay and discharge its Secured Obligations from time to time when they fall due.
- (b) Every payment by a Chargor of a Secured Obligation which is made to or for the benefit of a Secured Creditor to which that Secured Obligation is due and payable in accordance with the Credit Document under which such sum is payable to that Secured Creditor, shall operate in satisfaction to the same extent of the covenant contained in Clause 2(a).

## **3. GRANT OF SECURITY**

### **3.1 Nature of security**

All Security and dispositions created or made by or pursuant to this Deed are created or made:

- (a) in favour of the Collateral Agent as trustee for the Secured Creditors;
  - (b) with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994 but in each case with all covenants implied therein pursuant to that Act being subject to and qualified by reference to any Permitted Encumbrance; and
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(c) as continuing security for payment and discharge of the Secured Obligations.

#### **4. FIXED SECURITY**

##### **4.1 Fixed charges**

Subject to Clause 8 (*Excluded Assets*), each Chargor charges and agrees to charge all of its present and future right, title and interest in and to the following assets which are at any time owned by it, or in which it from time to time has an interest:

- (a) by way of first fixed charge all Inventory and the benefit of all contracts, licences and warranties relating to the same;
- (b) by way of first fixed charge all Charged Accounts and all monies at any time standing to the credit of such Charged Accounts, together with all interest from time to time accrued or accruing on such monies, any investment made out of such monies or account and all rights to repayment of any of the foregoing;
- (c) to the extent that any Assigned Asset is not effectively assigned under Clause 4.2 (*Security assignments*), by way of first fixed charge all its present and future right, title and interest in, proceeds of (and claims under) each Assigned Asset; and
- (d) by way of first fixed charge (to the extent not otherwise charged or assigned in this Deed) the benefit of all licences, consents, agreements and authorisations held or used in connection with the use of any of the Security Assets.

##### **4.2 Security assignments**

Subject to Clause 8 (*Excluded Assets*), each Chargor assigns and agrees to assign absolutely as continuing security for the payment and discharge of the Secured Obligations (subject to a proviso for reassignment on redemption) all of its present and future right, title and interest in and to:

- (a) all Insurances and all claims under the Insurances and all proceeds of the Insurances; and
- (b) all Receivables.

To the extent that any Assigned Asset is not assignable, the assignment which that clause purports to effect shall operate instead as an assignment of all present and future rights and claims of such Chargor to any proceeds of such Insurances and Receivables.

##### **4.3 Assigned Assets**

The Collateral Agent is not obliged to take any steps necessary to preserve any Assigned Asset, to enforce any term of an Assigned Asset against any person or to make any enquiries as to the nature or sufficiency of any payment received by it pursuant to this Deed.

#### **5. FLOATING CHARGE**

Each Chargor charges and agrees to charge by way of first floating charge all of its present and future Security Assets.

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## 6. GRANT OF LICENSE

- (a) For purposes of enabling the Collateral Agent to exercise rights and remedies under this Deed each Chargor hereby grants to the Collateral Agent and its agents, representatives and designees:
- (i) an irrevocable, nonexclusive, royalty free license, rent-free license and rent-free lease (which will be binding on any successor or assignee of such Chargor) to, after the occurrence and during the continuance of an Event of Default have access to and use all of such Chargor's Real Property (including the buildings and other improvements thereon), Equipment and fixtures (whether or not considered Real Property); and
  - (ii) under any Chargor Intellectual Property Rights, subject to the limitations set forth below, an irrevocable, non-exclusive, royalty free, paid-up, sublicensable (solely as necessary for Collateral Agent to exercise its rights hereunder and not for the independent or unrelated use of any third party) license, for the sole purpose of operating such Chargor's business, including completing the production of Inventory and selling the same, in accordance with this Deed. Collateral Agent hereby agrees to take all commercially reasonable actions in connection with its exercise of such license to protect such Chargor's rights and interest in such Intellectual Property Rights. To the extent Collateral Agent exercises the foregoing license with respect to Chargor's Trademarks, (A) all goodwill arising from such use shall inure to the sole benefit of Chargor and (B) Collateral Agent shall not use the Trademarks in a manner that detracts from the goodwill associated therewith. Collateral Agent shall take all reasonable steps under the circumstances to protect any confidential information or trade secrets licensed hereunder.
- (b) Except as provided above, the Collateral Agent shall not have any liability to Chargor in connection with its exercise of the foregoing licenses, other than liability which is the direct result of the Collateral Agent's gross negligence or willful misconduct, as determined by a court of competent jurisdiction in a final and non-appealable decision), for the purpose of
- (i) arranging for and effecting the sale, distribution or other disposition of Security Assets located on any such Real Property, including the manufacture, production, completion, packaging, advertising, distribution and other preparation of such Security Assets (including, without limitation, work-in-process, raw materials and complete Inventory) for sale, distribution or other disposition, (ii) selling Security Assets (by public auction, private sale, going out of business sale or similar sale, whether in bulk, in lots or to customers in the ordinary course of business or otherwise and which sale may include augmented Inventory of the same type sold in any Chargor's business), (iii) storing or otherwise dealing with the Security Assets, (iv) collecting all Accounts and copying, using and preserving any and all information relating to the Security Assets, and (v) otherwise dealing with the Security Assets as part of the exercise of any rights or remedies provided to the Collateral Agent hereunder or under the other Credit Documents, in each case without the interference by any Chargor or any other Subsidiary of the Company and without incurring any liability to any Chargor or any other Subsidiary of the Company, except any liability which is the direct result of the Collateral Agent's gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final and non-appealable decision).
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- (c) Each Chargor will, and will cause each of its Subsidiaries to, cooperate with the Collateral Agent and its agents, representatives and designees in allowing the Collateral Agent to exercise the foregoing rights. To the extent that any asset of any Chargor in which the Collateral Agent has access or use rights as provided above is to be sold or otherwise disposed of after the occurrence and during the continuance of an Event of Default, such Chargor shall, if requested by the Collateral Agent in writing, cause the buyer to agree in writing to be subject to, and comply with the terms of, this Clause 6. The Collateral Agent shall have the right to bring an action to enforce its rights under this Clause 6, including, without limitation, an action seeking possession of the applicable Security Assets and/or specific performance of this Clause 6.

If the grant of the above leases and licenses by an Chargor would breach any agreement with a third party, the affected Chargor shall promptly notify the Collateral Agent in writing. In such event, the above leases and licenses shall be deemed effective to the fullest extent permitted without causing such a breach, and, at the Collateral Agent's request, the affected Chargor shall use commercially reasonable efforts to obtain all third-party consents required to effect fully the above leases and licenses. The affected Chargor shall pay all reasonable out-of-pocket expenses in connection with obtaining any such consents.

## **7. CONVERSION OF FLOATING CHARGE**

### **7.1 Conversion by notice**

The Collateral Agent may, by written notice to a Chargor, convert the floating charge created under this Deed into a fixed charge with immediate effect as regards all or any of the Security Assets subject to the floating charge and specified in the notice if:

- (a) an Event of Default has occurred and is continuing; or
- (b) it considers (acting reasonably) any Security Assets to be in danger of being seized or sold under any form of distress, attachment, execution or other legal process.

### **7.2 Small companies**

The floating charge created under this Deed by any Chargor shall not convert into a fixed charge solely by reason of a moratorium being obtained under the Insolvency Act 2000 (or anything done with a view to obtaining such a moratorium) in respect of such Chargor.

### **7.3 Automatic conversion**

The floating charge created under this Deed shall (in addition to the circumstances in which the same will occur under general law) automatically convert into a fixed charge:

- (a) in relation to any Security Asset which is subject to a floating charge if:
  - (i) that Chargor creates any Security (other than any Permitted Encumbrances) on or over the relevant Security Asset without the prior written consent of the Collateral Agent; or
  - (ii) any third party levies or attempts to levy any distress, execution, attachment or other legal process against any such Security Asset that constitutes an Event of Default; or

- (iii) any other floating charge crystallises over that Security Asset; and
- (b) if a Chargor becomes or is declared insolvent or otherwise unable to pay its debts as they fall due in the ordinary course of business;
- (c) over all Security Assets of a Chargor which are subject to a floating charge if an administrator is appointed in respect of that Chargor or the Collateral Agent receives notice of intention to appoint such an administrator (as contemplated by the Insolvency Act 1986) by someone entitled to so appoint; or
- (d) if any Chargor convenes a meeting of its creditors or a proposal or arrangement or composition with, or any assignment is made for the benefit of, its creditors, or a petition is presented, or a meeting called for the purpose of considering a resolution regarding such matters or other steps are taken for its winding-up or dissolution.

#### 7.4 Partial conversion

The giving of a notice by the Collateral Agent pursuant to Clause 7.1 (*Conversion by notice*) in relation to any class of Security Assets of any Chargor shall not be construed as a waiver or abandonment of the rights of the Collateral Agent to serve similar notices in respect of any other class of Security Assets or of any other right of the Collateral Agent and/or the other Secured Creditors.

#### 8. EXCLUDED ASSETS

Unless otherwise agreed by the Company and the Collateral Agent in writing, there shall be excluded from the Security created by Clause 4 (*Fixed Security*) and Clause 5 (*Floating Charge*) and in no event shall the term "Security Assets" (and any component terms thereof) include:

- (a) any property, interest or other rights for so long as the grant of such security interest shall constitute or result in:
  - (i) a breach or termination pursuant to the terms of, or a default under, any General Intangible, lease, license, contract, agreement or other document;
  - (ii) a breach of any law or regulation which prohibits the creation of a security interest thereunder;
  - (iii) a requirement to obtain consent of a Governmental Authority or any other Person (other than consent of the Company or any of its Subsidiaries) to permit the grant of a security interest therein (and such consent has not been obtained); or
  - (iv) materially adverse tax consequences as reasonably determined by the Company,

**other than** to the extent that any such term specified in clause (i) or (ii) above is rendered ineffective pursuant to any then-applicable law or principles of equity and **provided, however**, that such security interest shall attach immediately at such time as the condition causing such abandonment, invalidation, unenforceability breach or termination shall no longer be effective and to the extent severable, shall attach immediately to any portion of such property or other rights that does not result in any of the consequences specified in clause (i), (ii), (iii) or (iv) above;

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- (b) any property, interest or other rights with respect to which, in the reasonable determination of the Administrative Agent, expressed in writing, the cost or other consequences of granting a security interest in favor of the Secured Creditors is excessive in relation to the value afforded thereby;
- (c) Non-Eligible Motor Vehicles, airplanes and other assets subject to certificates of title;
- (d) Equity Interests;
- (e) Securitization Related Assets;
- (f) all interests in Real Property;
- (g) Rental Account Assets;
- (h) Charged Accounts that are identifiable proceeds of the sale or other disposition of property that is not Security Assets;
- (i) intercompany Accounts outstanding on the Amendment Effective Date; and
- (j) Intellectual Property Rights.

**9. LIABILITY OF CHARGORS RELATING TO SECURITY ASSETS**

Notwithstanding anything contained in this Deed or implied to the contrary, each Chargor remains liable to observe and perform all conditions and obligations assumed by it in relation to the Security Assets. The Collateral Agent is under no obligation to perform or fulfil any such condition or obligation or to make any payment in respect of any such condition or obligation.

**10. REPRESENTATIONS**

**10.1 Power and capacity**

Each Chargor:

- (a) is duly incorporated and validly existing under the laws of its Original Jurisdiction; and
- (b) has the power and authority to own its assets and carry on its business as it is being conducted.

