

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
FORM 10-Q

(Mark One)

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

For the quarterly period ended June 30, 2020

OR

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

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

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 Accelerated filer
Non-accelerated filer Smaller reporting company
Emerging growth company

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

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

As of July 20, 2020, there were 186,361,726 shares of the registrant's common stock outstanding.

TESLA, INC.
FORM 10-Q FOR THE QUARTER ENDED JUNE 30, 2020

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Forward-Looking Statements

The discussions in this Quarterly Report on Form 10-Q 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 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 II, Item 1A, "Risk Factors" in this Quarterly Report on Form 10-Q and in our other filings with the Securities and Exchange Commission. We do not assume any obligation to update any forward-looking statements.

PART I. FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

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

	June 30, 2020	December 31, 2019
Assets		
Current assets		
Cash and cash equivalents	\$ 8,615	\$ 6,268
Accounts receivable, net	1,485	1,324
Inventory	4,018	3,552
Prepaid expenses and other current assets	1,218	959
Total current assets	15,336	12,103
Operating lease vehicles, net	2,524	2,447
Solar energy systems, net	6,069	6,138
Property, plant and equipment, net	11,009	10,396
Operating lease right-of-use assets	1,274	1,218
Intangible assets, net	312	339
Goodwill	196	198
Other non-current assets	1,415	1,470
Total assets	\$ 38,135	\$ 34,309
Liabilities		
Current liabilities		
Accounts payable	\$ 3,638	\$ 3,771
Accrued liabilities and other	3,110	3,222
Deferred revenue	1,130	1,163
Customer deposits	713	726
Current portion of debt and finance leases	3,679	1,785
Total current liabilities	12,270	10,667
Debt and finance leases, net of current portion	10,416	11,634
Deferred revenue, net of current portion	1,198	1,207
Other long-term liabilities	2,870	2,691
Total liabilities	26,754	26,199
Commitments and contingencies (Note 12)		
Redeemable noncontrolling interests in subsidiaries	613	643
Convertible senior notes (Note 10)	44	—
Equity		
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; 186 and 181 shares issued and outstanding as of June 30, 2020 and December 31, 2019, respectively	0	0
Additional paid-in capital	15,895	12,737
Accumulated other comprehensive loss	(40)	(36)
Accumulated deficit	(6,000)	(6,083)
Total stockholders' equity	9,855	6,618
Noncontrolling interests in subsidiaries	869	849
Total liabilities and equity	\$ 38,135	\$ 34,309

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

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

	<u>Three Months Ended June 30,</u>		<u>Six Months Ended June 30,</u>	
	<u>2020</u>	<u>2019</u>	<u>2020</u>	<u>2019</u>
Revenues				
Automotive sales	\$ 4,911	\$ 5,168	\$ 9,804	\$ 8,677
Automotive leasing	268	208	507	423
Total automotive revenues	5,179	5,376	10,311	9,100
Energy generation and storage	370	369	663	693
Services and other	487	605	1,047	1,098
Total revenues	6,036	6,350	12,021	10,891
Cost of revenues				
Automotive sales	3,714	4,254	7,413	7,110
Automotive leasing	148	106	270	223
Total automotive cost of revenues	3,862	4,360	7,683	7,333
Energy generation and storage	349	326	631	642
Services and other	558	743	1,206	1,429
Total cost of revenues	4,769	5,429	9,520	9,404
Gross profit	1,267	921	2,501	1,487
Operating expenses				
Research and development	279	324	603	664
Selling, general and administrative	661	647	1,288	1,351
Restructuring and other	—	117	—	161
Total operating expenses	940	1,088	1,891	2,176
Income (loss) from operations	327	(167)	610	(689)
Interest income	8	10	18	19
Interest expense	(170)	(172)	(339)	(330)
Other expense, net	(15)	(41)	(69)	(15)
Income (loss) before income taxes	150	(370)	220	(1,015)
Provision for income taxes	21	19	23	42
Net income (loss)	129	(389)	197	(1,057)
Net income attributable to noncontrolling interests and redeemable noncontrolling interests in subsidiaries	25	19	77	53
Net income (loss) attributable to common stockholders	\$ 104	\$ (408)	\$ 120	\$ (1,110)
Net income (loss) per share of common stock attributable to common stockholders				
Basic	\$ 0.56	\$ (2.31)	0.65	\$ (6.40)
Diluted	\$ 0.50	\$ (2.31)	0.59	\$ (6.40)
Weighted average shares used in computing net income (loss) per share of common stock				
Basic	186	177	184	175
Diluted	207	177	203	175

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

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

	<u>Three Months Ended June 30,</u>		<u>Six Months Ended June 30,</u>	
	<u>2020</u>	<u>2019</u>	<u>2020</u>	<u>2019</u>
Net income (loss)	\$ 129	\$ (389)	\$ 197	\$ (1,057)
Other comprehensive income (loss):				
Foreign currency translation adjustment	73	29	(4)	2
Comprehensive income (loss)	<u>202</u>	<u>(360)</u>	<u>193</u>	<u>(1,055)</u>
Less: Comprehensive income attributable to noncontrolling interests and redeemable noncontrolling interests in subsidiaries	25	19	77	53
Comprehensive income (loss) attributable to common stockholders	<u>\$ 177</u>	<u>\$ (379)</u>	<u>\$ 116</u>	<u>\$ (1,108)</u>

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)
(unaudited)

	Redeemable Noncontrolling Interests	Common Stock		Additional Paid-In Capital	Accumulated Deficit	Accumulated Other Comprehensive Loss	Total Stockholders' Equity	Noncontrolling Interests in Subsidiaries	Total Equity
		Shares	Amount						
		Three Months Ended June 30, 2019							
Balance as of March 31, 2019	\$ 570	174	\$ 0	\$ 10,564	\$ (5,923)	\$ (35)	\$ 4,606	\$ 862	\$ 5,468
Conversion feature of Convertible Senior Notes due in 2024	—	—	—	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	—	2	0	222	—	—	222	—	222
Issuance of common stock in May 2019 public offering at \$243.00 per share, net of issuance costs of \$15	—	3	0	848	—	—	848	—	848
Stock-based compensation	—	—	—	226	—	—	226	—	226
Contributions from noncontrolling interests	10	—	—	—	—	—	—	32	32
Distributions to noncontrolling interests	(26)	—	—	—	—	—	—	(33)	(33)
Other	—	—	—	3	—	—	3	—	3
Net income (loss)	26	—	—	—	(408)	—	(408)	(7)	(415)
Other comprehensive income	—	—	—	—	—	29	29	—	29
Balance as of June 30, 2019	\$ 580	179	\$ 0	\$ 12,052	\$ (6,331)	\$ (6)	\$ 5,715	\$ 854	\$ 6,569

	Redeemable Noncontrolling Interests	Common Stock		Additional Paid-In Capital	Accumulated Deficit	Other Comprehensive Loss	Total Stockholders' Equity	Noncontrolling Interests in Subsidiaries	Total Equity
		Shares	Amount						
		Six Months Ended June 30, 2019							
Balance as of December 31, 2018	\$ 556	173	\$ 0	\$ 10,249	\$ (5,318)	\$ (8)	\$ 4,923	\$ 834	\$ 5,757
Adjustments for prior periods from adopting ASC 842	—	—	—	—	97	—	97	—	97
Conversion feature of Convertible Senior Notes due in 2024	—	—	—	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	—	3	0	315	—	—	315	—	315
Issuance of common stock in May 2019 public offering at \$243.00 per share, net of issuance costs of \$15	—	3	0	848	—	—	848	—	848
Stock-based compensation	—	—	—	456	—	—	456	—	456
Contributions from noncontrolling interests	41	—	—	—	—	—	—	48	48
Distributions to noncontrolling interests	(37)	—	—	—	—	—	—	(61)	(61)
Buy-outs of noncontrolling interests	—	—	—	(8)	—	—	(8)	—	(8)
Other	—	—	—	3	—	—	3	—	3
Net income (loss)	20	—	—	—	(1,110)	—	(1,110)	33	(1,077)
Other comprehensive income	—	—	—	—	—	2	2	—	2
Balance as of June 30, 2019	\$ 580	179	\$ 0	\$ 12,052	\$ (6,331)	\$ (6)	\$ 5,715	\$ 854	\$ 6,569

	Redeemable Noncontrolling Interests	Common Stock		Additional Paid-In Capital	Accumulated Deficit	Accumulated Other Comprehensive Loss	Total Stockholders' Equity	Noncontrolling Interests in Subsidiaries	Total Equity
		Shares	Amount						
		Three Months Ended June 30, 2020							
Balance as of March 31, 2020	\$ 632	185	\$ 0	\$ 15,390	\$ (6,104)	\$ (113)	\$ 9,173	\$ 867	\$ 10,040
Reclassification from mezzanine equity to equity for 1.25% Convertible Senior Notes due in 2021	—	—	—	16	—	—	16	—	16
Exercises of conversion feature of convertible senior notes	—	0	0	65	—	—	65	—	65
Issuance of common stock for equity incentive awards	—	1	0	57	—	—	57	—	57
Stock-based compensation	—	—	—	367	—	—	367	—	367
Distributions to noncontrolling interests	(13)	—	—	—	—	—	—	(27)	(27)
Other	(2)	—	—	—	—	—	—	—	—
Net income	(4)	—	—	—	104	—	104	29	133
Other comprehensive income	—	—	—	—	—	73	73	—	73
Balance as of June 30, 2020	\$ 613	186	\$ 0	\$ 15,895	\$ (6,000)	\$ (40)	\$ 9,855	\$ 869	\$ 10,724

	Redeemable Noncontrolling Interests	Common Stock		Additional Paid-In Capital	Accumulated Deficit	Accumulated Other Comprehensive Income	Total Stockholders' Equity	Noncontrolling Interests in Subsidiaries	Total Equity
		Shares	Amount						
		Six Months Ended June 30, 2020							
Balance as of December 31, 2019	\$ 643	181	\$ 0	\$ 12,737	\$ (6,083)	\$ (36)	\$ 6,618	\$ 849	\$ 7,467
Adjustments for prior periods from adopting ASU 2016-13	—	—	—	—	(37)	—	(37)	—	(37)
Reclassification from equity to mezzanine equity for 1.25% Convertible Senior Notes due in 2021	—	—	—	(44)	—	—	(44)	—	(44)
Exercises of conversion feature of convertible senior notes	—	—	—	65	—	—	65	—	65
Issuance of common stock for equity incentive awards	—	2	0	217	—	—	217	—	217
Issuance of common stock in February 2020 public offering at \$767.00 per	—	3	0	2,309	—	—	2,309	—	2,309
share, net of issuance costs of \$28	—	—	—	611	—	—	611	—	611
Stock-based compensation	—	—	—	—	—	—	—	17	17
Contributions from noncontrolling interests	2	—	—	—	—	—	—	(77)	(77)
Distributions to noncontrolling interests	(27)	—	—	—	—	—	—	—	—
Other	(2)	—	—	—	—	—	—	—	—
Net income	(3)	—	—	—	120	—	120	80	200
Other comprehensive loss	—	—	—	—	—	(4)	(4)	—	(4)
Balance as of June 30, 2020	\$ 613	186	\$ 0	\$ 15,895	\$ (6,000)	\$ (40)	\$ 9,855	\$ 869	\$ 10,724