**10.2 Authorisation and enforceability**

- (a) Each Chargor has the power and authority to execute, perform and deliver the terms and provisions of this Deed and has taken all necessary action to authorise the execution, delivery and performance of this Deed.
  - (b) Subject to the Legal Reservations and, in the case of clause 9.2(b)(ii) the Perfection Requirements:
    - (i) the obligations expressed to be assumed by it in this Deed are legal, valid, binding and enforceable obligations; and
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- (ii) (without limiting the generality of clause (9.2(a)), this Deed creates the security interests which this Deed purports to create and those security interests are valid and effective.

### **10.3 Ownership of Security Assets**

Each Chargor is the sole legal and beneficial owner of all of the Security Assets identified against its name in Schedule 1 (*Details of Security Assets*) (or the relevant schedule of Accession Deed by which the relevant Chargor accedes to this Deed).

### **10.4 No adverse interests**

Subject only to the Security created by or pursuant to this Deed and any Permitted Encumbrances under the Credit Agreement, no person other than the relevant Chargor has any legal or beneficial interest (or any right to claim any such interest) in the Security Assets and the relevant Chargor has not received any notice of such claim.

### **10.5 Time when representations are made**

- (a) All the representations and warranties in this Clause 10 are made by each Chargor:
  - (i) on the date of this Deed; and
  - (ii) (in the case of a company that accedes to the terms of this Deed pursuant to an Accession Deed) on the day which it becomes a Chargor by reference to the relevant schedule (or part thereof) of the Accession Deed by which it accedes to this Deed.
- (b) Each representation and warranty deemed to be made after the date of this Deed shall be deemed to be made by reference to the facts and circumstances existing at the date the representation or warranty is deemed to be made.

## **11. UNDERTAKINGS BY THE CHARGORS AND DEALING WITH SECURITY ASSETS**

### **11.1 Negative pledge**

No Chargor shall, without the prior written consent of the Collateral Agent create, purport to create or permit to subsist any Security or Quasi-Security on any Security Asset other than as created by this Deed or a Permitted Encumbrance.

### **11.2 Bank accounts**

- (a) Each Chargor shall:
    - (i) on or prior to the 90<sup>th</sup> day following the date of this Deed (in respect of the Original Chargor), or (in the case of a company that accedes to the terms of this Deed pursuant to an Accession Deed) on the day which it becomes a Chargor; and
    - (ii) upon opening a Core UK Deposit Account with a new UK Collection Bank,
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(in each instance as such date may be extended by the Collateral Agent in its sole discretion) enter into an Account Control Agreement which shall constitute a Cash Management Control Agreement for the purposes of and in accordance with section 5.03(g) (*Method and Place of Payment*) of the Credit Agreement.

- (b) Until the occurrence of an Account Control Event which is continuing, each Chargor shall be entitled to deal with its Charged Accounts in any manner not prohibited by the Credit Documents (including closing such Charged Accounts).
- (c) At any time following the occurrence of an Account Control Event which is continuing, no Chargor shall be entitled to make any withdrawals or transfers from any Charged Account without the Collateral Agent's prior written consent and the Collateral Agent may at any time following the occurrence of an Account Control Event which is continuing, without prior notice exercise from time to time all rights, powers and remedies held by it as chargee of the Charged Accounts to:
  - (i) demand and receive all and any monies due under or rising out of each Charged Account;
  - (ii) exercise all such rights as the charger was then entitled to exercise in relation to such Charged Account or might, but for the terms of this Deed exercise.

### **11.3 Notice of assignment and/or charge**

Each Chargor shall, promptly upon request by the Collateral Agent at any time after the occurrence of an Event of Default which is continuing, in respect of each of its Assigned Assets, deliver a duly completed and executed notice of assignment to each other party to that Assigned Asset and shall use reasonable endeavours to procure that each such party executes and delivers to the Collateral Agent an acknowledgement, in the case of Insurances, in the form set out in Schedule 2 (*Form of Notice to and Acknowledgement by Insurers*) and in the case of all other Assigned Assets in the form set out in Schedule 3 (*Form of Notice and Acknowledgement of assignment*) or in each case such other form as the Collateral Agent may agree, acting reasonably. If a Chargor has used its reasonable endeavours but has not been able to obtain an acknowledgement as required by this Clause 10.3, its obligation to obtain acknowledgment shall cease on the expiry of 20 Business Days following delivery of the applicable notice.

### **11.4 Receivables**

- (a) Except (i) in accordance with such Chargor's ordinary course of business, (ii) as otherwise in such Chargor's reasonable business judgment, (iii) as permitted by the Credit Agreement or (iv) as permitted by paragraph (b) below, no Chargor shall rescind or cancel any indebtedness evidenced by or under any Receivable, or modify any term thereof or make any adjustment with respect thereto, or extend or renew the same, or compromise or settle any dispute, claim, suit or legal proceeding relating thereto, without the prior written consent of the Collateral Agent. Except to the extent otherwise permitted by this Deed or the Credit Agreement, no Chargor will do anything to impair in any material respect the rights of the Collateral Agent in any Receivable.
  - (b) Except as such Chargor otherwise determines in its reasonable business judgment, each Chargor shall endeavor in accordance with reasonable business practices to cause to be collected from the debtor in respect of any Receivable as and when due (including,
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without limitation, amounts which are delinquent, such amounts to be collected in accordance with generally accepted lawful collection procedures) any and all amounts owing under or on account of such any Receivable, and apply promptly upon receipt thereof all such amounts as are so collected to the outstanding balance of such Receivable. Except as otherwise directed by the Collateral Agent following the occurrence of an Event of Default that is continuing, any Chargor may allow in the ordinary course of business as adjustments to amounts owing in respect of Receivables (i) an extension or renewal of the time or times of payment, or settlement for less than the total unpaid balance, which such Chargor finds appropriate in accordance with its reasonable business judgment, (ii) a refund or credit due as a result of returned or damaged merchandise or improperly performed services or for other reasons which such Chargor finds appropriate in accordance with its reasonable business judgment and/or (iii) such other adjustments which such Chargor finds appropriate in accordance with its reasonable business judgment.

## **12. POWER TO REMEDY**

### **12.1 Power to remedy**

If at any time following an Event of Default which is continuing a Chargor does not comply with any of its obligations under this Deed, the Collateral Agent (without prejudice to any other rights arising as a consequence of such non-compliance) shall be entitled (but not bound) to rectify that default. The relevant Chargor irrevocably authorises the Collateral Agent and its employees and agents by way of security, to do all such things (including entering the property of such Chargor) which are reasonably necessary to rectify that default.

### **12.2 Mortgagee in possession**

The exercise of the powers of the Collateral Agent under this Clause 12 shall not render it, or any other Secured Creditor, liable as a mortgagee in possession.

### **12.3 Monies expended**

The relevant Chargor shall pay to the Collateral Agent on demand any monies which are expended by the Collateral Agent in exercising its powers under this Clause 12.

## **13. WHEN SECURITY BECOMES ENFORCEABLE**

### **13.1 When enforceable**

This Security created by or pursuant to this Deed shall become immediately enforceable upon the occurrence of an Event of Default which is continuing.

### **13.2 Statutory powers**

The power of sale and other powers conferred by section 101 of the Act (as amended or extended by this Deed) shall be immediately exercisable upon and at any time after the occurrence of an Event of Default which is continuing.

### **13.3 Enforcement**

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After the Security created by or pursuant to this Deed has become enforceable, the Collateral Agent may in its absolute discretion enforce all or any part of the Security created by or pursuant to this Deed in such manner as it sees fit.

## **14. ENFORCEMENT OF SECURITY**

### **14.1 General**

For the purposes of all rights and powers implied by statute, the Secured Obligations are deemed to have become due and payable on the date of this Deed. Sections 93 and 103 of the Act shall not apply to the Security created by or pursuant to this Deed.

### **14.2 Powers of leasing**

The statutory powers of leasing conferred on the Collateral Agent are extended so as to authorise the Collateral Agent to lease, make agreements for leases, accept surrenders of leases and grant options as the Collateral Agent may think fit and without the need to comply with section 99 or 100 of the Act.

### **14.3 Powers of Collateral Agent**

- (a) At any time after the Security created by or pursuant to this Deed becomes enforceable (or if so requested by any Chargor by written notice at any time), the Collateral Agent may without further notice (unless required by law):
  - (i) appoint any person (or persons) to be a receiver, receiver and manager or administrative receiver of all or any part of the Security Assets and/or of the income of the Security Assets; and/or
  - (ii) appoint or apply for the appointment of any person who is appropriately qualified as administrator of a Chargor; and/or
  - (iii) exercise all or any of the powers conferred on mortgagees by the Act (as amended or extended by this Deed) and/or all or any of the powers which are conferred by this Deed on a Receiver, in each case without first appointing a Receiver or notwithstanding the appointment of any Receiver.
- (b) The Collateral Agent is not entitled to appoint a Receiver in respect of any Security Assets of any Chargor which are subject to a charge which (as created) was a floating charge solely by reason of a moratorium being obtained under the Insolvency Act 2000 (or anything done with a view to obtaining such a moratorium) in respect of such Chargor.

### **14.4 Redemption of prior mortgages**

At any time after the Security created by or pursuant to this Deed has become enforceable, the Collateral Agent may:

- (a) redeem any prior Security against any Security Asset; and/or
  - (b) procure the transfer of that Security to itself; and/or
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- (c) settle and pass the accounts of the holder of any prior Security and any accounts so settled and passed shall be conclusive and binding on each Chargor.

All principal, interest, costs, charges and expenses of and incidental to any such redemption and/or transfer shall be paid by the relevant Chargor to the Collateral Agent on demand.

#### **14.5 Privileges**

Each Receiver and the Collateral Agent is entitled to all the rights, powers, privileges and immunities conferred by the Act on mortgagees and receivers when such receivers have been duly appointed under the Act, except that section 103 of the Act does not apply.

#### **14.6 No liability**

- (a) Neither the Collateral Agent, any other Secured Creditor nor any Receiver shall be liable
  - (A) in respect of all or any part of the Security Assets or (B) for any loss or damage which arises out of the exercise or the attempted or purported exercise of, or the failure to exercise any of, its or his respective powers (unless such loss or damage is caused by its gross negligence or wilful misconduct).
- (b) Without prejudice to the generality of Clause 14.6(a), neither the Collateral Agent, any other Secured Creditor nor any Receiver shall be liable, by reason of entering into possession of a Security Asset, to account as mortgagee in possession or for any loss on realisation or for any default or omission for which a mortgagee in possession might be liable.

#### **14.7 Protection of third parties**

No person (including a purchaser) dealing with the Collateral Agent or any Receiver or Delegate will be concerned to enquire:

- (a) whether the Secured Obligations have become payable;
- (b) whether any power which the Collateral Agent or the Receiver is purporting to exercise has become exercisable;
- (c) whether any money remains due under any Credit Document; or
- (d) how any money paid to the Collateral Agent or to the Receiver is to be applied.

### **15. RECEIVER**

#### **15.1 Removal and replacement**

The Collateral Agent may from time to time remove any Receiver appointed by it (subject, in the case of an administrative receivership, to section 45 of the Insolvency Act 1986) and, whenever it may deem appropriate, may appoint a new Receiver in the place of any Receiver whose appointment has terminated.

#### **15.2 Multiple Receivers**

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If at any time there is more than one Receiver of all or any part of the Security Assets and/or the income of the Security Assets, each Receiver shall have power to act individually (unless otherwise stated in the appointment document).