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

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

	Six Months Ended June 30,	
	2020	2019
Cash Flows from Operating Activities		
Net income (loss)	\$ 197	\$ (1,057)
Adjustments to reconcile net income (loss) to net cash provided by operating activities:		
Depreciation, amortization and impairment	1,120	1,047
Stock-based compensation	558	418
Amortization of debt discounts and issuance costs	94	82
Inventory and purchase commitments write-downs	88	116
Loss on disposals of fixed assets	12	48
Foreign currency transaction net loss (gain)	38	(11)
Non-cash interest and other operating activities	110	157
Operating cash flow related to repayment of discounted convertible notes	—	(188)
Changes in operating assets and liabilities, net of effect of business combinations:		
Accounts receivable	(236)	(168)
Inventory	(535)	(352)
Operating lease vehicles	(330)	(176)
Prepaid expenses and other current assets	(301)	(139)
Other non-current assets	(16)	42
Accounts payable and accrued liabilities	(372)	87
Deferred revenue	(20)	476
Customer deposits	5	(160)
Other long-term liabilities	112	2
Net cash provided by operating activities	<u>524</u>	<u>224</u>
Cash Flows from Investing Activities		
Purchases of property and equipment excluding finance leases, net of sales	(1,001)	(530)
Purchases of solar energy systems, net of sales	(46)	(43)
Receipt of government grants	1	—
Purchase of intangible assets	—	(5)
Business combinations, net of cash acquired	—	31
Net cash used in investing activities	<u>(1,046)</u>	<u>(547)</u>
Cash Flows from Financing Activities		
Proceeds from issuances of common stock in public offerings, net of issuance costs	2,309	848
Proceeds from issuances of convertible and other debt	4,946	5,008
Repayments of convertible and other debt	(4,226)	(3,700)
Collateralized lease repayments	(168)	(219)
Proceeds from exercises of stock options and other stock issuances	217	96
Principal payments on finance leases	(154)	(143)
Debt issuance costs	—	(30)
Purchase of convertible note hedges	—	(476)
Proceeds from issuance of warrants	—	174
Proceeds from investments by noncontrolling interests in subsidiaries	19	89
Distributions paid to noncontrolling interests in subsidiaries	(110)	(149)
Payments for buy-outs of noncontrolling interests in subsidiaries	(2)	(8)
Net cash provided by financing activities	<u>2,831</u>	<u>1,490</u>
Effect of exchange rate changes on cash and cash equivalents and restricted cash	14	5
Net increase in cash and cash equivalents and restricted cash	2,323	1,172
Cash and cash equivalents and restricted cash, beginning of period	6,783	4,277
Cash and cash equivalents and restricted cash, end of period	<u>\$ 9,106</u>	<u>\$ 5,449</u>
Supplemental Non-Cash Investing and Financing Activities		
Equity issued in connection with business combination	\$ —	\$ 207
Acquisitions of property and equipment included in liabilities	\$ 668	\$ 287
Leased assets obtained in exchange for finance lease liabilities	\$ 54	\$ 469
Leased assets obtained in exchange for operating lease liabilities	\$ 187	\$ 119

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

Tesla, Inc.
Notes to Consolidated Financial Statements
(unaudited)

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 June 30, 2020, there has continued to be widespread impact to the global economy from the coronavirus disease (“COVID-19”) pandemic. We had temporarily suspended operations at each of our manufacturing facilities worldwide at some point during the first half of 2020 as a result of government requirements or to accommodate related challenges for our employees, their families and our suppliers. Certain of our suppliers and partners, including Panasonic, our partner that manufactures lithium-ion battery cells for our products at our Gigafactory Nevada, also experienced such temporary suspensions. We had also instituted temporary labor cost reduction measures by furloughing certain of our hourly employees, reducing most salaried employees’ base salaries globally and reducing our bonus and commission structures while our U.S. operations were scaled back. Exiting the second quarter of 2020, however, we have resumed operations at all of our manufacturing facilities, 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. On the other hand, certain government regulations and public advisories, as well as shifting social behaviors, that have temporarily or sporadically limited or closed non-essential transportation, government functions, business activities and person-to-person interactions remain in place. In some cases, the relaxation of such trends has been followed by a return to stringent restrictions. We cannot predict the duration or direction of such trends, which have also adversely affected and may in the future affect our operations.

Note 2 - Summary of Significant Accounting Policies

Unaudited Interim Financial Statements

The consolidated balance sheet as of June 30, 2020, the consolidated statements of operations, the consolidated statements of comprehensive income (loss), the consolidated statements of redeemable noncontrolling interests and equity for the three and six months ended June 30, 2020 and 2019 and the consolidated statements of cash flows for the six months ended June 30, 2020 and 2019, as well as other information disclosed in the accompanying notes, are unaudited. The consolidated balance sheet as of December 31, 2019 was derived from the audited consolidated financial statements as of that date. The interim consolidated financial statements and the accompanying notes should be read in conjunction with the annual consolidated financial statements and the accompanying notes contained in our Annual Report on Form 10-K for the year ended December 31, 2019.

The interim consolidated financial statements and the accompanying notes have been prepared on the same basis as the annual consolidated financial statements and, in the opinion of management, reflect all adjustments, which include only normal recurring adjustments, necessary for a fair statement of the results of operations for the periods presented. The consolidated results of operations for any interim period are not necessarily indicative of the results to be expected for the full year or for any other future years or interim periods.

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 residual 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 Quarterly Report on Form 10-Q. 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

Revenue by source

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

	Three Months Ended June 30,		Six Months Ended June 30,	
	2020	2019	2020	2019
Automotive sales without resale value guarantee	\$ 4,423	\$ 4,919	\$ 8,790	\$ 8,602
Automotive sales with resale value guarantee (1)	60	138	232	(252)
Automotive regulatory credits	428	111	782	327
Energy generation and storage sales	225	226	398	438
Services and other	487	605	1,047	1,098
Total revenues from sales and services	5,623	5,999	11,249	10,213
Automotive leasing	268	208	507	423
Energy generation and storage leasing	145	143	265	255
Total revenues	\$ 6,036	\$ 6,350	\$ 12,021	\$ 10,891

- (1) Due to pricing adjustments we made to our vehicle offerings in the first half of 2019 and in the second quarter of 2020, 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 three and six months ended June 30, 2020, price adjustments resulted in a reduction of automotive sales with resale value guarantee of \$60 million. For the three and six months ended June 30, 2019, price adjustments resulted in a reduction of automotive sales with resale value guarantee of \$64 million and \$565 million, respectively. The amounts presented represent automotive sales with resale value guarantee net of such pricing adjustments' impact.

Automotive Sales Revenue

Automotive Sales with and without Resale Value Guarantee

Deferred revenue related to the access to our Supercharger network, internet connectivity and Full Self Driving ("FSD") features and over-the-air software updates on automotive sales with and without resale value guarantee amounted to \$1.61 billion and \$1.47 billion as of June 30, 2020 and December 31, 2019, respectively. Deferred revenue is equivalent to the total transaction price allocated to the performance obligations that are unsatisfied, or partially unsatisfied, as of the balance sheet date. Revenue recognized from the deferred revenue balance as of December 31, 2019 and 2018 was \$149 million and \$114 million for the six months ended June 30, 2020 and 2019, respectively. Of the total deferred revenue on automotive sales with and without resale value guarantees, we expect to recognize \$876 million of revenue in the next 12 months. The remaining balance will be recognized over the various performance periods of the obligations, which is up to the eight-year life of the vehicle.

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 estimates are based on historical experience. On a quarterly basis, we assess the estimated market values of vehicles under our buyback options program to determine whether there will be changes to 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 the three months ended June 30, 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 in the second quarter, we adjusted our sales return reserve on vehicles previously sold under our buyback options program resulting in a reduction of automotive sales revenues of \$60 million for the three months ended June 30, 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 automotive cost of sales of \$37 million for the three months ended June 30, 2020. The net impact was \$23 million reduction in gross profit for the three months ended June 30, 2020.

With the exception of two programs which are discussed within the *Automotive Leasing Revenue* section, we recognize revenue when control transfers upon delivery to customers 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. The total sales return reserve on vehicles previously sold under our buyback options program was \$650 million and \$639 million as of June 30, 2020 and December 31, 2019, respectively, of which \$124 million and \$93 million was short term, respectively.

Automotive Regulatory Credits

In connection with the production and delivery of our zero emission vehicles in global markets, we have earned and will continue to earn various tradable automotive regulatory credits. We have sold these credits, and will continue to sell future credits, to automotive companies and other regulated entities who can use the credits to comply with emission standards and other regulatory requirements. For example, under California's Zero Emission Vehicle Regulation and those of states that have adopted California's standard, vehicle manufacturers are required to earn or purchase credits, referred to as ZEV credits, for compliance with their annual regulatory requirements. These laws provide that automakers may bank or sell to other regulated parties their excess credits if they earn more credits than the minimum quantity required by those laws. We also earn other types of saleable regulatory credits in the United States and abroad, including greenhouse gas, fuel economy and clean fuels credits. Payments for 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 revenue in the consolidated statements of operations. Deferred revenue related to sales of automotive regulatory credits was \$0 million and \$140 million as of June 30, 2020 and December 31, 2019, respectively. Revenue recognized from the deferred revenue balance as of December 31, 2019 was \$140 million for the six months ended June 30, 2020.

Automotive Leasing Revenue

Automotive leasing revenue includes revenue recognized under lease accounting guidance for our direct leasing programs as well as the two programs with resale value guarantees described below.

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

The maximum amount we could be required to pay under our collateralized lease borrowing program, should we decide to repurchase all vehicles, was \$98 million and \$214 million as of June 30, 2020 and December 31, 2019, respectively, including \$61 million within a 12-month period from June 30, 2020. As of June 30, 2020 and December 31, 2019, we had \$106 million and \$238 million, respectively, of collateralized lease borrowings recorded in accrued liabilities and other and other long-term liabilities, and \$16 million and \$29 million, respectively, recorded in deferred revenue liability. For the three and six months ended June 30, 2020, we recognized \$19 million and \$52 million, respectively, of leasing revenue related to this program, and \$50 million and \$103 million, respectively, for the same periods in 2019. The net carrying amount of operating lease vehicles under this program was \$88 million and \$190 million as of June 30, 2020 and December 31, 2019, respectively.

Vehicle Sales to Customers with a Resale Value Guarantee where Exercise is Probable

As of June 30, 2020, we had an immaterial amount of resale value guarantees where exercise is probable recorded in accrued liabilities and other. As of December 31, 2019, we had \$115 million of resale value guarantees where exercise is probable recorded in accrued liabilities and other. For the three and six months ended June 30, 2020, we recognized \$66 million and \$101 million, respectively, of leasing revenue related to this program, and \$37 million and \$85 million, respectively, for the same periods in 2019. The net carrying amount of operating lease vehicles under this program was immaterial as of June 30, 2020 and \$83 million as of December 31, 2019. This portfolio will wind down completely in the third quarter of 2020.

Energy Generation and Storage Sales

As of June 30, 2020 and December 31, 2019, deferred revenue related to non-refundable customer prepayments, remote monitoring service, and operations and maintenance service amounted to \$172 million and \$156 million, respectively. Revenue recognized from the deferred revenue balance as of December 31, 2019 and 2018 was \$28 million and \$22 million for the six months ended June 30, 2020 and 2019, respectively. As of June 30, 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 \$105 million. Of this amount, we expect to recognize \$5 million in the next 12 months and the remaining over a period of up to 28 years.

Income Taxes

There are transactions that occur during the ordinary course of business for which the ultimate tax determination is uncertain. As of June 30, 2020 and December 31, 2019, the aggregate balances of our gross unrecognized tax benefits were \$276 million and \$273 million, respectively, of which \$250 million and \$247 million, respectively, would not give rise to changes in our effective tax rate since these tax benefits would increase a deferred tax asset that is currently fully offset by a valuation allowance.

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 six months ended June 30, 2019, we increased net loss attributable to common stockholders by \$8 million to arrive at the numerator used to calculate net loss per share. This adjustment represents the difference between the cash we paid to the financing fund investor for their noncontrolling interest in one of our subsidiaries and the carrying amount of the noncontrolling interest on our consolidated balance sheet, 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, 1.25% Convertible Senior Notes due in 2021, 2.375% Convertible Senior Notes due in 2022, 2.00% Convertible Senior Notes due in 2024 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 notes, we entered into convertible note hedges and warrants (see Note 10, *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.

The following table presents the computation of basic and diluted net income (loss) per share of common stock attributable to common stockholders (in millions, except per share data):

	<u>Three Months Ended June 30,</u>		<u>Six Months Ended June 30,</u>	
	<u>2020</u>	<u>2019</u>	<u>2020</u>	<u>2019</u>
Net income (loss) per share of common stock attributable to common stockholders, basic				
Net income (loss) attributable to common stockholders	\$ 104	\$ (408)	\$ 120	\$ (1,110)
Less: Buy-out of noncontrolling interest	—	—	—	8
Net income (loss) used in computing net income (loss) per share of common stock, basic	104	(408)	120	(1,118)
Weighted average shares used in computing net income (loss) per share of common stock, basic	186	177	184	175
Net income (loss) per share of common stock attributable to common stockholders, basic	<u>\$ 0.56</u>	<u>\$ (2.31)</u>	<u>\$ 0.65</u>	<u>\$ (6.40)</u>
Net income (loss) per share of common stock attributable to common stockholders, diluted				
Net income (loss) attributable to common stockholders	\$ 104	\$ (408)	\$ 120	\$ (1,110)
Less: Buy-out of noncontrolling interest	—	—	—	8
Net income (loss) used in computing net income (loss) per share of common stock, diluted	104	(408)	120	(1,118)
Weighted average shares used in computing net income (loss) per share of common stock, basic	186	177	184	175
Add:				
Stock-based awards	10	—	10	—
Convertible senior notes	8	—	7	—
Warrants	3	—	2	—
Weighted average shares used in computing net income (loss) per share of common stock, diluted	207	177	203	175
Net income (loss) per share of common stock attributable to common stockholders, diluted	<u>\$ 0.50</u>	<u>\$ (2.31)</u>	<u>\$ 0.59</u>	<u>\$ (6.40)</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):

	<u>Three Months Ended June 30,</u>		<u>Six Months Ended June 30,</u>	
	<u>2020</u>	<u>2019</u>	<u>2020</u>	<u>2019</u>
Stock-based awards	0	13	0	12
Convertible senior notes	0	1	0	1

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 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, depending upon the specific jurisdictions issuing them, can take more than six months to be collected. These various factors may have a significant impact on our accounts receivable balance from period to period.

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. The fair value of our restricted cash invested in commercial paper equals the carrying value using quoted prices in active markets (Level I). 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):

	June 30, 2020	December 31, 2019	June 30, 2019	December 31, 2018
Cash and cash equivalents	\$ 8,615	\$ 6,268	\$ 4,955	\$ 3,686
Restricted cash included in prepaid expenses and other current assets	203	246	128	193
Restricted cash included in other non-current assets	288	269	366	398
Total as presented in the consolidated statements of cash flows	<u>\$ 9,106</u>	<u>\$ 6,783</u>	<u>\$ 5,449</u>	<u>\$ 4,277</u>

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 ASU No. 2016-13, *Measurement of Credit Losses on Financial Instruments* ("ASC 326") 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 June 30, 2020 and December 31, 2019, the total outstanding balance of MyPower customer notes receivable, net of allowance

for credit losses, was \$351 million and \$402 million, respectively, of which \$10 million and \$9 million was due in the next 12 months as of June 30, 2020 and December 31, 2019, respectively. As of June 30, 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 June 30, 2020.

Concentration of Risk

Credit Risk

Financial instruments that potentially subject us to a concentration of credit risk consist of cash and 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 June 30, 2020, one entity represented 10% or more of our total accounts receivable balance, which was related to sales of regulatory credits. As of December 31, 2019, no entity represented 10% of our total accounts receivable balance. The risk of concentration for our 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 we have resumed operations at all of our manufacturing facilities, 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.

Operating Lease Vehicles

The gross cost of operating lease vehicles as of June 30, 2020 and December 31, 2019 was \$2.93 billion and \$2.85 billion, respectively. Operating lease vehicles on the consolidated balance sheets are presented net of accumulated depreciation of \$408 million and \$406 million, as of June 30, 2020 and December 31, 2019, respectively.

Warranties

We provide a manufacturer's warranty on all new and used vehicles and production powertrain components and systems we sell. In addition, we also provide 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 lease accounting and our solar energy systems under lease contracts or Power Purchase Agreements ("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):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2020	2019	2020	2019
Accrued warranty—beginning of period	\$ 1,130	\$ 844	\$ 1,089	\$ 748
Warranty costs incurred	(62)	(61)	(143)	(115)
Net changes in liability for pre-existing warranties, including expirations and foreign exchange impact	9	5	12	42
Provision for warranty	120	153	239	266
Accrued warranty—end of period	<u>\$ 1,197</u>	<u>\$ 941</u>	<u>\$ 1,197</u>	<u>\$ 941</u>

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 June 30, 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.

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. The ASUs are effective for interim and annual periods beginning after December 15, 2019. 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. This ASU 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. The ASU is effective for interim and annual periods beginning after December 15, 2019. Adoption of the ASU is prospective. 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). The ASU is effective for interim and annual periods beginning after December 15, 2019. Adoption of the ASU is either retrospective or prospective. We adopted the ASU prospectively on January 1, 2020. The ASU did not have a material impact on our consolidated financial statements.

Note 3 - Intangible Assets

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

	June 30, 2020				December 31, 2019			
	Gross Carrying Amount	Accumulated Amortization	Other	Net Carrying Amount	Gross Carrying Amount	Accumulated Amortization	Other	Net Carrying Amount
Finite-lived intangible assets:								
Developed technology	\$ 291	\$ (92)	\$ —	\$ 199	\$ 291	\$ (72)	\$ 1	\$ 220
Trade names	3	(1)	—	2	3	(1)	1	3
Favorable contracts and leases, net	113	(28)	—	85	113	(24)	—	89
Other	38	(17)	—	21	38	(16)	—	22
Total finite-lived intangible assets	445	(138)	—	307	445	(113)	2	334
Indefinite-lived intangible assets:								
Gigafactory Nevada water rights	5	—	—	5	5	—	—	5
Total intangible assets	\$ 450	\$ (138)	\$ —	\$ 312	\$ 450	\$ (113)	\$ 2	\$ 339

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

Six months ending December 31, 2020	\$	25
2021		49
2022		48
2023		42
2024		27
Thereafter		116
Total	\$	<u>307</u>

Note 4 - 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):

	June 30, 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)	\$ 4,071	\$ 4,071	\$ —	\$ —	\$ 1,632	\$ 1,632	\$ —	\$ —
Interest rate swap assets	—	—	—	—	1	—	1	—
Interest rate swap liabilities	(69)	—	(69)	—	(27)	—	(27)	—
Total	<u>\$ 4,002</u>	<u>\$ 4,071</u>	<u>\$ (69)</u>	<u>\$ —</u>	<u>\$ 1,606</u>	<u>\$ 1,632</u>	<u>\$ (26)</u>	<u>\$ —</u>

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, 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):

	June 30, 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	\$ 839	\$ —	\$ 69	\$ 821	\$ 1	\$ 27

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

	Three Months Ended June 30,		Six Months Ended June 30,	
	2020	2019	2020	2019
Gross losses	\$ 3	\$ 19	\$ 42	\$ 38

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 1.25% Convertible Senior Notes due in 2021, 2.375% Convertible Senior Notes due in 2022, 2.00% Convertible Senior Notes due in 2024, 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, 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 5.30% Senior Notes due in 2025 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):

	June 30, 2020		December 31, 2019	
	Carrying Value	Fair Value	Carrying Value	Fair Value
Convertible Senior Notes	\$ 3,758	\$ 14,098	\$ 3,729	\$ 6,110
5.30% Senior Notes due in 2025	\$ 1,784	\$ 1,814	\$ 1,782	\$ 1,748
Solar asset-backed notes	\$ 1,135	\$ 1,122	\$ 1,155	\$ 1,211
Solar loan-backed notes	\$ 161	\$ 166	\$ 175	\$ 189

Note 5 - Inventory

Our inventory consisted of the following (in millions):

	June 30, 2020	December 31, 2019
Raw materials	\$ 1,842	\$ 1,428
Work in process	420	362
Finished goods (1)	1,379	1,356
Service parts	377	406
Total	<u>\$ 4,018</u>	<u>\$ 3,552</u>

- (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 three and six months ended June 30, 2020, we recorded write-downs of \$37 million and \$82 million, respectively, in cost of revenues. During the three and six months ended June 30, 2019, we recorded write-downs of \$25 million and \$89 million, respectively, in cost of revenues.

Note 6 - Solar Energy Systems, Net

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

	June 30, 2020	December 31, 2019
Solar energy systems in service	\$ 6,722	\$ 6,682
Initial direct costs related to customer solar energy system lease acquisition costs	103	102
	<u>6,825</u>	<u>6,784</u>
Less: accumulated depreciation and amortization	(839)	(723)
	<u>5,986</u>	<u>6,061</u>
Solar energy systems under construction	28	18
Solar energy systems pending interconnection	55	59
Solar energy systems, net (1)	<u>\$ 6,069</u>	<u>\$ 6,138</u>

- (1) As of June 30, 2020 and December 31, 2019, solar energy systems, net, included \$36 million of gross finance leased assets with accumulated depreciation and amortization of \$6 million.

Note 7 - Property, Plant and Equipment, Net

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

	June 30, 2020	December 31, 2019
Machinery, equipment, vehicles and office furniture	\$ 7,687	\$ 7,167
Tooling	1,711	1,493
Leasehold improvements	1,157	1,087
Land and buildings	3,172	3,024
Computer equipment, hardware and software	700	595
Construction in progress	1,012	764
	<u>15,439</u>	<u>14,130</u>
Less: Accumulated depreciation	(4,430)	(3,734)
Total	<u>\$ 11,009</u>	<u>\$ 10,396</u>

Construction in progress is primarily comprised of equipment and tooling related to the manufacturing of our products, Gigafactory Shanghai expansion and Gigafactory Berlin construction. 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 three and six months ended June 30, 2020, we capitalized \$10 million and \$20 million, respectively, of interest. During the three and six months ended June 30, 2019, we capitalized \$7 million and \$15 million, respectively, of interest.