### **15.3 Remuneration**

Any Receiver shall be entitled to remuneration for his services at a rate to be fixed by agreement between him and the Collateral Agent (or, failing such agreement, to be fixed by the Collateral Agent).

### **15.4 Payment by Receiver**

Only monies actually paid by a Receiver to the Collateral Agent in relation to the Secured Obligations shall be capable of being applied by the Collateral Agent in discharge of the Secured Obligations.

### **15.5 Agent of Chargors**

Any Receiver shall be the agent of the Chargor in respect of which it is appointed. Such Chargor shall (subject to the Companies Act 2006 and the Insolvency Act 1986) be solely responsible for his acts and defaults and for the payment of his remuneration. No Secured Creditor shall incur any liability (either to such Chargor or to any other person) by reason of the appointment of a Receiver or for any other reason.

### **15.6 Collateral Agent**

To the fullest extent allowed by law, any right, power or discretion conferred by this Deed (either expressly or impliedly) or by law on a Receiver may after the Security created by or pursuant to this Deed becomes enforceable be exercised by the Collateral Agent in relation to any Security Asset without first appointing a Receiver and notwithstanding the appointment of a Receiver.

## **16. POWERS OF RECEIVER**

### **16.1 General powers**

Any Receiver shall have:

- (a) all the powers which are conferred on the Collateral Agent by Clause 14.3 (*Powers of Collateral Agent*);
- (b) all the powers which are conferred by the Act on mortgagees in possession and receivers appointed under the Act;
- (c) (whether or not he is an administrative receiver) all the powers which are listed in schedule 1 of the Insolvency Act 1986; and
- (d) all powers which are conferred by any other law conferring power on receivers.

### **16.2 Additional powers**

In addition to the powers referred to in Clause 16.1 (*General powers*), a Receiver shall have the following powers:

- (a) to take possession of, collect and get in all or any part of the Security Assets and/or income in respect of which he was appointed;
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- (b) to manage the Security Assets and the business of any Chargor as he thinks fit;
  - (c) to redeem any Security and to borrow or raise any money and secure the payment of any money in priority to the Secured Obligations for the purpose of the exercise of his powers and/or defraying any costs or liabilities incurred by him in such exercise;
  - (d) to sell or concur in selling, leasing or otherwise disposing of all or any part of the Security Assets in respect of which he was appointed without the need to observe the restrictions imposed by section 103 of the Act, and, without limitation;
    - (i) the consideration for any such transaction may consist of cash, debentures or other obligations, shares, stock or other valuable consideration (and the amount of such consideration may be dependent upon profit or turnover or be determined by a third party); and
    - (ii) any such consideration may be payable in a lump sum or by instalments spread over such period as he thinks fit;
  - (e) to carry out any sale, lease or other disposal of all or any part of the Security Assets by conveying, transferring, assigning or leasing the same in the name of the relevant Chargor and, for that purpose, to enter into covenants and other contractual obligations in the name of, and so as to bind, such Chargor;
  - (f) to take any such proceedings (in the name of any of the relevant Chargors or otherwise) as he shall think fit in respect of the Security Assets and/or income in respect of which he was appointed (including proceedings for recovery of rent or other monies in arrears at the date of his appointment);
  - (g) to enter into or make any such agreement, arrangement or compromise as he shall think fit;
  - (h) settle any claims, accounts, disputes, questions and demands with or by any person who is or claims to be a creditor of the relevant Chargor or relating to any of the Security Assets.
  - (i) to insure, and to renew any insurances in respect of, the Security Assets as he shall think fit (or as the Collateral Agent shall direct);
  - (j) to appoint and employ such managers, officers and workmen and engage such professional advisers as he shall think fit (including, without prejudice to the generality of the foregoing power, to employ his partners and firm);
  - (k) to form one or more subsidiaries of any Chargor and to transfer to any such subsidiary all or any part of the Security Assets;
  - (l) to:
    - (i) give valid receipts for all monies and to do all such other acts and things as may seem to him to be incidental or conducive to any other power vested in him or necessary or desirable for the preservation, improvement or realisation of any Security Asset;
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- (ii) exercise in relation to each Security Asset all such powers and rights as he would be capable of exercising if he were the absolute beneficial owner of the Security Assets; and
- (iii) use the name of any Chargor for any of the above purposes;
- (iv) do all other acts and things (including signing and executing all documents and deeds) as the Receiver considers to be incidental or conducive to any of the matters or powers in this Clause 16.2.

**16.3 Section 109 Law of Property Act 1925**

- (a) Section 109(1) of the Act shall not apply to this Deed.
- (b) Sections 109(6) and (8) of the Act shall not apply to a Receiver appointed under this Deed.

**17. APPLICATION OF PROCEEDS**

**17.1 Application**

- (a) All moneys collected by the Collateral Agent (or, to the extent any other Security Document requires proceeds of collateral under such other Security Document to be applied in accordance with the provisions of this Deed, the collateral agent under such other Security Document) upon any sale or other disposition of the Security Assets, in connection with the Collateral Agent's exercise of remedies following the occurrence of an Event of Default which is continuing, together with all other moneys received by the Collateral Agent hereunder or under any other Security Document, shall be applied as follows:
    - (i) *first*, to the payment of all amounts owing the Collateral Agent of the type described in clauses (b), (c), (d) and (e) of the definition of "Secured Obligations";
    - (ii) *second*, to the extent proceeds remain after the application pursuant to preceding clause (i), an amount equal to the outstanding Primary Obligations shall be paid to the Secured Creditors as provided in Clause 17.1(e) below, with each such Secured Creditor receiving an amount equal to its outstanding Primary Obligations or, if the proceeds are insufficient to pay in full all Primary Obligations described above, each Secured Creditor shall receive its Pro Rata Share of the amount remaining to be distributed;
    - (iii) *third*, to the extent proceeds remain after the application pursuant to preceding clauses (i) and (ii), an amount equal to the outstanding Secondary Obligations shall be paid to the Secured Creditors as provided in Clause 17.1(e) below, with each such Secured Creditor receiving an amount equal to its outstanding Secondary Obligations or, if the proceeds are insufficient to pay in full all Secondary Obligations described above, each Secured Creditor shall receive its Pro Rata Share of the amount remaining to be distributed; and
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- (iv) *fourth*, to the extent proceeds remain after the application pursuant to preceding clauses (i) through (iii), inclusive, and following the termination of this Deed pursuant to Clause 32 (*Release*) hereof, to the relevant Chargor or to whomever may be lawfully entitled to receive such surplus.

- (b) For the purposes of this Clause 17.1:

**“Pro Rata Share”** shall mean, when calculating a Secured Creditor’s portion of any distribution or amount, that amount (expressed as a percentage) equal to a fraction the numerator of which is the then unpaid amount of such Secured Creditor’s Primary Obligations or Secondary Obligations, as the case may be, and the denominator of which is the then outstanding amount of all Primary Obligations or Secondary Obligations owing to the applicable Secured Creditors entitled thereto, as the case may be;

**“Primary Obligations”** shall mean all principal of, premium, fees and interest on, all Loans made to the UK Borrowers, all Unpaid Drawings (and all interest thereon) in respect of Letters of Credit issued for the account of a UK Borrower, the Stated Amount of (and the obligation to cash collateralize) all outstanding Letters of Credit issued for the account of a UK Borrower and all Fees in respect of which a UK Borrower (in its capacity as such) is obligated; and

**“Secondary Obligations”** shall mean all Obligations other than Primary Obligations.

- (c) When payments to Secured Creditors are based upon their respective Pro Rata Shares, the amounts received by such Secured Creditors hereunder shall be applied (for purposes of making determinations under this Clause 17.1 only) (i) first, to their Primary Obligations and (ii) second, to their Secondary Obligations. If any payment to any Secured Creditor of its Pro Rata Share of any distribution would result in overpayment to such Secured Creditor, such excess amount shall instead be distributed in respect of the unpaid Primary Obligations or Secondary Obligations, as the case may be, of the other Secured Creditors entitled to such distribution, with each such Secured Creditor whose Primary Obligations or Secondary Obligations, as the case may be, have not been paid in full to receive an amount equal to such excess amount multiplied by a fraction the numerator of which is the unpaid Primary Obligations or Secondary Obligations, as the case may be, of such Secured Creditor and the denominator of which is the unpaid Primary Obligations or Secondary Obligations, as the case may be, of all Secured Creditors entitled to such distribution.
- (d) Each of the Secured Creditors, by their acceptance of the benefits hereof and of the other Security Documents, agrees and acknowledges that if the Secured Creditors receive (or are to receive) a distribution on account of undrawn amounts with respect to Letters of Credit issued under the Credit Agreement for the account of a UK Borrower (which shall only occur after all outstanding Revolving Loans under the Credit Agreement of any UK Borrower and Unpaid Drawings of any UK Borrower have been paid in full), such amounts shall be paid to the Administrative Agent under the Credit Agreement and held by it, for the equal and ratable benefit of the Secured Creditors, as cash security for the repayment of Obligations owing to the Secured Creditors as such. If any amounts are held as cash security pursuant to the immediately preceding sentence, then upon the termination of all outstanding Letters of Credit issued under the Credit Agreement and for the account of a UK Borrower, and after the application of all such cash security to the repayment of all Secured Obligations owing to the Secured Creditors after giving effect to the termination of all such Letters of Credit, if there remains any excess cash, such excess cash shall be returned by the Administrative
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Agent to the Collateral Agent for distribution in accordance with Clause 17.1(a) (*Application*) hereof.

- (e) All payments required to be made hereunder shall be made to the Administrative Agent for the account of the Secured Creditors.
- (f) For purposes of applying payments received in accordance with this Clause 17 (*Application of Proceeds*), the Collateral Agent shall be entitled to rely upon the Administrative Agent for a determination (which the Administrative Agent agrees to provide upon request of the Collateral Agent) of the outstanding Primary Obligations and Secondary Obligations owed to the Secured Creditors. Unless it has received written notice from a Secured Creditor to the contrary, the Administrative Agent, in furnishing information pursuant to the preceding sentence, and the Collateral Agent, in acting hereunder, shall be entitled to assume that no Secondary Obligations are outstanding.
- (g) It is understood that the Chargors shall remain jointly and severally liable to the extent of any deficiency between the amount of the proceeds of the Security Assets and the aggregate amount of the Obligations.
- (h) It is understood and agreed by each Chargor and each Secured Creditor that the Collateral Agent shall have no liability for any determinations made by it in this Section 16.1 (*Application*), in each case except to the extent resulting from the gross negligence or willful misconduct of the Collateral Agent (as determined by a court of competent jurisdiction in a final and non-appealable decision). Each Chargor and each Secured Creditor also agrees that the Collateral Agent may (but shall not be required to), at any time and in its sole discretion, and with no liability resulting therefrom, petition a court of competent jurisdiction regarding any application of the Security Assets in accordance with the requirements hereof, and the Collateral Agent shall be entitled to wait for, and may conclusively rely on, any such determination.

## **17.2 Contingencies**

If the Security created by or pursuant to this Deed is enforced at a time when no amounts are due under the Credit Documents (but at a time when amounts may become so due), the Collateral Agent or a Receiver may pay the proceeds of any recoveries effected by it into a blocked suspense account (bearing interest at such rate (if any) as the Collateral Agent usually grants for accounts of that size and nature).