Depreciation expense during the three and six months ended June 30, 2020 was \$356 million and \$727 million, respectively. Depreciation expense during the three and six months ended June 30, 2019 was \$335 million and \$634 million, respectively. Gross property plant and equipment under finance leases as of June 30, 2020 and December 31, 2019 was \$2.12 billion and \$2.08 billion, respectively, with accumulated depreciation of \$617 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 June 30, 2020 and December 31, 2019, we had cumulatively capitalized costs of \$1.75 billion and \$1.73 billion, respectively, on the consolidated balance sheets in relation to the production equipment under our Panasonic arrangement.

In July 2020, we entered into a Purchase and Sale Agreement to purchase a property located near Austin, Texas.

Note 8 - Accrued Liabilities and Other

As of June 30, 2020 and December 31, 2019, accrued liabilities and other current liabilities consisted of the following (in millions):

	June 30, 2020	December 31, 2019
Accrued purchases (1)	\$ 782	\$ 638
Payroll and related costs	495	466
Taxes payable	484	611
Accrued interest	91	86
Financing obligation, current portion	47	57
Accrued warranty reserve, current portion	384	344
Sales return reserve, current portion	345	272
Resale value guarantees, current portion	70	317
Operating lease liabilities, current portion	233	228
Other current liabilities	179	203
Total	<u>\$ 3,110</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.

Note 9 - Other Long-Term Liabilities

As of June 30, 2020 and December 31, 2019, other long-term liabilities consisted of the following (in millions):

	June 30, 2020	December 31, 2019
Accrued warranty reserve	\$ 812	\$ 745
Financing obligation	42	37
Sales return reserve	529	545
Resale value guarantees	36	36
Operating lease liabilities	1,016	956
Other non-current liabilities	435	372
Total other long-term liabilities	<u>\$ 2,870</u>	<u>\$ 2,691</u>

Note 10 -Debt

The following is a summary of our debt and finance leases as of June 30, 2020 (in millions):

	Net Carrying Value		Unpaid Principal Balance	Unused Committed Amount (1)	Contractual Interest Rates	Contractual Maturity Date
	Current	Long-Term				
Recourse debt:						
1.25% Convertible Senior Notes due in 2021 ("2021 Notes")	\$ 1,336	\$ —	\$ 1,380	\$ —	1.25%	March 2021
2.375% Convertible Senior Notes due in 2022 ("2022 Notes")	—	918	977	—	2.375%	March 2022
2.00% Convertible Senior Notes due in 2024 ("2024 Notes")	—	1,425	1,839	—	2.00%	May 2024
5.30% Senior Notes due in 2025 ("2025 Notes")	—	1,784	1,800	—	5.30%	August 2025
Credit Agreement	—	1,550	1,550	575	1.2% - 3.3%	July 2023
Zero-Coupon Convertible Senior Notes due in 2020	35	—	36	—	0.0%	December 2020
Solar Bonds and other Loans	5	53	60	—	3.6%-5.8%	July 2020 - January 2031
Total recourse debt	1,376	5,730	7,642	575		
Non-recourse debt:						
Automotive Asset-backed Notes	650	667	1,323	—	2.0%-7.9%	December 2020-May 2023
Solar Asset-backed Notes	37	1,098	1,162	—	3.1%-7.7%	September 2024-February 2048
China Loan Agreements	945	517	1,462	1,388	3.5%-4.0%	September 2020-December 2024
Cash Equity Debt	13	423	448	—	5.3%-5.8%	July 2033-January 2035
Solar Loan-backed Notes	12	149	167	—	4.8%-7.5%	September 2048-September 2049
Warehouse Agreements	92	589	681	419	1.6%-2.2%	September 2021
Solar Term Loans	158	—	158	—	4.5%	January 2021
Canada Credit Facility	18	7	25	—	4.2%-5.8%	November 2022
Solar Renewable Energy Credit and other Loans	16	67	83	—	3.5%-6.6%	July 2020-June 2022
Total non-recourse debt	1,941	3,517	5,509	1,807		
Total debt	3,317	9,247	\$ 13,151	\$ 2,382		
Finance leases	362	1,169				
Total debt and finance leases	\$ 3,679	\$ 10,416				

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

	Net Carrying Value		Unpaid Principal Balance	Unused Committed Amount (1)	Contractual Interest Rates	Contractual Maturity Date
	Current	Long-Term				
Recourse debt:						
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	—	5.30%	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		
Non-recourse debt:						
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
Canada Credit Facility	24	16	40	—	4.2%-5.9%	November 2022
Solar Renewable Energy Credit 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 as may be described in the notes to the consolidated financial statements included in our reports on Form 10-K and Form 10-Q filed subsequent to December 31, 2019 (such as 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).

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 June 30, 2020, we were in material compliance with all financial debt covenants, which include minimum liquidity and expense-coverage balances and ratios.

2021 Notes, 2022 Notes and 2024 Notes

During the first quarter of 2020, we classified the carrying value of our 2021 Notes as current liabilities as the maturity date of the 2021 Notes is March 2021. During the first two quarters of 2020, the closing price of our common stock exceeded 130% of the applicable conversion price of each of our 2021 Notes, 2022 Notes and 2024 Notes on at least 20 of the last 30 consecutive trading days of the quarter; causing the 2021 Notes, 2022 Notes and 2024 Notes to be convertible by their holders during the second and third quarters of 2020. As the settlement of conversion of the 2021 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, we reclassified \$44 million, representing the difference between the aggregate principal of our 2021 Notes and the carrying value as of June 30, 2020, as mezzanine equity from permanent equity on our consolidated balance sheet as of June 30, 2020. As the settlement of conversion of the 2022 Notes and 2024 Notes would be in cash, shares of our common stock or a combination thereof is at our election, the liability is classified as non-current. Should the closing price conditions be met in a future quarter for any of these notes, such notes will be convertible at their holders' option during the immediately following quarter.

Credit Agreement

In March 2020, we upsized our senior asset-based revolving credit agreement (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

During the second quarter of 2020, \$67 million in aggregate principal amount of the Zero-Coupon Convertible Senior Notes due in 2020 were converted, pursuant to which we issued 223,320 shares of our common stock to the holders of such notes.

China Loan Agreements

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 will mature in June 2021, the first anniversary of the first borrowing under the loan.

Interest Expense

The following table presents the interest expense related to the contractual interest coupon, the amortization of debt issuance costs and the amortization of debt discounts on our convertible senior notes with cash conversion features, which includes the 0.25% Convertible Senior Notes due in 2019 (matured in March 2019), the 2021 Notes, the 2022 Notes and the 2024 Notes (in millions):

	<u>Three Months Ended June 30,</u>		<u>Six Months Ended June 30,</u>	
	<u>2020</u>	<u>2019</u>	<u>2020</u>	<u>2019</u>
Contractual interest coupon	\$ 19	\$ 16	\$ 39	\$ 26
Amortization of debt issuance costs	2	1	4	3
Amortization of debt discounts	44	33	88	61
Total	<u>\$ 65</u>	<u>\$ 50</u>	<u>\$ 131</u>	<u>\$ 90</u>

Note 11 - Equity Incentive Plans

In June 2019, we adopted the 2019 Equity Incentive Plan (the “2019 Plan”). The 2019 Plan provides for the granting 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 June 30, 2020, 11 million shares were reserved and available for issuance under the 2019 Plan.

2018 CEO Performance Award

In March 2018, our stockholders approved the Board of Directors' grant of 20,264,042 stock option awards to our CEO (the "2018 CEO Performance Award"). 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 met, and (ii) any one of the following eight operational milestones focused on total revenue or eight operational milestones focused on Adjusted EBITDA have been met 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 \$350.02 per share, 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 June 30, 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
\$ 35.0	Probable	\$ 3.0	Achieved
\$ 55.0	-	\$ 4.5	Probable
\$ 75.0	-	\$ 6.0	-
\$ 100.0	-	\$ 8.0	-
\$ 125.0	-	\$ 10.0	-
\$ 150.0	-	\$ 12.0	-
\$ 175.0	-	\$ 14.0	-

Stock-based compensation expense associated with each tranche under the 2018 CEO Performance Award 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 met. 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 market capitalization milestone period and the valuation of each tranche were determined using a Monte Carlo simulation and is used as the basis for determining the expected achievement period. The probability of meeting an operational milestone is based on a subjective assessment of our future financial projections. Upon vesting of a tranche, all unamortized expense for the tranche will be recognized immediately. Additionally, 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.

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 first market capitalization milestone of \$100.0 billion and the operational milestone of \$20.0 billion annualized revenue had been met. Additionally, on July 24, 2020, the second tranche of the 2018 CEO Performance Award vested upon certification by the Board of Directors that the second market capitalization milestone of \$150.0 billion and the operational milestone of \$1.5 billion Adjusted EBITDA had been met. Therefore, the remaining unamortized expense of \$95 million associated with such tranche, which was previously expected to be recognized ratably in future quarters through the first quarter of 2022 as determined on the grant date, will be accelerated into the third quarter of 2020. If the value of Tesla's closing stock price continues near or higher than the levels seen in late July 2020, the third market capitalization milestone of \$200.0 billion is expected to be met during the third quarter of 2020. In such event, subject to certification by our Board of Directors, the third tranche under the 2018 CEO Performance Award would vest. If the third tranche of the 2018 CEO Performance Award vests during the third quarter of 2020, the remaining unamortized expense of \$118 million for that tranche, which was expected to be recognized ratably in future quarters through the first quarter of 2023 as determined on the grant date, would be accelerated into the third quarter of 2020.

As of June 30, 2020, we had \$502 million of total unrecognized stock-based compensation expense for the operational milestones that were considered probable of achievement and achieved but not yet vested, which will be recognized over a weighted-average period of 2.9 years. As of June 30, 2020, we had unrecognized stock-based compensation expense of \$1.08 billion for the operational milestones that were considered not probable of achievement. For the three and six months ended June 30, 2020, we recorded stock-based compensation expense of \$167 million and \$233 million, respectively, related to the 2018 CEO Performance Award, and \$56 million and \$111 million, respectively, for the same periods in 2019.

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 1,073,000 shares of our common stock. 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 June 30, 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 June 30, 2020, we had unrecognized stock-based compensation expense of \$4 million for the performance milestone that was considered not probable of achievement. For the three and six months ended June 30, 2020, and for the same periods in 2019, we did not record any additional stock-based compensation related to these awards.

2012 CEO Performance Award

In August 2012, our Board of Directors granted 5,274,901 stock option awards to our CEO (the “2012 CEO Performance Award”). 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 June 30, 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 June 30, 2020, we had unrecognized stock-based compensation expense of \$6 million for the performance milestone that was considered not probable of achievement. For the three and six months ended June 30, 2020, and for the same periods in 2019, we did not record any additional stock-based compensation expense related to the 2012 CEO Performance Award.

Our CEO historically earned a base salary that reflected the applicable minimum wage requirements under California law, and he was subject to income taxes based on such base salary. However, he has never accepted his salary. Commencing in May 2019 at our CEO’s request, we eliminated altogether the earning and accrual of his base salary.

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):

	<u>Three Months Ended June 30,</u>		<u>Six Months Ended June 30,</u>	
	<u>2020</u>	<u>2019</u>	<u>2020</u>	<u>2019</u>
Cost of revenues	\$ 52	\$ 35	\$ 85	\$ 62
Research and development	73	71	138	143
Selling, general and administrative	222	103	335	210
Restructuring and other	—	1	—	3
Total	<u>\$ 347</u>	<u>\$ 210</u>	<u>\$ 558</u>	<u>\$ 418</u>

We realized no income tax benefit from stock option exercises in each of the periods presented due to cumulative losses and valuation allowances. As of June 30, 2020, we had \$1.66 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 12 - 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") for a manufacturing facility constructed on behalf of the SUNY Foundation, which was completed in April 2018. We use this facility, referred to as Gigafactory New York, primarily 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 the lease and a related research and development agreement, on behalf of the SUNY Foundation, we have and will continue to install certain utilities and other improvements and acquire certain equipment designated by us to be used in the manufacturing facility.

Under the terms of the operating lease arrangement, as amended, we are required to achieve specific operational milestones during the initial lease term, which include minimum in-state personnel requirements and a requirement to spend or incur \$5.00 billion in combined capital, operational expenses and other costs in the State of New York, as measured 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 might become payable by us.

In April 2020, the government agency overseeing our agreement with the SUNY Foundation for the construction and use of Gigafactory New York issued guidance that all obligations relating to investment and employment targets under certain of its projects, including our obligation to be compliant with our applicable targets under such agreement on April 30, 2020, may be deferred for a one-year period upon such agency's approval of an application for relief by the obligor. 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 such deferral, which was memorialized in an amendment to our agreement with the SUNY Foundation in July 2020. Moreover, as 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. 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, is subject to approval by the Court, and a fairness hearing is set for August 27, 2020. Tesla will receive such amount, which would be recognized as a gain in its financial statements, if the settlement is approved by the Court. 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 March 29 to April 12, 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, and the parties await a ruling. 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 appellate court on such 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 October 2021. 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' response is due September 3, 2020. 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. Trial is set for March 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 U.S. Treasury grants or investment tax credits (“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. Treasury Department for purposes of claiming U.S. Treasury grants or as assessed by the IRS for purposes of claiming ITCs or U.S. Treasury grants. 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 guidelines issued by the U.S. Treasury Department on solar energy system valuations for purposes of claiming U.S. Treasury grants and 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 U.S. Treasury Department would determine as fair value for the systems for purposes of claiming U.S. Treasury grants or the values the IRS would determine as the fair value for the systems for purposes of claiming ITCs or U.S. Treasury grants. We claim U.S. Treasury grants 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 future revisions to U.S. Treasury Department guidelines governing solar energy system values or how the IRS will evaluate system values used in claiming ITCs or U.S. Treasury grants, 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.

Our lease pass-through financing funds have a one-time lease payment reset mechanism that occurs after the installation of all solar energy systems in a fund. As a result of this mechanism, we may be required to refund master lease prepayments previously received from investors. Any refunds of master lease prepayments would reduce the lease pass-through financing obligation.

Letters of Credit

As of June 30, 2020, we had \$273 million of unused letters of credit outstanding.

Note 13 - 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):

	<u>June 30, 2020</u>	<u>December 31, 2019</u>
Assets		
Current assets		
Cash and cash equivalents	\$ 72	\$ 106
Accounts receivable, net	56	27
Prepaid expenses and other current assets	91	100
Total current assets	219	233
Operating lease vehicles, net	1,102	1,183
Solar energy systems, net	4,894	5,030
Other non-current assets	170	156
Total assets	<u>\$ 6,385</u>	<u>\$ 6,602</u>
Liabilities		
Current liabilities		
Accrued liabilities and other	\$ 73	\$ 80
Deferred revenue	73	78
Customer deposits	13	9
Current portion of debt and finance leases	713	608
Total current liabilities	872	775
Deferred revenue, net of current portion	230	264
Debt and finance leases, net of current portion	1,322	1,516
Other long-term liabilities	23	22
Total liabilities	<u>\$ 2,447</u>	<u>\$ 2,577</u>

Note 14 - Related Party Transactions

In February 2020, our CEO and a member of our Board of Directors purchased from us 13,037 and 1,250 shares, respectively, of our common stock in a public offering at the public offering price for an aggregate \$10 million and \$1 million, respectively.

In June 2020, our CEO entered into an indemnification agreement with us, for an interim term of 90 days. During the interim term, we are resuming 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 intend to obtain a binding market quote for a directors' and officers' liability insurance policy with an aggregate coverage limit of \$100 million, which we will weigh in selecting an indemnity coverage option for a customary term following the end of the interim period.

The indemnification agreement provides that our CEO will provide, 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 will pay our CEO a one-time fee of \$972,361. We will also exercise reasonable best efforts to obtain the market quote described above, and will pay an additional amount to our CEO to reconcile the one-time fee to be equal to the market-based premium for such market quote as prorated for 90 days and further discounted by 50%, if the latter amount is greater.

Note 15 - 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):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2020	2019	2020	2019
Automotive segment				
Revenues	\$ 5,666	\$ 5,981	\$ 11,358	\$ 10,198
Gross profit	\$ 1,246	\$ 878	\$ 2,469	\$ 1,436
Energy generation and storage segment				
Revenues	\$ 370	\$ 369	\$ 663	\$ 693
Gross profit	\$ 21	\$ 43	\$ 32	\$ 51

The following table presents revenues by geographic area based on the sales location of our products (in millions):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2020	2019	2020	2019
United States	\$ 3,090	\$ 3,480	\$ 5,858	\$ 5,810
China	1,400	690	2,300	1,469
Other	1,546	2,180	3,863	3,612
Total	\$ 6,036	\$ 6,350	\$ 12,021	\$ 10,891

The revenues in certain geographic areas were impacted by the price adjustments we made to our vehicle offerings during the second quarter of 2020 and the first half of 2019. Refer to Note 2, *Summary of Significant Accounting Policies*, for details.

The following table presents long-lived assets by geographic area (in millions):

	June 30, 2020	December 31, 2019
United States	\$ 15,541	\$ 15,644
International	1,537	890
Total	\$ 17,078	\$ 16,534

ITEM 2. 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 Quarterly Report on Form 10-Q.

Overview

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.

Automotive

In the first half of 2020, we produced 184,944 vehicles and delivered 179,387 vehicles, including our one millionth cumulatively delivered vehicle in the second quarter. We remain focused on ramping our existing products, including Model Y, and constructing additional and diversified manufacturing capabilities while incrementally improving our processes and reducing costs.

Energy Generation and Storage

In the first half of 2020, we deployed 679 MWh of energy storage products, driven by our Powerwall system and the ongoing rollout of our popular Megapack system, and 62 MW of solar energy systems. In the second quarter of 2020, we further streamlined our retrofit solar processes to allow us to offer a better product at improved pricing. We continue to focus on increasing our Solar Roof deployments and installation capabilities.

Management Opportunities, Challenges and Risks

Impact of Current Macroeconomic Factors

We achieved a strong second quarter of 2020 in spite of the continuing widespread worldwide impact from the COVID-19 pandemic. We had temporarily suspended operations at each of our manufacturing facilities worldwide at some point during the first half of 2020 as a result of government requirements or to accommodate related challenges for our employees, their families and our suppliers. Certain of our suppliers and partners, including Panasonic, our partner that manufactures lithium-ion battery cells for our products at our Gigafactory Nevada, also experienced such temporary suspensions. We had also instituted temporary labor cost reduction measures by furloughing certain of our hourly employees, reducing most salaried employees' base salaries globally and reducing our bonus and commission structures while our U.S. operations were scaled back. Exiting the second quarter of 2020, however, we have resumed operations at all of our manufacturing facilities, 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 manufacture, deliver and install our products, increase our infrastructure, and plan and invest in our future roadmap during difficult external circumstances has been tested, and thus far we have met the challenge.

On the other hand, certain government regulations and public advisories, as well as shifting social behaviors, that have temporarily or sporadically limited or closed non-essential transportation, government functions, business activities and person-to-person interactions remain in place. In some cases, the relaxation of such trends has been followed by a return to stringent restrictions. We cannot predict the duration or direction of such trends, which have also adversely affected and may in the future affect our operations. For example, reduced operations or closures at motor vehicle departments, vehicle auction houses and municipal and utility company inspectors resulted in certain challenges in or postponements for our new vehicle deliveries, used vehicle sales, and energy product deployments in the first half of 2020. We may also be affected by global macroeconomic conditions and changing levels of consumer comfort and spend in the future, which could further impact demand in the worldwide transportation and automotive industries and for construction projects such as the addition of solar energy systems. Likewise, our ability to sustain our production trajectory depends on the ongoing status of various government regulations regarding manufacturing operations, the readiness and solvency of our suppliers and vendors, and a stable and motivated production workforce. Government-imposed travel or visa restrictions may also prevent personnel employed by us or our vendors from traveling to our sites to work on key projects, which may delay their progress.

Ultimately, we have always monitored macroeconomic conditions to remain flexible and optimize and evolve our business as appropriate, and we will continue to do so as we did in the first half of 2020. Because the impact of current conditions on a sustained basis is yet largely unknown, is rapidly evolving, and has been varied across geographic regions, this ongoing assessment will be particularly critical to allow us to accurately project demand and infrastructure requirements globally and deploy our production, workforce, and other resources accordingly.

Automotive—Production

We continued the ramp of Model Y at the Fremont Factory during the second quarter of 2020, and after only four cumulative months of production in the first half of the year primarily due to manufacturing suspensions, we exited the quarter at a weekly production rate comparable to that of Model 3 more than nine months into its ramp. We intend to add additional manufacturing capacity for Model 3 and Model Y at the Fremont Factory in the second half of 2020 as previously planned.

At Gigafactory Shanghai, we have continued to ramp our installed Model 3 capacity, and construction of the next phase to add Model Y manufacturing capacity remains on track. We are also continuing the construction of Gigafactory Berlin, where a localized version of Model Y will be the first vehicle we produce. Finally, we recently purchased a site near Austin, Texas for our Gigafactory Texas, where we expect to manufacture Model Y and Cybertruck. We have seen the early benefits of diversifying and localizing manufacturing facilities, including during the current COVID-19 pandemic, and our goal is to further improve our manufacturing resilience, efficiency, costs and technology with the development of each new factory. However, the construction of and ramp at these factories are subject to a number of uncertainties inherent in all new manufacturing operations, including ongoing compliance with regulatory requirements, maintenance of 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, and it is not yet certain whether and to what extent the COVID-19 pandemic may further affect such uncertainties and our projected timelines for completion.