## **17.3 Appropriation and suspense account**

- (a) Subject to Clause 17.1 (*Application*), the Collateral Agent shall apply all payments received in respect of the Secured Obligations in reduction of any part of the Secured Obligations in any order or manner which it may determine.
  - (b) Any such appropriation shall override any appropriation by any Chargor.
  - (c) All monies received, recovered or realised by the Collateral Agent under or in connection with this Deed may at the discretion of the Collateral Agent be credited to a separate interest bearing suspense account (with interest accruing thereon at at least the rate that the Collateral Agent usually grants for accounts of that size and nature) for so long as the Collateral Agent determines without the Collateral Agent having any
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obligation to apply such monies or any part of it in or towards the discharge of any of the Secured Obligations unless such monies would be sufficient to discharge all Secured Obligations in full.

**18. SET-OFF**

- (a) At any time after the occurrence of an Event of Default which is continuing, the Collateral Agent and each other Secured Creditor may (but shall not be obliged to) set-off any matured liability owed by a Chargor under any Credit Document against any obligation (whether or not matured) owed by the Collateral Agent or such other Secured Creditor to such Chargor, regardless of the place of payment, booking branch or currency of either obligation.
- (b) If the obligations are in different currencies, the Collateral Agent or such other Secured Creditor may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.
- (c) If either obligation is unliquidated or unascertained, the Collateral Agent or such other Secured Creditor may set off in an amount estimated by it in good faith to be the amount of that obligation.

**19. DELEGATION**

Each of the Collateral Agent and any Receiver may delegate, by power of attorney (or in any other manner) to any person, any right, power or discretion exercisable by them under this Deed upon any terms (including power to sub-delegate) which it may reasonably think fit. Neither the Collateral Agent nor any Receiver shall be in any way liable or responsible to any Chargor for any loss or liability arising from any act, default, omission or misconduct on the part of any Delegate unless arising as a result of its gross negligence or wilful misconduct in so delegating.

**20. FURTHER ASSURANCES**

**20.1 Further action**

Each Chargor shall at its own expense, promptly do all acts and execute all documents that the Collateral Agent reasonably specifies is required for:

- (a) perfecting or protecting the Security created or intended to be created by this Deed; or
- (b) after the Security created by or pursuant to this Deed has become enforceable, facilitating the realisation of any Security Asset or the exercise of any rights, powers and remedies properly exercisable by the Collateral Agent, any other Secured Creditor or any Receiver or any Delegate in respect of any Security Asset or provided by or pursuant to the Credit Documents or by law,

which may include:

- (i) the re-execution of this Deed or such Security Document;
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- (ii) the execution of any legal mortgage, charge, transfer, conveyance, assignment, assignation or assurance of any property, whether to the Collateral Agent or to its nominee; and
- (iii) the giving of any notice, order or direction and the making of any filing or registration,

provided that no Chargor shall be required to do any act or execute any document in order to create or to perfect (as applicable) any Security pursuant to this Clause 20.1 before such an obligation has otherwise arisen by operation of this Deed.

## **20.2 Specific security**

Without prejudice to the generality of Clause 20.1 (*Further action*), each Chargor will promptly upon request by the Collateral Agent execute any document contemplated by that Clause over any Security Asset which is subject to or intended to be subject to any fixed security under this Deed (including any fixed security arising or intended to arise pursuant to Clause 7 (*Conversion of Floating Charge*)).

## **21. POWER OF ATTORNEY**

Until this Security Agreement is terminated in accordance with its terms, each Chargor hereby constitutes and appoints the Collateral Agent to be its attorney, irrevocably, with full power after the occurrence of an Event of Default which is continuing (in the name of such Chargor or otherwise) to take any action which such Chargor is obliged to take under this Deed, including (without limitation) under Clause 20.1 (*Further action*).

## **22. CURRENCY CONVERSION**

All monies received or held by the Collateral Agent or any Receiver under this Deed may be converted from their existing currency into such other currency as the Collateral Agent or the Receiver considers necessary or, following an Event of Default which is continuing, desirable to cover the obligations and liabilities comprised in the Secured Obligations in that other currency at the exchange rate in effect on such date, as determined by the Collateral Agent in a manner permitted by the terms of the Credit Documents. Each Chargor shall indemnify the Collateral Agent against all costs, charges and expenses reasonably and properly incurred in relation to such conversion. Neither the Collateral Agent nor any Receiver shall have any liability to any Chargor in respect of any loss resulting from any fluctuation in exchange rates after any such conversion.

## **23. CONTINUING SECURITY**

### **23.1 Continuing security**

The Security created by or pursuant to this Deed is continuing and will extend to the ultimate balance of the Secured Obligations regardless of any intermediate payment or discharge in whole or in part. Subject to Clause 32 (*Release*), this Deed shall remain in full force and effect as a continuing security for the duration of the Security Period.

### **23.2 Additional and separate security**

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This Deed is in addition to, without prejudice to, and shall not merge with, any other right, remedy, guarantee or Security which the Collateral Agent and/or any other Secured Creditors may at any time hold for any Secured Obligation.

### **23.3 Right to enforce**

This Deed may be enforced against each or any Chargor without the Collateral Agent and/or any other Secured Creditor first having recourse to any other right, remedy, guarantee or Security held by or available to it or any of them.

### **23.4 Waiver of defences**

The obligations of each Chargor under this Deed will not be discharged, diminished or in any way adversely affected by any of the following (whether or not known to any Chargor, any Secured Creditor or any other person and whether or not agreed to by, or notified to, any Chargor):

- (a) any time, waiver, or consent granted to, or composition with, any Credit Party or any other person;
- (b) any amendment to, or replacement of, any Credit Document (however fundamental and whether or not it increases the liability of any member of the Group) or any other agreement or security;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take-up or enforce any rights or remedies against, or security over the assets of, any member of the Group or any other person or any failure to observe or perform any formal requirement in respect of any security or other instruments or failure to realise the full value of any security;
- (d) any obligation of any Chargor or any other person under any Credit Document or other agreement (or any security for that obligation) being or becoming void, invalid, illegal or unenforceable for any reason;
- (e) any incapacity or lack of power, authority or legal personality of, or change in the constitution of, or any amalgamation or reconstruction of, any member of the Group or other person or any failure by any actual or proposed member of the Group to be or become bound by the terms of any Credit Document;
- (f) any member of the Group or other person being or becoming insolvent or subject to any insolvency proceedings or procedure;
- (g) the release of any other Credit Party under the terms of any composition or arrangement with any creditor of such Credit Party; or
- (h) any other act, omission, circumstance, matter or thing which, but for this Clause 23.4 would operate to release, reduce, prejudice or otherwise exonerate the relevant Chargor from any of its obligations under this Deed.

## **24. CHANGES TO THE PARTIES**

### **24.1 Chargors**

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No Chargor may assign any of its rights or obligations under this Deed.

#### **24.2 Collateral Agent**

Subject to the terms of the Credit Agreement, the Collateral Agent may assign or transfer all or any part of its rights under this Deed in accordance with the Credit Agreement. Each Chargor shall, as soon as reasonably practicable after being requested to do so by the Collateral Agent, enter into such documents as may be necessary to effect such assignment or transfer.

#### **24.3 Accession Deed**

Each Chargor consents to other members of the Group becoming Chargors in accordance with the terms of the Credit Documents.

### **25. INDEMNITY**

#### **25.1 Indemnity.**

- (a) Each Chargor jointly and severally agrees to indemnify, reimburse and hold the Collateral Agent, each other Lender and their respective successors, assigns, employees, affiliates and agents (each, an “**Indemnitee**,” and collectively, “**Indemnitees**”) harmless, in accordance with Section 13.01(b) of the Credit Agreement, any and all liabilities, obligations, losses, damages (excluding damages, losses or liabilities arising under any theory of liability for special, indirect, consequential or incidental damages (as opposed to direct or actual damages)), penalties, claims, actions (including removal or remedial actions), judgments, suits, costs, expenses and disbursements (including reasonable and invoiced out-of-pocket attorneys’ and consultants’ fees and disbursements (but limited, in the case of attorneys’ fees and disbursements, to one counsel to the Indemnified Persons, taken as a whole, one local counsel for the Indemnified Persons, taken as a whole, in each relevant jurisdiction, and, solely in the case of an actual or perceived conflict of interests, one additional counsel in each relevant jurisdiction to each group of affected Indemnified Persons similarly situated, taken as a whole)) incurred by, imposed on or assessed against any of them as a result of, or arising out of, or in any way related to, or by reason of:
- (i) any investigation, litigation or other proceeding (whether or not the Lead Arrangers, the Administrative Agent, the Collateral Agent, the Syndication Agent, the Documentation Agent, any Issuing Lender or any Lender is a party thereto and whether or not such investigation, litigation or other proceeding is brought by or on behalf of any Credit Party) related to the entering into and/or performance of this Deed or any other Credit Document or the use of any Letter of Credit or the proceeds of any Loans hereunder or the consummation of the Transaction or any other transactions contemplated herein or in any other Credit Document or the exercise of any of their rights or remedies provided herein or in the other Credit Documents; or
  - (ii) (A) the handling of the Charged Account and Security Assets as provided in this Deed; (B) the Agents’ and the Lenders’ relying on any instructions of the Company; or (C) any other action taken by the Agents or the Lenders hereunder or under the other Credit Documents;
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**provided** that no Indemnitee shall be indemnified pursuant to this Clause 25.1(a) (*Indemnity*) for losses, damages or liabilities:

- (D) to the extent caused by the gross negligence or willful misconduct of such Indemnitee (as determined by a court of competent jurisdiction in a final and non-appealable decision);
  - (E) constituting taxes (other than taxes that represent losses, liabilities, claims, damages or expenses arising from any non-tax claim); or
  - (F) arising out of disputes solely between and among Indemnitees to the extent such disputes do not involve any act or omission of the Company or any of its Subsidiaries or any of their respective Affiliates (other than claims against an Indemnitee acting in its capacity as Agent or Lender). Each Chargor agrees that upon written notice by any Indemnitee of the assertion of such a liability, obligation, damage, injury, penalty, claim, demand, action, suit or judgment, the relevant Chargor shall assume full responsibility for the defense thereof. Each Indemnitee agrees to use its best efforts to promptly notify the relevant Chargor of any such assertion of which such Indemnitee has knowledge.
- (b) Without limiting the application of Clause 25.1(a) (*Indemnity*) above, each Chargor agrees, jointly and severally, to pay or reimburse the Collateral Agent for any and all reasonable and invoiced out-of-pocket fees, costs and expenses of whatever kind or nature incurred in connection with the creation, preservation or protection of the Collateral Agent's Security on, and security interest in, the Security Assets, including, without limitation, all fees and taxes in connection with the recording or filing of instruments and documents in public offices, payment or discharge of any taxes or Security in respect of the Security Assets, premiums for insurance with respect to the Security Assets and all other fees, costs and expenses in connection with protecting, maintaining or preserving the Security Assets and the Collateral Agent's interest therein, whether through judicial proceedings or otherwise, or in defending or prosecuting any actions, suits or proceedings arising out of or relating to the Security Assets.
- (c) If and to the extent that the obligations of any Chargor under this Clause 25 (*Indemnity*) are unenforceable for any reason, such Chargor hereby agrees to make the maximum contribution to the payment and satisfaction of such obligations which is permissible under applicable law.

## **25.2 Indemnity Obligations Secured by Collateral; Survival.**

Any amounts paid by any Indemnitee as to which such Indemnitee has the right to reimbursement hereunder or under the other Credit Documents shall constitute Secured Obligations secured by the Security Assets. The indemnity obligations of each Chargor contained in this Deed shall continue in full force and effect notwithstanding the full payment of all of the other Secured Obligations and notwithstanding the full payment of all the Notes issued, and Loans made, under the Credit Agreement, the termination of all Letters of Credit issued under the Credit Agreement, the termination of all Secured Hedging Agreements entered into with the Secured Hedging Creditors, the termination of all Treasury Services Agreements entered into with the Treasury Services Creditors and the payment of all other

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Secured Obligations and notwithstanding the discharge thereof and the occurrence of the Termination Date.

**26. MISCELLANEOUS**

**26.1 Ruling off**

- (a) If the Collateral Agent or any other Secured Creditor receives, or is deemed to be affected by, notice, whether actual or constructive, of any subsequent Security (other than any Permitted Encumbrances) affecting any Security Asset and/or the proceeds of sale of any Security Asset or any guarantee under the Credit Documents ceases to continue in force, it may open a new account or accounts for any Chargor. If it does not open a new account, it shall nevertheless be treated as if it had done so at the time when it received or was deemed to have received such notice.
- (b) As from that time all payments made to the Collateral Agent or such other Secured Creditor will be credited or be treated as having been credited to the new account and will not operate to reduce any amount of the Secured Obligations.

**26.2 Tacking**

- (a) Each Secured Creditor shall perform its obligations under the Credit Documents (including any obligation to make available further advances).
- (b) This Deed secures advances already made and further advances to be made under the Credit Agreement that constitute Secured Obligations.

**26.3 Protective clause**

Each Chargor is deemed to be a principal debtor in relation to this Deed. The obligations of each Chargor under, and the security intended to be created by, this Deed shall not be impaired by any forbearance, neglect, indulgence, extension of time, release, surrender or loss of securities, dealing, amendment or arrangement by any Secured Creditor which would otherwise have reduced, released or prejudiced the Security created by or pursuant to this Deed or any surety liability of a Chargor (whether or not known to it or to any Secured Creditor).

**27. CALCULATIONS AND CERTIFICATES**

Any certificate of or determination by a Secured Creditor, or the Collateral Agent specifying the amount of any Secured Obligation due from the Chargors (including details of any relevant calculation thereof) is, in the absence of manifest error, prima facie evidence against the Chargors of the matters to which it relates.

**28. PARTIAL INVALIDITY**

All the provisions of this Deed are severable and distinct from one another and if at any time any provision is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of any of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

**29. REMEDIES AND WAIVERS**

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No failure to exercise, nor any delay in exercising, on the part of the Collateral Agent (or any other Secured Creditor), any right or remedy under this Deed shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise, or the exercise of any other right or remedy. The rights and remedies provided are cumulative and not exclusive of any rights or remedies provided by law.

### **30. AMENDMENTS**

Any provision of this Deed may be amended only if the Collateral Agent and each Chargor so agree in writing and any breach of this Deed may be waived before or after it occurs only if the Collateral Agent so agrees in writing. A waiver given or consent granted by the Collateral Agent under this Deed will be effective only if given in writing and then only in the instance and for the purpose for which it is given.

### **31. COUNTERPARTS**

This Deed may be executed in any number of counterparts, and this has the same effect as if the signatures (and seals, if any) on the counterparts were on a single copy of this Deed.

### **32. RELEASE**

#### **32.1 Release**

Upon the expiry of the Security Period or where otherwise contemplated by the Credit Agreement, the Collateral Agent shall, at the request and cost of the Chargors, take whatever action, including preparing and delivering all documents and instruments (including any termination or release letter or deed), revoking any powers of attorney and performing all acts or deeds (including returning any document belonging to the Chargors) which are, in each case, necessary to release or re-assign (without recourse or warranty) the Security Assets (or part thereof) from the Security.

#### **32.2 Reinstatement**

Where any discharge (whether in respect of the obligations of any Chargor or any security for those obligations or otherwise) is made in whole or in part or any arrangement is made on the faith of any payment, security or other disposition which is avoided or must be restored on insolvency, liquidation or otherwise (without limitation), the liability of the Chargors under this Deed shall continue as if the discharge or arrangement had not occurred. The Collateral Agent may concede or compromise any claim that any payment, security or other disposition is liable to avoidance or restoration.

### **33. PERPETUITY PERIOD**

The Perpetuity period under the rule against perpetuities, if applicable to this Deed, shall be the period of one hundred and twenty five years from the date of this Deed.

### **34. GOVERNING LAW**

This Deed and any dispute, proceedings or claims of whatever nature arising out of or in connection with it and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with English law.

### **35. JURISDICTION**

#### **35.1 English Courts**

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The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute regarding the existence, validity or termination of this Deed or any non-contractual obligations arising out of or in connection with this Deed) (a "**Dispute**").

**35.2 Convenient Forum**

The parties to this Deed agree that the courts of England are the most appropriate and convenient forum to settle Disputes between them and, accordingly, that they will not argue to the contrary.

**35.3 Non-exclusive Jurisdiction**

This Clause 35 (*Jurisdiction*) is for the benefit of the Collateral Agent only. As a result and notwithstanding Clause 35.1 (*English Courts*), it does not prevent the Collateral Agent from taking proceedings relating to a Dispute in any other court of competent jurisdiction. To the extent allowed by law the Collateral Agent may take concurrent proceedings in any number of jurisdictions.

**IN WITNESS** of which this Deed has been duly executed by the Original Chargor as a deed and duly executed by the Collateral Agent and has been delivered on the first date specified on page 1 of this Deed by the Original Chargor.

**SCHEDULE 1 DETAILS OF SECURITY ASSETS**

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**SCHEDULE 2**

**FORM OF NOTICE TO AND ACKNOWLEDGEMENT BY INSURERS**

To: [Insert name and address of insurer]

Dated: [●]

Dear Sirs

**SECURITY AGREEMENT DATED [●] BETWEEN (1) [COLLATERAL AGENT] AND (2) [●] (THE “CHARGOR”)**

1. We give notice that, by a security agreement dated [●] (the “**Security Agreement**”), we have assigned to [*the Collateral Agent*] (the “**Collateral Agent**”) as Collateral Agent for certain banks, financial institutions and others (as referred to in the Security Agreement) all our present and future right, title and interest in and to the [*DESCRIBE INSURANCE POLICIES*] (together with any other agreement supplementing or amending the same, the “**Policies**”) including all rights and remedies in connection with the Policies and all proceeds and claims arising from the Policies.
  2. We irrevocably authorise and instruct you following receipt by you of a notice from the Collateral Agent stating that an “Event of Default” has occurred and is continuing under the Security Agreement to:
    - (a) disclose to the Collateral Agent at our expense (without any reference to or further authority from us and without any enquiry by you as to the justification for such disclosure) such information relating to the Policies as the Collateral Agent may from time to time request;
    - (b) comply with any written notice or instructions in any way relating to (or purporting to relate to) the Security Agreement, the sums payable to us from time to time under the Policies or the debts represented by them which you may receive from the Collateral Agent (without any reference to or further authority from us and without any enquiry by you as to the justification for or validity of such notice or instruction);
    - (c) make all payments under or arising from the Policies only in accordance with the written instructions of the Collateral Agent; and
    - (d) send copies of all notices and other information given or received under the Policies to the Collateral Agent.
  3. This notice may only be revoked or amended with the prior written consent of the Collateral Agent and the Chargors.
  4. Please confirm by completing and signing the enclosed copy of this notice and returning it to the Collateral Agent (with a copy to us) that you agree to the above and that:
    - (a) you accept the instructions and authorisations contained in this notice and you undertake to comply with this notice; and
-



(b) you have not, at the date this notice is returned to the Collateral Agent, received notice of the assignment or charge, the grant of any security or the existence of any other interest of any third party in or to the Policies or any proceeds of them or any breach of the terms of any Policy and you will notify the Collateral Agent promptly if you should do so in future.

5. This notice, and any acknowledgement in connection with it, and any non-contractual obligations arising out of or in connection with any of them, shall be governed by English law.

Yours faithfully

\_\_\_\_\_  
for and on behalf of  
[***Name of Chargor***]

---

[On acknowledgment copy]

To: [●]  
as Collateral Agent [ADDRESS]

Copy to: [NAME OF CHARGOR]

Dear Sirs

We acknowledge receipt of the above notice and consent and agree to its terms. We confirm and agree to the matters referred to in it.

\_\_\_\_\_  
for and on behalf of  
[●]

Dated: [●]

---

**SCHEDULE 3**

**FORM OF NOTICE AND ACKNOWLEDGEMENT OF ASSIGNMENT**

To: [Insert name and address of counterparty]

Dated: [●]

Dear Sirs

**SECURITY AGREEMENT DATED [●] BETWEEN (1) [COLLATERAL AGENT] AND (2) [●] (THE "CHARGOR")**

1. We give notice that, by a security agreement dated [●] (the "**Security Agreement**"), we have assigned to [*the Collateral Agent*] (the "**Collateral Agent**") as Collateral Agent for certain banks, financial institutions and others (as referred to in the Security Agreement) all our present and future right, title and interest in and to [identify receivables or other Assigned Asset] (together with any other agreement supplementing or amending the same, the "**Agreement**") including all rights and remedies in connection with the Agreement and all proceeds and claims arising from the Agreement.
  2. We irrevocably authorise and instruct you following receipt by you of a notice from the Collateral Agent stating that an "Event of Default" has occurred under the Security Agreement, to:
    - (a) disclose to the Collateral Agent at our expense (without any reference to or further authority from us and without any enquiry by you as to the justification for such disclosure) such information relating to the Agreement as the Collateral Agent may from time to time request;
    - (b) comply with any written notice or instructions in any way relating to (or purporting to relate to) the Security Agreement, the sums payable to us from time to time under the Agreement or the debts represented by them which you may receive from the Collateral Agent (without any reference to or further authority from us and without any enquiry by you as to the justification for or validity of such notice or instruction);
    - (c) make all payments under or arising from the Agreement only in accordance with the written instructions of the Collateral Agent; and
    - (d) send copies of all notices and other information given or received under the Agreement to the Collateral Agent.
  3. This notice may only be revoked or amended with the prior written consent of the Collateral Agent and the Chargors.
  4. Please confirm by completing and signing the enclosed copy of this notice and returning it to the Collateral Agent (with a copy to us) that you agree to the above and that:
    - (a) you accept the instructions and authorisations contained in this notice and you undertake to comply with this notice; and
    - (b) you have not, at the date this notice is returned to the Collateral Agent, received notice of the assignment or charge, the grant of any security or the existence of any other interest of any third party in or to the Agreement or any proceeds of them and you will notify the Collateral Agent promptly if you should do so in future.
  5. This notice, and any acknowledgement in connection with it, and any non-contractual obligations arising out of or in connection with any of them, shall be governed by English law.
-

Yours faithfully

\_\_\_\_\_  
for and on behalf of  
[***Name of Chargor***]

---

[On acknowledgment copy]

To: [●]  
as Collateral Agent [ADDRESS]

Copy to: [NAME OF CHARGOR]

Dear Sirs

We acknowledge receipt of the above notice and consent and agree to its terms. We confirm and agree to the matters referred to in it.

\_\_\_\_\_  
for and on behalf of  
[●]

Dated: [●]

---

**SCHEDULE 4**

**FORM OF NOTICE TO AND ACKNOWLEDGEMENT FROM ACCOUNT BANK**

To [insert name and address of Account Bank] (the “**Account Bank**”)

Dated: [●]

Dear Sirs

Re: **[Chargor] - Security over Bank Accounts**

We notify you that each of [insert names of Chargors] (the “**Chargors**”) has charged to [the Collateral Agent] (the “**Collateral Agent**”) for the benefit of itself and certain other banks and financial institutions all their right, title and interest in and to the monies from time to time standing to the credit of the accounts identified in the schedule to this notice (the “**Charged Accounts**”) and to all interest (if any) accruing on the Charged Accounts by way of a security agreement dated [●] (the “**Security Agreement**”).