Automotive—Demand and Sales

In the second quarter of 2020, the maturity and adaptability of our business model, together with the advanced technology in our vehicles that enabled options for touchless test drives and deliveries, continued to allow us to market and deliver vehicles notwithstanding challenges impacting the automotive industry as a whole. We are adding to this advantage as we ramp and expand new offerings such as Model Y, and continuously update and improve our vehicles' functionality and features based on user feedback. Recently, we further improved our stop sign and traffic light recognition system for applicable FSD-optioned users and increased the EPA-tested maximum range of Model S to 402 miles. We also expect our international manufacturing expansion to continue to drive demand. For example, Model 3 was the best-selling electric vehicle during the second quarter of 2020 in China, where Gigafactory Shanghai allows us to offer locally-produced Model 3 vehicles with industry-leading standard equipment at a lower price point than competing mid-sized premium sedans even before the impact of government or tax incentives. Moreover, Germany is now among our largest European vehicle markets, which we believe bodes well for future manufacturing at Gigafactory Berlin. While we cannot predict the magnitude or duration of current macroeconomic conditions, we believe that we have actually gained key advantages with the flexibility and momentum we have shown in the first half of 2020, and we are also hopeful that the demonstrably positive environmental impact from the recent worldwide reduction in the transportation-related consumption of fossil fuels will facilitate greater awareness for the importance of sustainable energy and related products.

As is inherent in the automotive industry, we may be impacted by trade and environmental policies, political uncertainty and economic cycles involving geographic regions where we have significant operations, which are inherently unpredictable. We may also make certain adjustments to our prices from time to time in the ordinary course of business, including as we introduce new vehicles and variants and optimize the pricing among them and for affordability, and we made such adjustments in the second quarter of 2020 and more recently for Model Y. Such pricing changes may impact our vehicles' resale values, and in turn our operating results.

Automotive—Deliveries and Customer Infrastructure

We continue to optimize our vehicle manufacturing and logistics patterns to deliver our vehicles efficiently worldwide. Unusual logistical challenges such as those related to the COVID-19 pandemic may strain such delivery patterns, which in the second quarter of 2020 resulted in a heavy volume of deliveries towards the end of the quarter. While we have historically experienced planning and logistics challenges related to concentrated production, Gigafactory Shanghai is becoming an increasingly larger contributor to our overall production and we expect to ultimately alleviate such challenges through increased local production, including at Gigafactory Berlin and at Gigafactory Texas.

We also continue to expand and invest in our servicing and charging locations and capabilities to keep pace with our customer vehicle fleet and ensure a convenient and efficient customer experience, marked by our expansion of the Supercharger network to over 2,000 stations at the end of the second quarter of 2020. However, if our customer vehicles, particularly in the rapidly growing Model 3 fleet and newly launched Model Y fleet, experience unexpected reliability issues, it could outpace and overburden our servicing capabilities and parts inventory.

Energy Generation and Storage Demand, Production and Deployment

In the second quarter of 2020, we further increased the value proposition of our retrofit solar systems by improving the efficiency of our panels, additionally streamlining our ordering and contracting processes and passing on the savings to our customers, backed by lowest-price and money-back guarantees. We have also continued to expand our Solar Roof deployments and increase our installation capacity. Megapack, our up to 3 MWh energy storage system for commercial, industrial and utility and energy generation customers, remains a popular offering as we expand its production and rollout. Together with the international expansion of Autobidder, our proprietary real-time energy trading platform for our customers' utility-scale systems, and the continuing expansion of our other systems such as Powerwall, we believe our energy storage business is well-positioned for further growth.

In April 2020, the government agency overseeing our agreement with the SUNY Foundation for the construction and use of Gigafactory New York issued guidance that all obligations relating to investment and employment targets under certain of its projects, including our obligation to be compliant with our applicable targets under such agreement on April 30, 2020, may be deferred for a one-year period upon such agency's approval of an application for relief by the obligor. As we temporarily suspended most of our manufacturing operations (including of Solar Roof) 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 such deferral, which was memorialized in an amendment to our agreement with the SUNY Foundation in July 2020. Moreover, as 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 set forth above or 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.

Trends in Cash Flow, Capital Expenditures and Operating Expenses

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. For example, the curve of any new product ramp, such as for Model Y and the Solar Roof, or the construction of new large-scale operations, such as Gigafactory Berlin and Gigafactory Texas, is inherently subject to uncertainty of timing, and if we are able to meet various milestones more quickly than expected, our related capital expenditures may be accelerated. We also continuously evaluate and may adjust our capital expenditures based on, among other things: our manufacturing plans for our various products, which we may rebalance from time to time based on the mix of demand among them and other contingent factors; the pace and prioritization of current projects under development; and the addition of any new projects. Moreover, we are generally increasing the capital efficiency of our projects with experience, and we may find that our actual capital expenditures on new projects are different than previously expected.

Subject to the above, considering the expected pace of the manufacturing ramps for our products, construction and expansion of our factories, and pipeline of announced projects under development, and consistent with our current strategy of using partners to manufacture battery cells, as well as considering all other infrastructure growth, we currently expect our average annual capital expenditures in 2020 and the two succeeding fiscal years to be \$2.5 billion to \$3.5 billion.

In March 2018, our stockholders approved the 2018 CEO Performance Award, with vesting contingent on our Board of Directors' certification of the achievement of specified market capitalization and operational milestones. We will incur significant non-cash stock-based compensation expense for each tranche under this award after the related operational milestone initially becomes probable of being met, and if later than the grant date, we will also have to record a cumulative catch-up expense at such time. Such catch-up expense may be material depending on the length of time elapsed from the grant date. Moreover, as the expense for a tranche is recorded over the longer of (i) the expected achievement period of the relevant operational milestone and (ii) only if the related market capitalization milestone has not been achieved, its expected achievement period, the achievement of a market capitalization milestone earlier than expected may accelerate the rate at which such expense is recognized. Upon vesting of a tranche, all remaining associated expense will be recognized immediately. As of the date of this filing, three operational milestones and two market capitalization milestones have been achieved, of which two operational milestones and two market capitalization milestones have also been certified by our Board of Directors. Consequently, two of the 12 tranches under this award have vested and become exercisable, subject to our CEO's payment of the exercise price of \$350.02 per share and the minimum five-year holding period generally applicable to any shares he acquires upon exercise.

During the second quarter of 2020, an operational milestone under the 2018 CEO Performance Award of Adjusted EBITDA of \$4.5 billion became probable of being met and consequently, we recognized a catch-up expense of \$79 million in such quarter. During the third quarter of 2020, the second tranche vested and therefore the remaining unamortized expense of \$95 million associated with such tranche, which was previously expected to be recognized ratably in future quarters through the first quarter of 2022 as determined on the grant date, will be accelerated into the third quarter of 2020. In addition, if the value of Tesla's closing stock price continues near or higher than the levels seen in late July 2020, the third market capitalization milestone of \$200.0 billion is expected to be met during the third quarter of 2020, meaning that the third tranche under the 2018 CEO Performance Award would vest upon certification by our Board of Directors. In such case, the remaining unamortized expense of \$118 million for that tranche, which is currently expected to be recognized ratably in future quarters through the first quarter of 2023 as determined on the grant date, would be accelerated into the third quarter of 2020. See Note 11, *Equity Incentive Plans—2018 CEO Performance Award*, to the consolidated financial statements included elsewhere in this Quarterly Report on Form 10-Q for further details regarding the stock-based compensation relating to the 2018 CEO Performance Award.

Excluding the impact of non-cash stock compensation expense from additional operational milestones and/or tranches under the 2018 CEO Performance Award becoming, as applicable, probable of being met or vested earlier than expected, and as long as macroeconomic factors facilitate increases in overall revenues from expanding sales, we expect operating expenses as a percentage of revenue to continue to decrease in the future as we focus on increasing operational efficiency and process automation.

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 residual 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 Quarterly Report on Form 10-Q. 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.

For a description of our critical accounting policies and estimates, refer to Part II, Item 7, *Critical Accounting Policies and Estimates* in our Annual Report on Form 10-K for the year ended December 31, 2019. There have been no material changes to our critical accounting policies and estimates since our Annual Report on Form 10-K for the year ended December 31, 2019.

Recent Accounting Pronouncements

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

Results of Operations

Effects of COVID-19

The COVID-19 pandemic impacted our business and financial results in the first half of 2020.

The temporary suspension of production at our factories during the six months ended June 30, 2020 had caused production limitations that negatively impacted our deliveries for the first half of 2020. While we have 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 had instituted cost reduction initiatives across our business globally to be commensurate to the scope of our operations while they were scaled back. This included temporary labor cost reduction measures such as furloughing certain of our hourly employees, reducing most salaries employees' base salaries, and reducing our bonus and commission structures. 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 idle capacity charges disclosed as well as marginally reduced our operating expenses. The impact of the idle capacity charges incurred in the current period were almost entirely offset by our cost savings initiatives and payroll related benefits.

Revenues

(Dollars in millions)	Three Months Ended June 30,		Change		Six Months Ended June 30,		Change	
	2020	2019	\$	%	2020	2019	\$	%
Automotive sales	\$ 4,911	\$ 5,168	\$ (257)	-5%	\$ 9,804	\$ 8,677	\$ 1,127	13%
Automotive leasing	268	208	60	29%	507	423	84	20%
Total automotive revenues	5,179	5,376	(197)	-4%	10,311	9,100	1,211	13%
Services and other	487	605	(118)	-20%	1,047	1,098	(51)	-5%
Total automotive & services and other segment revenue	5,666	5,981	(315)	-5%	11,358	10,198	1,160	11%
Energy generation and storage segment revenue	370	369	1	0%	663	693	(30)	-4%
Total revenues	\$ 6,036	\$ 6,350	\$ (314)	-5%	\$ 12,021	\$ 10,891	\$ 1,130	10%

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 by quarter depending on when a contract is executed with a buyer and when the credits are delivered. For example, our revenue from regulatory credit sales in the three months ended June 30, 2019 was \$111 million while it was \$428 million in the three months ended June 30, 2020.

Automotive leasing revenue includes the amortization of revenue for Model S, Model X and Model 3 vehicles under direct 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.

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.

Automotive sales revenue decreased \$257 million, or 5%, in the three months ended June 30, 2020 as compared to the three months ended June 30, 2019, primarily due to a decrease of 6,807 Model S and Model X cash deliveries and a decrease in the average selling price of Model 3 from a higher sales mix of lower end trims in the three months ended June 30, 2020 compared to the same period in the prior year as we began delivering Standard Range variants internationally in June 2019. These decreases were partially offset by an increase of \$317 million from additional sales of regulatory credits to \$428 million in the three months ended June 30, 2020 and an increase of 3,691 Model 3 and Model Y cash deliveries despite production limitations as a result of temporary suspension of production at the Fremont Factory during the first half of 2020. We were able to increase deliveries year over year from additional Model 3 production capacity at Gigafactory Shanghai.

Automotive sales revenue increased \$1.13 billion, or 13%, in the six months ended June 30, 2020 as compared to the six months ended June 30, 2019, primarily due to an increase of 24,865 Model 3 and Model Y cash deliveries despite production limitations as a result of temporary suspension of production at the Fremont Factory during the first half of 2020. We were able to increase deliveries year over year from additional Model 3 production capacity at Gigafactory Shanghai. Additionally, due to pricing adjustments we made to our vehicle offerings in the six months ended June 30, 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 \$565 million. During the six months ended June 30, 2020, we made further pricing adjustments that similarly resulted in a reduction of automotive sales revenue of \$60 million. There was also an increase of \$455 million from additional sales of regulatory credits to \$782 million in the six months ended June 30, 2020. The increases in automotive sales revenue were partially offset by a decrease in the average selling price of Model 3 from a higher sales mix of lower end trims as we began delivering Standard Range variants internationally in June 2019 and a decrease of 7,245 Model S and Model X cash deliveries in the six months ended June 30, 2020 compared to the same period in the prior year.