- 1 Prior to the receipt by you of a notice from the Collateral Agent specifying that an Account Control Event is continuing, the Chargors will have the sole right: (i) to operate and transact business in relation to the Charged Accounts (including making withdrawals from and effecting closures of the Charged Accounts), and (ii) to deal with you in relation to the Charged Accounts.
  - 2 Following receipt by you of a written notice from the Collateral Agent specifying that an Account Control Event is continuing, the Chargors irrevocably authorise you:
    - (a) to hold all monies from time to time standing to the credit of the Charged Accounts to the order of the Collateral Agent and to pay all or any part of those monies to the Collateral Agent (or as it may direct) promptly following receipt of written instructions from the Collateral Agent to that effect; and
    - (b) subject to the requirements of applicable law, to disclose to the Collateral Agent any information relating to the Chargors and the Charged Accounts which the Collateral Agent may from time to time request you to provide.
  - 3 This notice may only be revoked or varied with the prior written consent of the Collateral Agent and the Chargors.
  - 4 Please sign and return the enclosed copy of this notice to the Collateral Agent (with a copy to the Chargors) by way of your confirmation that:
    - (a) you agree to act in accordance with the provisions of this notice;
    - (b) you have not previously received notice (other than notices which were subsequently irrevocably and unconditionally withdrawn) that any Chargor has assigned its rights to the monies standing to the credit of the Charged Accounts or otherwise granted any security or other interest over those monies in favour of any third party;
-

- (c) you will not exercise any right to combine accounts or any rights of set-off or lien or any similar rights in relation to the monies standing to the credit of the Charged Accounts; and
- (d) you have not claimed or exercised, nor do you have outstanding any right to claim or exercise against any Chargor, any right of set-off, counter-claim or other right relating to the Charged Accounts, except prior security interests in favour of you created or arising by operation of law or in your standard terms and conditions (including, as applicable, for the netting of credit and debit balances pursuant to current account netting arrangements).

- 5 This notice shall take effect as a Cash Management Control Agreement for the purposes of the Credit Agreement.
- 6. This notice, and any acknowledgements in connection with it, and any non-contractual obligations arising out of or in connection with any of them, shall be governed by English law.

SCHEDULE

Customer [●]	Account Number [●]	Sort Code [●]	Status Not blocked
-----------------	-----------------------	------------------	-----------------------

Yours faithfully

.....  
for and on behalf of [**Name of Chargor**]

---

[On acknowledgement copy]

To: [●]  
as Collateral Agent [ADDRESS]

Copy to: [NAME OF EACH CHARGOR]

We acknowledge receipt of the above notice. We confirm and agree to the matters referred to in it.

\_\_\_\_\_  
for and on behalf of  
[Name of Account Bank]

Dated: [●]

---



**SCHEDULE 5**

**FORM OF ACCESSION DEED THIS ACCESSION DEED** is made on 20[●]  
**BETWEEN**

- (1) **EACH COMPANY LISTED IN SCHEDULE 1** (each an “**Acceding Company**”); and
- (2) [●] (as Collateral Agent for the Secured Creditors (as defined below)) (the “**Collateral Agent**”).

**BACKGROUND**

This Accession Deed is supplemental to a security agreement dated [●] and made between (1) the Chargors named in it and (2) the Collateral Agent (the “**Security Agreement**”). **IT IS AGREED:**

**1. DEFINITIONS AND INTERPRETATION**

**(a) Definitions**

Terms defined in, or construed for the purposes of, the Security Agreement have the same meanings when used in this Accession Deed including the recital to this Accession Deed (unless otherwise defined in this Accession Deed).

**(b) Construction**

Clause 1.2 (*Interpretation*) of the Security Agreement applies with any necessary changes to this Accession Deed as if it were set out in full in this Accession Deed.

**2. ACCESSION OF THE ACCEDING COMPANY**

**(a) Accession**

[The/Each] Acceding Company:

- (i) unconditionally and irrevocably undertakes to and agrees with the Collateral Agent to observe and be bound by the Security Agreement; and
- (ii) creates and grants [at the date of this Deed] the charges, mortgages, assignments and other security which are stated to be created or granted by the Security Agreement, as if it had been an original party to the Security Agreement as one of the Chargors.

**(b) Covenant to pay**

Without prejudice to the generality of clause 2(a) (*Accession*), [the/each] Acceding Company (jointly and severally with the other Chargors [and each other Acceding Company]), covenants in the terms set out in clause 2 (*Covenant to Pay*) of the Security Agreement.

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**(c) Charge and assignment**

Subject to clause 8 (*Excluded Assets*) of the Security Agreement and without prejudice to the generality of clause 2(a) (*Accession*), [the/each] Acceding Company with full title guarantee, charges and assigns (and agrees to charge and assign) to the Collateral Agent for the payment and discharge of the Secured Obligations, all its right, title and interest in and to the property, assets and undertaking owned by it or in which it has an interest, on the terms set out in clauses 1.7 (*Obligations secured by this Deed*), 3 (*Grant of Security*), 4 (*Fixed Security*), 5 (*Floating Charge*) and 6 (***Grant of license***) of the Security Agreement including (without limiting the generality of the foregoing):

- (i) by way of first fixed charge all Inventory the benefit of all contracts, licences and warranties relating to the same;
- (ii) by way of first fixed charge all Charged Accounts of the Acceding Company (including, without limitation, those specified [against its name] in Part 1 (*Charged Accounts*) of Schedule 2 (*Details of Security Assets owned by Acceding Companies*)) and all monies at any time standing to the credit of such Charged Accounts, together with all interest from time to time accrued or accruing on such monies, any investment made out of such monies or account and all rights to repayment of any of the foregoing;
- (iii) by way of assignment and, to the extent not effectively assigned, by way of first fixed charge all its right, title and interest in, proceeds of (and claims under) each Assigned Asset;
- (iv) by way of first fixed charge (to the extent not otherwise charged or assigned in this Deed) the benefit of all licences, consents, agreements and authorisations held or used in connection with the use of any of the Security Assets; and
- (v) by way of first floating charge all of its present and future Security Assets.

**(d) Security Assignment**

Subject to clause 8 (*Excluded Assets*) of the Security Agreement, [the/each Acceding Company] assigns and agrees to assign absolutely as continuing security for the payment and discharge of the Secured Obligations (subject to a proviso for reassignment on redemption) all of its present and future right, title and interest in and to:

- (i) all Insurances and all claims under the Insurances and all proceeds of the Insurances; and
- (ii) all Receivables.

To the extent that any Assigned Asset is not assignable, the assignment which that clause purports to effect shall operate instead as an assignment of all present and future rights and claims of such Chargor to any proceeds of such Insurances and Receivables.

**3. REPRESENTATIONS**

[The / Each] Acceding Company makes the representations and warranties set out in clause 10 of the Security Agreement as at the date of this Deed.

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**4. CONSTRUCTION OF SECURITY AGREEMENT**

This Accession Deed shall be read as one with the Security Agreement so that all references in the Security Agreement to “*this Deed*” and similar expressions shall include references to this Accession Deed.

**5. THIRD PARTY RIGHTS**

A person who is not a party to this Accession Deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Accession Deed.

**6. NOTICE DETAILS**

Notice details for [the/each] Acceding Company are those identified with its name below.

**7. COUNTERPARTS**

This Accession Deed may be executed in any number of counterparts, and this has the same effect as if the signatures (and seals, if any) on the counterparts were on a single copy of this Accession Deed.

**8. GOVERNING LAW**

This Accession Deed and any non-contractual obligations arising out of or in connection with it shall be governed by English law.

**IN WITNESS** of which this Accession Deed has been duly executed by [the/each] Acceding Company as a deed and duly executed by the Collateral Agent and has been delivered on the first date specified on page 1 of this Accession Deed][by [the/each] Acceding Company.

---

**SCHEDULE 1 TO THE ACCESSION DEED**

**The Acceding Companies**

Acceding Company	Jurisdiction of incorporation	Registration number	Registered office
[●]	[●]	[●]	[●]
[●]	[●]	[●]	[●]

**SCHEDULE 2 TO THE ACCESSION DEED**

**Details of Security Assets owned by the Acceding Companies**

**Core UK Deposit Accounts**

Accounts						
Account holder	Account Bank	Account number	Swift code	Sort code	IBAN	Currency
[●]	[●]	[●]	[●]	[●]	[●]	[●]

**EXECUTION PAGES OF THE ACCESSION DEED THE ACCEDING COMPAN[Y][IES]  
EITHER one director in the presence of a witness**

EXECUTED AS A DEED

By: [●] )  
as Acceding Company ) Signature \_\_\_\_\_

Director name: \_\_\_\_\_

Witness signature : \_\_\_\_\_

Witness name: \_\_\_\_\_

Witness address: \_\_\_\_\_

Notice details:

Address: [●]

Telephone No: [●]

Email: [●]

Attention: [●]

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***OR where executing by an individual attorney in the presence of a witness***

EXECUTED AS A DEED )  
By: [●] )  
as Acceding Company by its attorney )  
\_\_\_\_\_ [acting pursuant to a )  
power of attorney dated [●] in )  
the presence of ) Signature \_\_\_\_\_

as attorney for [●]

Witness signature : \_\_\_\_\_

Witness name: \_\_\_\_\_

Witness address: \_\_\_\_\_

Notice details:

Address: [ ● ]

Telephone No: [ ● ]

Email: [ ● ]

Attention: [ ● ]

**THE COLLATERAL AGENT**

By: [●] )  
as Collateral Agent )  
) ) Signature \_\_\_\_\_

Name:

Notice details:

Address: [ ● ]

Telephone No: [ ● ]

Email: [ ● ]

Attention: [ ● ]

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**The Original Charging Companies**

EXECUTED as a DEED by

**TESLA MOTORS LIMITED**

acting by:

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Name of Director

**Witnessed by:**

\_\_\_\_\_  
Signature of Witness

Name of Witness: \_\_\_\_\_

Occupation of Witness: \_\_\_\_\_

Address of Witness: \_\_\_\_\_

Notice details:

Address:

Telephone No:

Email:

Attention:

\_\_\_\_\_

**The Collateral Agent**

**DEUTSCHE BANK AG NEW YORK BRANCH**

as Collateral Agent

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

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

Notice details:

Address:

Telephone No

Email:

Attention:

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[To be attached]

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## Lenders; Commitments

## Revolving Loan Commitments

Lender	Revolving Loan Commitment	DTPP Passport Scheme Reference Number
DEUTSCHE BANK AG NEW YORK BRANCH	\$275,000,000.00	07/D/70006/DTPP
BANK OF AMERICA, N.A.	\$272,000,000.00	13/B/7418
BARCLAYS BANK PLC	\$272,000,000.00	N/A
CITIBANK, N.A.	\$272,000,000.00	13/C/62301/DTPP
GOLDMAN SACHS BANK USA	\$272,000,000.00	13/G/351779/DTPP
MORGAN STANLEY SENIOR FUNDING, INC.	\$272,000,000.00	13/M/227953/DTPP
CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH	\$197,500,000.00	N/A
SOCIETE GENERALE S.A. - NEW YORK BRANCH	\$197,500,000.00	5/S/70085/DTPP
WELLS FARGO BANK, NATIONAL ASSOCIATION	\$197,500,000.00	13/W/61173/DTPP
BANK OF THE WEST	\$100,000,000.00	13/B/359711/DTPP
<b>TOTAL COMMITMENTS</b>	<b>\$2,327,500,000.00</b>	

## Exhibit 21.1

## SUBSIDIARIES OF TESLA, INC.

Name of Subsidiary	Jurisdiction of Incorporation or Organization
Allegheny Solar 1, LLC	Delaware
Allegheny Solar Manager 1, LLC	Delaware
Ancon Holdings II, LLC	Delaware
Ancon Holdings III, LLC	Delaware
Ancon Holdings, LLC	Delaware
Ancon Solar Corporation	Delaware
Ancon Solar I, LLC	Delaware
Ancon Solar II Lessee Manager, LLC	Delaware
Ancon Solar II Lessee, LLC	Delaware
Ancon Solar II Lessor, LLC	Delaware
Ancon Solar III Lessee Manager, LLC	Delaware
Ancon Solar III Lessee, LLC	Delaware
Ancon Solar III Lessor, LLC	Delaware
Ancon Solar Managing Member I, LLC	Delaware
Arpad Solar Borrower, LLC	Delaware
Arpad Solar I, LLC	Delaware
Arpad Solar Manager I, LLC	Delaware
AU Solar 1, LLC	Delaware
AU Solar 2, LLC	Delaware
Banyan SolarCity Manager 2010, LLC	Delaware
Banyan SolarCity Owner 2010, LLC	Delaware
Basking Solar I, LLC	Delaware
Basking Solar II, LLC	Delaware
Basking Solar Manager II, LLC	Delaware
Beatrix Solar I, LLC	Delaware
Bernese Solar Manager I, LLC	Delaware
Blue Skies Solar I, LLC	Delaware
Blue Skies Solar II, LLC	Delaware
Caballero Solar Managing Member I, LLC	Delaware
Caballero Solar Managing Member II, LLC	Delaware
Caballero Solar Managing Member III, LLC	Delaware
Cardinal Blue Solar, LLC	Delaware
Castello Solar I, LLC	Delaware
Castello Solar II, LLC	Delaware
Castello Solar III, LLC	Delaware
Chaparral SREC Borrower, LLC	Delaware
Chaparral SREC Holdings, LLC	Delaware
Chompie Solar I, LLC	Delaware
Chompie Solar II, LLC	Delaware
Chompie Solar Manager I, LLC	Delaware
Chompie Solar Manager II, LLC	Delaware
Clydesdale SC Solar I, LLC	Delaware
Colorado River Project, LLC	Delaware
Community Solar Partners, LLC	Delaware
Compass Automation Incorporated	Illinois
Dom Solar General Partner I, LLC	Delaware
Dom Solar Lessor I, LP	Cayman Islands
Dom Solar Ltd.	Cayman Islands
Dom Solar Limited Partner I, LLC	Delaware
Eiger Lease Co, LLC	Delaware

Falconer Solar Manager I, LLC  
Firehorn Solar I, LLC  
Firehorn Solar Manager I, LLC  
FocalPoint Solar Borrower, LLC  
FocalPoint Solar I, LLC  
FocalPoint Solar Manager I, LLC

Delaware  
Cayman Islands  
Delaware  
Delaware  
Delaware  
Delaware

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Fontane Solar I, LLC	Delaware
Fotovoltaica GI 4, S. de R.L. de C.V.	Mexico
Fotovoltaica GI 5, S. de R.L. de C.V.	Mexico
FP System Owner, LLC	Delaware
FTE Solar I, LLC	Delaware
Gambit Energy Storage, LLC	Delaware
Grohmann Engineering Trading (Shanghai) Co. Ltd.	China
Grohmann USA, Inc.	Delaware
Guilder Solar, LLC	Delaware
Hamilton Solar, LLC	Delaware
Hangzhou Silevo Electric Power Co., Ltd.	China
Harpoon Solar I, LLC	Delaware
Harpoon Solar Manager I, LLC	Delaware
Haymarket Holdings, LLC	Delaware
Haymarket Manager 1, LLC	Delaware
Haymarket Solar 1, LLC	Delaware
Hibar China Co. Ltd.	China
Hibar Systems Europe GmbH	Germany
Hive Battery Inc.	Delaware
Ikehu Manager I, LLC	Delaware
IL Buono Solar I, LLC	Delaware
Iliosson, S.A. de C.V.	Mexico
Industrial Maintenance Technologies, Inc.	California
Klamath Falls Solar 1, LLC	Delaware
Knight Solar Managing Member I, LLC	Delaware
Knight Solar Managing Member II, LLC	Delaware
Knight Solar Managing Member III, LLC	Delaware
Landlord 2008-A, LLC	Delaware
Louis Solar II, LLC	Delaware
Louis Solar III, LLC	Delaware
Louis Solar Manager II, LLC	Delaware
Louis Solar Manager III, LLC	Delaware
Louis Solar Master Tenant I, LLC	Delaware
Louis Solar MT Manager I, LLC	Delaware
Louis Solar Owner I, LLC	Delaware
Louis Solar Owner Manager I, LLC	Delaware
Mako GB SPV Holdings, LLC	Delaware
Mako GB SPV, LLC	Delaware
Mako Solar Holdings, LLC	Delaware
Mako Solar, LLC	Delaware
Master Tenant 2008-A, LLC	Delaware
Matterhorn Solar I, LLC	Delaware
Maxwell Holding GmbH	Germany
Maxwell Sequoia, Inc.	Delaware
Maxwell Technologies GmbH	Germany
Maxwell Technologies Hong Kong Limited	Hong Kong
Maxwell Technologies, Inc.	Delaware
Maxwell Technologies Korea Co., Ltd.	Republic of Korea
Maxwell Technologies Shanghai Trading Co., Ltd.	China
Maxwell Technologies Shenzhen Trading Co., Ltd.	China
Megalodon Solar, LLC	Delaware
MML Acquisition Corp.	Delaware
Monte Rosa Solar I, LLC	Delaware
Mound Solar Manager V, LLC	Delaware
Mound Solar Manager VI, LLC	Delaware
Mound Solar Manager X, LLC	Delaware
Mound Solar Manager XI, LLC	Delaware
Mound Solar Manager XII, LLC	Delaware
Mound Solar Master Tenant IX, LLC	Delaware
Mound Solar Master Tenant V, LLC	California
Mound Solar Master Tenant VI, LLC	Delaware
Mound Solar Master Tenant VII, LLC	Delaware

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Mound Solar Master Tenant VIII, LLC	Delaware
Mound Solar MT Manager IX, LLC	Delaware
Mound Solar MT Manager VII, LLC	Delaware
Mound Solar MT Manager VIII, LLC	Delaware
Mound Solar Owner IX, LLC	Delaware
Mound Solar Owner Manager IX, LLC	Delaware
Mound Solar Owner Manager VII, LLC	Delaware
Mound Solar Owner Manager VIII, LLC	Delaware
Mound Solar Owner V, LLC	California
Mound Solar Owner VI, LLC	Delaware
Mound Solar Owner VII, LLC	Delaware
Mound Solar Owner VIII, LLC	Delaware
Mound Solar Partnership X, LLC	Delaware
Mound Solar Partnership XI, LLC	Delaware
Mound Solar Partnership XII, LLC	Delaware
MS SolarCity 2008, LLC	Delaware
MS SolarCity Commercial 2008, LLC	Delaware
MS SolarCity Residential 2008, LLC	Delaware
NBA SolarCity AFB, LLC	California
NBA SolarCity Commercial I, LLC	California
NBA SolarCity Solar Phoenix, LLC	California
Northern Nevada Research Co., LLC	Nevada
Oranje Solar I, LLC	Delaware
Oranje Solar Manager I, LLC	Delaware
Paramount Energy Fund I Lessee, LLC	Delaware
Paramount Energy Fund I Lessor, LLC	Delaware
PEF I MM, LLC	Delaware
Perbix Machine Company, Inc.	Minnesota
Presidio Solar I, LLC	Delaware
Presidio Solar II, LLC	Delaware
Presidio Solar III, LLC	Delaware
Pukana La Solar I, LLC	Delaware
R9 Solar 1, LLC	Delaware
Roadster Automobile Sales and Service (Beijing) Co., Ltd.	China
Roadster Finland Oy	Finland
SA VPP Holding Trust	Australia
SA VPP Project Trust	Australia
Sequoia Pacific Holdings, LLC	Delaware
Sequoia Pacific Manager I, LLC	Delaware
Sequoia Pacific Solar I, LLC	Delaware
Sequoia SolarCity Owner I, LLC	Delaware
Servicios de Tecnología Y Administración Ilios, S.A. de C.V.	Mexico
Sierra Solar Power (Hong Kong) Limited	Hong Kong
SiiLion, Inc.	Delaware
Silevo, LLC	Delaware
Solar Aquarium Holdings, LLC	Delaware
Solar Energy of America 1, LLC	Delaware
Solar Energy of America Manager 1, LLC	Delaware
Solar Explorer, LLC	Delaware
Solar Gezellig Holdings, LLC	Delaware
Solar House I, LLC	Delaware
Solar House II, LLC	Delaware
Solar House III, LLC	Delaware
Solar House IV, LLC	Delaware
Solar Integrated Fund I, LLC	Delaware
Solar Integrated Fund II, LLC	Delaware
Solar Integrated Fund III, LLC	Delaware
Solar Integrated Fund IV-A, LLC	Delaware
Solar Integrated Fund V, LLC	Delaware
Solar Integrated Fund VI, LLC	Delaware
Solar Integrated Manager I, LiLC	Delaware
Solar Integrated Manager II, LLC	Delaware

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Solar Integrated Manager III, LLC	Delaware
Solar Integrated Manager IV-A, LLC	Delaware
Solar Integrated Manager V, LLC	Delaware
Solar Integrated Manager VI, LLC	Delaware
Solar Services Company, LLC	Delaware
Solar Ulysses Manager I, LLC	Delaware
Solar Ulysses Manager II, LLC	Delaware
Solar Voyager, LLC	Delaware
Solar Warehouse Manager I, LLC	Delaware
Solar Warehouse Manager II, LLC	Delaware
Solar Warehouse Manager III, LLC	Delaware
Solar Warehouse Manager IV, LLC	Delaware
SolarCity Alpine Holdings, LLC	Delaware
SolarCity Amphitheatre Holdings, LLC	Delaware
SolarCity Arbor Holdings, LLC	Delaware
SolarCity Arches Holdings, LLC	Delaware
SolarCity AU Holdings, LLC	Delaware
SolarCity Cruyff Holdings, LLC	Delaware
SolarCity Electrical, LLC	Delaware
SolarCity Electrical New York Corporation	Delaware
SolarCity Finance Company, LLC	Delaware
SolarCity Finance Holdings, LLC	Delaware
SolarCity Foxborough Holdings, LLC	Delaware
SolarCity FTE Series 1, LLC	Delaware
SolarCity FTE Series 2, LLC	Delaware
SolarCity Fund Holdings, LLC	Delaware
SolarCity Grand Canyon Holdings, LLC	Delaware
SolarCity Holdings 2008, LLC	Delaware
SolarCity International, Inc.	Delaware
SolarCity Leviathan Holdings, LLC	Delaware
SolarCity LMC Series I, LLC	Delaware
SolarCity LMC Series II, LLC	Delaware
SolarCity LMC Series III, LLC	Delaware
SolarCity LMC Series IV, LLC	Delaware
SolarCity LMC Series V, LLC	Delaware
SolarCity Mid-Atlantic Holdings, LLC	Delaware
SolarCity Nitro Holdings, LLC	Delaware
SolarCity Orange Holdings, LLC	Delaware
SolarCity Series Holdings I, LLC	Delaware
SolarCity Series Holdings II, LLC	Delaware
SolarCity Series Holdings IV, LLC	Delaware
SolarCity Steep Holdings, LLC	Delaware
SolarCity Ulu Holdings, LLC	Delaware
SolarCity Village Holdings, LLC	Delaware
SolarRock, LLC	Delaware
SolarStrong, LLC	Delaware
Sparrowhawk Solar I, LLC	Delaware
SREC Holdings, LLC	Delaware
TALT Holdings, LLC	Delaware
TALT TBM Holdings, LLC	Delaware
TBM Partnership II, LLC	Delaware
TEO Engineering, Inc.	California
TES 2017-1, LLC	Delaware
TES 2017-2, LLC	Delaware
TES 2018-K2, LLC	Delaware
TES Holdings 2017-1, LLC	Delaware
TES Holdings 2018-K2, LLC	Delaware
Tesla 2014 Warehouse SPV LLC	Delaware
Tesla Auto Lease Trust 2018-B	Delaware
Tesla Auto Lease Trust 2019-A	Delaware
Tesla Auto Lease Trust 2020-A	Delaware
Tesla Automation GmbH	Germany