Automotive leasing revenue increased \$60 million, or 29%, in the three months ended June 30, 2020 as compared to the three months ended June 30, 2019. Automotive leasing revenue increased \$84 million, or 20%, in the six months ended June 30, 2020 as compared to the six months ended June 30, 2019. The increases in the three and six months ended June 30, 2020 compared to the same periods in the prior year were primarily due to an increase in cumulative vehicles under our direct vehicle leasing program and an increase in the number of vehicles under leasing programs where our counterparty has retained ownership of the vehicle during or at the end of the guarantee period. When our counterparty retains ownership, any remaining deferred revenue and resale value guarantee liabilities are released to automotive leasing revenue. These increases were partially offset by a decrease in cumulative vehicles under our resale value guarantee leasing programs which are accounted for as operating leases.

Services and other revenue decreased \$118 million, or 20%, in the three months ended June 30, 2020 as compared to the three months ended June 30, 2019. Services and other revenue decreased \$51 million, or 5%, in the six months ended June 30, 2020 as compared to the six months ended June 30, 2019. These decreases were primarily due to a decrease in the volume of used vehicle sales, offset by an increase in average selling prices for traded-in Tesla vehicles. Additionally, there was an increase in non-warranty maintenance services revenue as our fleet continues to grow and an increase in sales by our acquired subsidiaries to third party customers.

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.

Energy generation and storage revenue increased by \$1 million, or 0%, in the three months ended June 30, 2020 as compared to the three months ended June 30, 2019. Energy generation and storage revenue decreased by \$30 million, or 4%, in the six months ended June 30, 2020 as compared to the six months ended June 30, 2019, primarily due to a decrease in deployments of solar cash and loan jobs.

Cost of Revenues and Gross Margin

(Dollars in millions)	Three Months Ended June 30,		Change		Six Months Ended June 30,		Change	
	2020	2019	\$	%	2020	2019	\$	%
Cost of revenues								
Automotive sales	\$ 3,714	\$ 4,254	\$ (540)	-13%	\$ 7,413	\$ 7,110	\$ 303	4%
Automotive leasing	148	106	42	40%	270	223	47	21%
Total automotive cost of revenues	3,862	4,360	(498)	-11%	7,683	7,333	350	5%
Services and other	558	743	(185)	-25%	1,206	1,429	(223)	-16%
Total automotive & services and other segment cost of revenues	4,420	5,103	(683)	-13%	8,889	8,762	127	1%
Energy generation and storage segment	349	326	23	7%	631	642	(11)	-2%
Total cost of revenues	\$ 4,769	\$ 5,429	\$ (660)	-12%	\$ 9,520	\$ 9,404	\$ 116	1%
Gross profit total automotive	\$ 1,317	\$ 1,016			\$ 2,628	\$ 1,767		
Gross margin total automotive	25%	19%			25%	19%		
Gross profit total automotive & services and other segment	\$ 1,246	\$ 878			\$ 2,469	\$ 1,436		
Gross margin total automotive & services and other segment	22%	15%			22%	14%		
Gross profit energy generation and storage segment	\$ 21	\$ 43			\$ 32	\$ 51		
Gross margin energy generation and storage segment	6%	12%			5%	7%		
Total gross profit	\$ 1,267	\$ 921			\$ 2,501	\$ 1,487		
Total gross margin	21%	15%			21%	14%		

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, as well as warranty expenses recognized as incurred. 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.

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.

Cost of automotive sales revenue decreased \$540 million, or 13%, in the three months ended June 30, 2020 as compared to the three months ended June 30, 2019, primarily due to a decrease of 6,807 Model S and Model X cash deliveries and a decrease in average Model 3 costs per unit due to a higher sales mix of lower end trims, lower freight and duty costs from local production in China, and additional manufacturing efficiencies in the production of Model 3 in our Fremont Factory. The decrease in cost of automotive sales revenue was partially offset by idle capacity charges of \$189 million as a result of temporary suspension of production at the Fremont Factory and Gigafactory Nevada during the three months ended June 30, 2020 and an increase of 3,691 Model 3 and Model Y cash deliveries.

Cost of automotive sales revenue increased \$303 million, or 4%, in the six months ended June 30, 2020 as compared to the six months ended June 30, 2019, primarily due to a decrease in average Model 3 costs per unit due to a higher sales mix of lower end trims, lower freight and duty costs from local production in China, and additional manufacturing efficiencies in the production of Model 3 in our Fremont Factory. There was also a decrease of 7,245 Model S and Model X cash deliveries in the six months ended June 30, 2020 compared to the same period in the prior year at lower costs per unit due to lower freight and duties from regional sales mix. The decreases in cost of automotive sales revenue were partially offset by an increase of 24,865 Model 3 and Model Y cash deliveries. Due to pricing adjustments we made to our vehicle offerings in the six months ended June 30, 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 \$458 million. During the six months ended June 30, 2020, we made further pricing adjustments that similarly resulted in a reduction of cost of automotive sales revenue of \$37 million. 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 six months ended June 30, 2020.

Cost of automotive leasing revenue increased \$42 million, or 40%, in the three months ended June 30, 2020 compared to the three months ended June 30, 2019. Cost of automotive leasing revenue increased \$47 million, or 21%, in the six months ended June 30, 2020 as compared to the six months ended June 30, 2019. The increases in the three and six months ended June 30, 2020 compared to the same periods in the prior year were primarily due to an increase in cumulative vehicles under our direct vehicle leasing program and an increase in the number of vehicles under leasing programs where our counterparty has retained ownership of the vehicle during or at the end of the guarantee period. When our counterparty retains ownership, the net book value of the leased vehicle of the lease vehicle is expensed to cost of automotive leasing revenue. These increases were partially offset by a decrease in cumulative vehicles under our resale value guarantee leasing programs which are accounted for as operating leases.

Cost of services and other revenue decreased \$185 million, or 25%, in the three months ended June 30, 2020 as compared to the three months ended June 30, 2019. Cost of services and other revenue decreased \$223 million, or 16%, in the six months ended June 30, 2020 as compared to the six months ended June 30, 2019. The decreases were primarily due to decreased costs of used vehicle sales from lower sales volume and decreased costs of non-warranty maintenance services as a result of additional operational efficiencies. These decreases were partially offset by an increase in cost of sales by our acquired subsidiaries to third party customers in line with the increase in revenue.

Gross margin for total automotive increased from 19% to 25% in the three and six months ended June 30, 2020 as compared to the three and six months ended June 30, 2019, primarily due an increase of \$317 million and \$455 million, respectively, in sales of regulatory credits and an improvement of Model 3 gross margin primarily from lower freight and duty costs from local production in China and additional manufacturing efficiencies in the production of Model 3 in our Fremont Factory. Additionally, improvement of Model S and Model X gross margin from lower freight and duties from regional sales mix helped contribute to higher total automotive gross margin. The increases were partially offset by idle capacity charges of \$189 million and \$213 million as a result of temporary suspension of production at the Fremont Factory during the three and six months ended June 30, 2020, respectively.

Gross margin for total automotive & services and other segment increased from 15% to 22% in the three months ended June 30, 2020 as compared to the three months ended June 30, 2019. Gross margin for total automotive & services and other segment increased from 14% to 22% in the six months ended June 30, 2020 as compared to the six months ended June 30, 2019. The increases to gross margin in the three and six months ended June 30, 2020 compared to the same periods in the prior year were primarily due to the automotive gross margin impacts discussed above and improved services and other gross margin from increased operational efficiencies in our non-warranty maintenance services business and improved used vehicle sales margins. Additionally, there was an increase due to a lower proportion of services and other within the segment in the three and six months ended June 30, 2020, which operates at a lower gross margin than our automotive business.

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. In addition, where arrangements are accounted for as operating leases, 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.

Cost of energy generation and storage revenue increased by \$23 million, or 7%, in the three months ended June 30, 2020 as compared to the three months ended June 30, 2019, primarily due to higher costs from temporary manufacturing utilization of our Solar Roof ramp and idle capacity charges of \$20 million as a result of temporary suspension of production at Gigafactory New York during the three months ended June 30, 2020, partially offset by a decrease in deployments of solar cash and loan jobs.

Cost of energy generation and storage revenue decreased by \$11 million, or 37%, in the six months ended June 30, 2020 as compared to the six months ended June 30, 2019, primarily due to a decrease in deployments of solar cash and loan jobs and lower material costs per unit for storage products, offset by higher costs from temporary manufacturing utilization of our Solar Roof ramp and idle capacity charges of \$20 million as a result of temporary suspension of production at Gigafactory New York during the six months ended June 30, 2020.

Gross margin for energy generation and storage decreased from 12% to 6% in the three months ended June 30, 2020 as compared to the three months ended June 30, 2019, primarily due to idle capacity charges of \$20 million as a result of temporary suspension of production at Gigafactory New York during the three months ended June 30, 2020.

Gross margin for energy generation and storage decreased from 7% to 5% in the six months ended June 30, 2020 as compared to the six months ended June 30, 2019, primarily due to idle capacity charges of \$20 million as a result of temporary suspension of production at Gigafactory New York during the six months ended June 30, 2020. This decrease is partially offset by an improvement in our energy storage gross margin as a result of lower materials costs.

Research and Development Expense

(Dollars in millions)	<u>Three Months Ended June 30,</u>		<u>Change</u>		<u>Six Months Ended June 30,</u>		<u>Change</u>	
	<u>2020</u>	<u>2019</u>	<u>\$</u>	<u>%</u>	<u>2020</u>	<u>2019</u>	<u>\$</u>	<u>%</u>
Research and development	\$ 279	\$ 324	\$ (45)	-14%	\$ 603	\$ 664	\$ (61)	-9%
As a percentage of revenues	5%	5%			5%	6%		

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 decreased \$45 million, or 14%, in the three months ended June 30, 2020 compared to the three months ended June 30, 2019. The decrease was primarily due to a \$27 million decrease in employee and labor related expenses, an \$11 million decrease in professional and outside service expenses and a \$4 million decrease in expensed materials. The decreases observed were driven by our continued focus on increasing operational efficiency and process automation and from our cost savings initiatives as part of our COVID-19 response strategy as discussed above.

R&D expenses as a percentage of revenue decreased from 5.1% to 4.6% in the three months ended June 30, 2020 as compared to the three months ended June 30, 2019. The decrease is primarily from a decrease in our R&D expenses as detailed above, offset by a decrease in total revenues as a result of temporary suspension of our factories during the first half of 2020.

R&D expenses decreased \$61 million, or 9%, in the six months ended June 30, 2020 as compared to the six months ended June 30, 2019. The decrease was primarily due to a \$49 million decrease in employee and labor related expenses and a \$9 million decrease in professional and outside service expenses, partially offset by an \$8 million increase in facilities, freight and depreciation expenses. The decreases observed were driven by our continued focus on increasing operational efficiency and process automation and from our cost savings initiatives as part of our COVID-19 response strategy as discussed above.

R&D expenses as a percentage of revenue decreased from 6% to 5% in the six months ended June 30, 2020 as compared to the six months ended June 30, 2019. The decrease is primarily from a decrease in our R&D expenses as detailed above and an increase in total revenues from expanding sales.