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Tesla Automobile Information Service (Dalian) Co., Ltd.	China
Tesla Automobile Sales and Service (Beijing) Co., Ltd.	China
Tesla Automobile Sales and Service (Changchun) Co., Ltd.	China
Tesla Automobile Sales and Service (Changsha) Co., Ltd.	China
Tesla Automobile Sales and Service (Chengdu) Co., Ltd.	China
Tesla Automobile Sales and Service (Chongqing) Co., Ltd.	China
Tesla Automobile Sales and Service (Dalian) Co., Ltd.	China
Tesla Automobile Sales and Service (Fuzhou) Co., Ltd.	China
Tesla Automobile Sales and Service (Guangzhou) Co., Ltd.	China
Tesla Automobile Sales and Service (Guiyang) Co., Ltd.	China
Tesla Automobile Sales and Service (Haerbin) Co., Ltd.	China
Tesla Automobile Sales and Service (Haikou) Co., Ltd.	China
Tesla Automobile Sales and Service (Hangzhou) Co., Ltd.	China
Tesla Automobile Sales and Service (Hefei) Co., Ltd.	China
Tesla Automobile Sales and Service (Jinan) Co., Ltd.	China
Tesla Automobile Sales and Service (Kunming) Co., Ltd.	China
Tesla Automobile Sales and Service (Nanchang) Co., Ltd.	China
Tesla Automobile Sales and Service (Nanjing) Co., Ltd.	China
Tesla Automobile Sales and Service (Nanning) Co., Ltd.	China
Tesla Automobile Sales and Service (Ningbo) Co., Ltd.	China
Tesla Automobile Sales and Service (Qingdao) Co., Ltd.	China
Tesla Automobile Sales and Service (Shanghai) Co., Ltd.	China
Tesla Automobile Sales and Service (Shenyang) Co., Ltd.	China
Tesla Automobile Sales and Service (Shenzhen) Co., Ltd.	China
Tesla Automobile Sales and Service (Shijiazhuang) Co., Ltd.	China
Tesla Automobile Sales and Service (Suzhou) Co. Ltd.	China
Tesla Automobile Sales and Service (Taiyuan) Co., Ltd.	China
Tesla Automobile Sales and Service (Tianjin) Co. Ltd.	China
Tesla Automobile Sales and Service (Wenzhou) Co., Ltd.	China
Tesla Automobile Sales and Service (Wuhan) Co., Ltd.	China
Tesla Automobile Sales and Service (Xi'an) Co., Ltd.	China
Tesla Automobile Sales and Service (Xiamen) Co., Ltd.	China
Tesla Automobile Sales and Service (Zhengzhou) Co. Ltd.	China
Tesla Automobiles Sales and Service Mexico, S. de R.L. de C.V.	Mexico
Tesla (Beijing) New Energy R&D Co., Ltd.	China
Tesla Belgium BV	Belgium
Tesla Canada GP Inc.	Canada
Tesla Canada LP	Canada
Tesla Charging, LLC	Delaware
Tesla Construction (Shanghai) Co., Ltd.	China
Tesla Czech Republic s.r.o.	Czech Republic
Tesla Energia Macau Limitada	Macau
Tesla Energy d.o.o.	Slovenia
Tesla Energy Operations, Inc.	Delaware
Tesla Finance LLC	Delaware
Tesla Financial Leasing (China) Co., Ltd.	China
Tesla Financial Services GmbH	Germany
Tesla Financial Services Holdings B.V.	Netherlands
Tesla Financial Services Limited	United Kingdom
Tesla France S.à r.l.	France
Tesla Germany GmbH	Germany
Tesla Greece Single Member P.C.	Greece
Tesla Hrvatska d.o.o.	Croatia
Tesla Hungary Kft.	Hungary
Tesla India Motors and Energy Private Limited	India
Tesla Insurance Brokers Co., Ltd.	China
Tesla Insurance Holdings, LLC	Delaware
Tesla Insurance, Inc.	Delaware
Tesla Insurance Ltd.	Malta
Tesla Insurance Services, Inc.	California
Tesla Insurance Services of Texas, Inc.	Texas
Tesla International B.V.	Netherlands

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Tesla Italy S.r.l.	Italy
Tesla Jordan Car Trading LLC	Jordan
Tesla Korea Limited	Republic of Korea
Tesla Lease Trust	Delaware
Tesla Manufacturing Brandenburg SE	Germany
Tesla Michigan, Inc.	Michigan
Tesla Mississippi LLC	Delaware
Tesla Motors Australia, Pty Ltd	Australia
Tesla Motors Austria GmbH	Austria
Tesla Motors (Beijing) Co., Ltd.	China
Tesla Motors Canada ULC	Canada
Tesla Motors Coöperatief U.A.	Netherlands
Tesla Motors Denmark ApS	Denmark
Tesla Motors FL, Inc.	Florida
Tesla Motors HK Limited	Hong Kong
Tesla Motors Iceland ehf.	Iceland
Tesla Motors Ireland Limited	Ireland
Tesla Motors Israel Ltd.	Israel
Tesla Motors Japan GK	Japan
Tesla Motors Limited	United Kingdom
Tesla Motors Luxembourg S.à r.l.	Luxembourg
Tesla Motors MA, Inc.	Massachusetts
Tesla Motors Netherlands B.V.	Netherlands
Tesla Motors New York LLC	New York
Tesla Motors NL LLC	Delaware
Tesla Motors NV, Inc.	Nevada
Tesla Motors PA, Inc.	Pennsylvania
Tesla Motors Romania S.R.L.	Romania
Tesla Motors Sales and Service LLC	Turkey
Tesla Motors Singapore Holdings Pte. Ltd.	Singapore
Tesla Motors Singapore Private Limited	Singapore
Tesla Motors Stichting	Netherlands
Tesla Motors Taiwan Limited	Taiwan
Tesla Motors TN, Inc.	Tennessee
Tesla Motors TX, Inc.	Texas
Tesla Motors UT, Inc.	Utah
Tesla Nambe LLC	Delaware
Tesla New Zealand ULC	New Zealand
Tesla Norway AS	Norway
Tesla Poland sp. z o.o.	Poland
Tesla Portugal, Sociedade Unipessoal LDA	Portugal
Tesla Puerto Rico LLC	Puerto Rico
Tesla Pumps Seoul Ltd.	Republic of Korea
Tesla Sales, Inc.	Delaware
Tesla Services Sdn. Bhd.	Malaysia
Tesla Shanghai Co., Ltd	China
Tesla Spain, S.L. Unipersonal	Spain
Tesla Switzerland GmbH	Switzerland
Tesla Toronto Automation ULC	Canada
Tesla Toronto International Holdings ULC	Canada
Tesla Transport B.V.	Netherlands
The Big Green Solar I, LLC	Delaware
The Big Green Solar Manager I, LLC	Delaware
Three Rivers Solar 1, LLC	Delaware
Three Rivers Solar 2, LLC	Delaware
Three Rivers Solar 3, LLC	Delaware
Three Rivers Solar Manager 1, LLC	Delaware
Three Rivers Solar Manager 2, LLC	Delaware
Three Rivers Solar Manager 3, LLC	Delaware
TM International C.V.	Netherlands
TM Sweden AB	Sweden
USB SolarCity Manager IV, LLC	Delaware

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USB SolarCity Master Tenant IV, LLC  
USB SolarCity Owner 2009, LLC  
USB SolarCity Owner IV, LLC  
Visigoth Solar 1, LLC  
Visigoth Solar Holdings, LLC  
Visigoth Solar Managing Member 1, LLC  
VPP Project 1 (SA) Pty Ltd.  
Weisshorn Solar I, LLC  
Weisshorn Solar Manager I, LLC  
Zep Solar Hong Kong Limited  
Zep Solar LLC

California  
California  
California  
Delaware  
Delaware  
Delaware  
Australia  
Delaware  
Delaware  
Hong Kong  
California

**Exhibit 23.1**

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in the Registration Statements on Form S-3 (Nos. 333-231168 and 333-230180) and S-8 (Nos. 333-232079, 333-223169, 333-216376, 333-209696, 333-198002, 333-187113, 333-183033, and 333-167874) of Tesla, Inc. of our report dated February 8, 2021 relating to the financial statements and the effectiveness of internal control over financial reporting, which appears in this Form 10-K.

/s/ PricewaterhouseCoopers LLP

San Jose, California  
February 8, 2021

**Exhibit 31.1**

**CERTIFICATIONS**

I, Elon Musk, certify that:

1. I have reviewed this Annual Report on Form 10-K of Tesla, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's Board of Directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 8, 2021

/s/ Elon Musk  
Elon Musk  
Chief Executive Officer  
(Principal Executive Officer)

**Exhibit 31.2**

**CERTIFICATIONS**

I, Zachary J. Kirkhorn, certify that:

1. I have reviewed this Annual Report on Form 10-K of Tesla, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;



4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
- (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's Board of Directors (or persons performing the equivalent functions):
- (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 8, 2021

/s/ Zachary J. Kirkhorn  
Zachary J. Kirkhorn  
Chief Financial Officer  
(Principal Financial Officer)

**Exhibit 32.1**

#### **SECTION 1350 CERTIFICATIONS**

I, Elon Musk, certify, pursuant to 18 U.S.C. Section 1350, that, to my knowledge, the Annual Report of Tesla, Inc. on Form 10-K for the annual period ended December 31, 2020, (i) fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and (ii) that the information contained in such Form 10-K fairly presents, in all material respects, the financial condition and results of operations of Tesla, Inc.

Date: February 8, 2021

/s/ Elon Musk  
Elon Musk  
Chief Executive Officer  
(Principal Executive Officer)

I, Zachary J. Kirkhorn, certify, pursuant to 18 U.S.C. Section 1350, that, to my knowledge, the Annual Report of Tesla, Inc. on Form 10-K for the annual period ended December 31, 2020, (i) fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and (ii) that the information contained in such Form 10-K fairly presents, in all material respects, the financial condition and results of operations of Tesla, Inc.

Date: February 8, 2021

/s/ Zachary J. Kirkhorn  
Zachary J. Kirkhorn  
Chief Financial Officer  
(Principal Financial Officer)