Selling, General and Administrative Expense

(Dollars in millions)	<u>Three Months Ended June 30,</u>		<u>Change</u>		<u>Six Months Ended June 30,</u>		<u>Change</u>	
	<u>2020</u>	<u>2019</u>	<u>\$</u>	<u>%</u>	<u>2020</u>	<u>2019</u>	<u>\$</u>	<u>%</u>
Selling, general and administrative	\$ 661	\$ 647	\$ 14	2%	\$ 1,288	\$ 1,351	\$ (63)	-5%
As a percentage of revenues	11%	10%			11%	12%		

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 \$14 million, or 2%, in the three months ended June 30, 2020 as compared to the three months ended June 30, 2019. The increase was primarily due to an increase of \$119 million in stock-based compensation expense, of which \$111 million was attributable to the 2018 CEO Performance Award. We had recorded a \$79 million cumulative catch-up expense for the service provided from the grant date when an additional operational milestone was considered probable of being met in the second quarter of 2020 and the remaining unamortized expense of \$22 million for the first tranche was recognized in the second quarter of 2020 upon vesting as the first market capitalization milestone was achieved (see Note 11, *Equity Incentive Plans*, to the consolidated financial statements included elsewhere in this Quarterly Report on Form 10-Q). The remainder of the increase in SG&A expense from the 2018 CEO Performance Award is attributed to the additional performance milestone that was deemed probable in the fourth quarter of 2019. The increase was partially offset by a decrease of \$74 million in employee and labor related expenses and a \$46 million decrease in office, information technology and facilities-related expenses and sales and marketing activities. The decreases observed were driven by our continued focus on increasing operational efficiency and process automation and from our cost savings initiatives as part of our COVID-19 response strategy as discussed above.

SG&A expenses as a percentage of revenue increased from 10% to 11% in the three months ended June 30, 2020 as compared to the three months ended June 30, 2019. The increase is primarily from a decrease in total revenues as a result of temporary suspension of our factories during the first half of 2020 and an increase in our SG&A expenses as detailed above.

SG&A expenses decreased \$63 million, or 5%, in the six months ended June 30, 2020 as compared to the six months ended June 30, 2019. The decrease is primarily due to a \$123 million decrease in employee and labor related expenses and \$64 million decrease in office, information technology and facilities-related expenses and sales and marketing activities. The decreases observed were driven by our continued focus on increasing operational efficiency and process automation and from our cost savings initiatives as part of our COVID-19 response strategy as discussed above. The decreases were partially offset by an increase of \$125 million in stock-based compensation expense, of which \$122 million was attributable to the 2018 CEO Performance Award. We had recorded a \$79 million cumulative catch-up expense for the service provided from the grant date when an additional operational milestone was considered probable of being met in the second quarter of 2020 and the remaining unamortized expense of \$22 million for the first tranche was recognized in the second quarter of 2020 upon vesting as the first market capitalization milestone was achieved (see Note 11, *Equity Incentive Plans*, to the consolidated financial statements included elsewhere in this Quarterly Report on Form 10-Q). The remainder of the increase in SG&A expense from the 2018 CEO Performance Award is attributed to the additional performance milestone that was deemed probable in the fourth quarter of 2019.

SG&A expenses as a percentage of revenue decreased from 12% to 11% in the six months ended June 30, 2020 as compared to the six months ended June 30, 2019. The decrease is primarily from a decrease in our SG&A expenses as detailed above and an increase in total revenues from expanding sales.

Restructuring and other

(Dollars in millions)	<u>Three Months Ended June 30,</u>		<u>Change</u>		<u>Six Months Ended June 30,</u>		<u>Change</u>	
	<u>2020</u>	<u>2019</u>	<u>\$</u>	<u>%</u>	<u>2020</u>	<u>2019</u>	<u>\$</u>	<u>%</u>
Restructuring and other	\$ —	\$ 117	\$ (117)	-100%	\$ —	\$ 161	\$ (161)	-100%
As a percentage of revenues	0%	2%			0%	1%		

During the first half of 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. These costs were substantially paid by the end of second quarter of 2019. During the second quarter of 2019, we recognized \$47 million in impairment related to IPR&D as we abandoned further development efforts and \$15 million for the related equipment. We also incurred a loss of \$49 million for closing certain facilities. There were no restructuring actions in the three and six months ended June 30, 2020.

Interest Expense

(Dollars in millions)	Three Months Ended June 30,		Change		Six Months Ended June 30,		Change	
	2020	2019	\$	%	2020	2019	\$	%
Interest expense	\$ 170	\$ 172	\$ (2)	-1%	\$ 339	\$ 330	\$ 9	3%
As a percentage of revenues	3%	3%			3%	3%		

Interest expense decreased by \$2 million, or 1%, in the three months ended June 30, 2020 as compared to the three months ended June 30, 2019.

Interest expense increased by \$9 million, or 3%, in the six months ended June 30, 2020 as compared to the six months ended June 30, 2019, primarily due to an increase in our average outstanding indebtedness as compared to the six months ended June 30, 2019.

Other Income (Expense), Net

(Dollars in millions)	Three Months Ended June 30,		Change		Six Months Ended June 30,		Change	
	2020	2019	\$	%	2020	2019	\$	%
Other expense, net	\$ (15)	\$ (41)	\$ 26	-63%	\$ (69)	\$ (15)	\$ (54)	360%
As a percentage of revenues	0%	-1%			-1%	0%		

Other income (expense), 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, net, changed favorably by \$26 million, in the three months ended June 30, 2020 as compared to the three months ended June 30, 2019. The change was primarily due to a decrease in losses from interest rate swaps related to our debt facilities year-over-year and favorable fluctuations in foreign currency exchange rates compared to the three months ended June 30, 2019.

Other expense, net, changed unfavorably by \$54 million, in the six months ended June 30, 2020 as compared to the six months ended June 30, 2019. The change was primarily due to unfavorable fluctuations in foreign currency exchange rates compared to the six months ended June 30, 2019.

Provision for Income Taxes

(Dollars in millions)	Three Months Ended June 30,		Change		Six Months Ended June 30,		Change	
	2020	2019	\$	%	2020	2019	\$	%
Provision for income taxes	\$ 21	\$ 19	\$ 2	11%	\$ 23	\$ 42	\$ (19)	-45%
Effective tax rate	14%	-5%			10%	-4%		

Our provision for income taxes increased by \$2 million, or 11%, in the three months ended June 30, 2020 as compared to the three months ended June 30, 2019. The increase is primarily due to an increase in discrete tax expense in the current period related to foreign return-to-provision items, partially offset by reduced taxable profits within certain foreign jurisdictions compared to the same period in the prior year.

Our provision for income taxes decreased by \$19 million, or 45%, in the six months ended June 30, 2020 as compared to the six months ended June 30, 2019. The decrease was primarily due to reduced taxable profits within certain foreign jurisdictions, partially offset by an increase in discrete tax expense in the current period related to foreign return-to-provision items compared to the same period in the prior year.

Our effective tax rate increased from -5% to 14% in the three months ended June 30, 2020 as compared to the three months ended June 30, 2019. Our effective tax rate increased from -4% to 10% in the six months ended June 30, 2020 as compared to the six months ended June 30, 2019. The increases were primarily due to being in a pre-tax earnings position in the three and six months ended June 30, 2020 as compared to a pre-tax loss position for the same periods in the prior year.

Net Income Attributable to Noncontrolling Interests and Redeemable Noncontrolling Interests

(Dollars in millions)	<u>Three Months Ended June 30,</u>		<u>Change</u>		<u>Six Months Ended June 30,</u>		<u>Change</u>	
	<u>2020</u>	<u>2019</u>	<u>\$</u>	<u>%</u>	<u>2020</u>	<u>2019</u>	<u>\$</u>	<u>%</u>
Net income attributable to noncontrolling interests and redeemable noncontrolling interests in subsidiaries	\$ 25	\$ 19	\$ 6	32%	\$ 77	\$ 53	\$ 24	45%

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

Net income attributable to noncontrolling interests and redeemable noncontrolling interests increased by \$6 million, or 32%, in the three months ended June 30, 2020 as compared to the three months ended June 30, 2019. Net income attributable to noncontrolling interests and redeemable noncontrolling interests increased by \$24 million, or 45%, in the six months ended June 30, 2020 as compared to the six months ended June 30, 2019. The increases were primarily due to lower activities from new financing fund arrangements.

Liquidity and Capital Resources

As of June 30, 2020, we had \$8.62 billion of cash and cash equivalents. Balances held in foreign currencies had a U.S. dollar equivalent of \$3.60 billion and consisted primarily of Chinese yuan, euros 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, establishment and/or increases of Model 3 and Model Y production capacity at the Fremont Factory and at Gigafactory Shanghai, the continued expansion of Gigafactory Nevada, the construction of Gigafactory Berlin and Gigafactory Texas, the manufacturing ramp of the Solar Roof at Gigafactory New York, and the continued expansion of our retail and service locations, body shops, Mobile Service fleet and Supercharger network.

As discussed in and subject to the considerations referenced in Part I, Item 2, *Management's Discussion and Analysis of Financial Condition and Results of Operations—Management Opportunities, Challenges and Risks—Trends in Cash Flow, Capital Expenditures and Operating Expenses* in this Quarterly Report on Form 10-Q, considering the expected pace of the manufacturing ramps for our products, construction and expansion of our factories, and pipeline of projects under development, and consistent with our current strategy of using a partner to manufacture battery cells, as well as considering all other infrastructure growth, we currently expect our average annual capital expenditures in 2020 and the two succeeding fiscal years to be \$2.5 billion to \$3.5 billion.

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, we expect that much of our investment in Gigafactory Shanghai will continue to be funded through indebtedness arranged through local financial institutions in China, such as the RMB 9.0 billion (or the equivalent amount in U.S. dollars) fixed asset term facility and RMB 2.25 billion (or the equivalent amount in U.S. dollars) working capital revolving facility that our local subsidiary entered into in December 2019, and we expect the same with respect to Gigafactory Berlin. 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.

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. In April 2020, the government agency overseeing this agreement issued guidance that all obligations relating to investment and employment targets under certain of its projects, including our obligation to be compliant with our applicable targets under such agreement on April 30, 2020, may be deferred for a one-year period upon such agency's approval of an application for relief by the obligor. 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 such deferral, which was memorialized in an amendment to this agreement in July 2020. Moreover, as 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, and we do not believe that we face a significant risk of default.

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. 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 are at a smaller scale or ramp more slowly than expected, including due to global economic conditions and levels of consumer comfort and spend impacting demand in the worldwide transportation, automotive and energy product industries, the pace of our capital expenditures may be correspondingly slowed. 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 \$1.83 billion of unused committed amounts under our credit facilities and financing funds as of June 30, 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 10, *Debt*, and Note 13, *Variable Interest Entity Arrangements*, to the consolidated financial statements included elsewhere in this Quarterly Report on Form 10-Q.

Summary of Cash Flows

(Dollars in millions)	Six Months Ended June 30,			
	2020		2019	
Net cash provided by operating activities	\$	524	\$	224
Net cash used in investing activities	\$	(1,046)	\$	(547)
Net cash provided by financing activities	\$	2,831	\$	1,490

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 \$300 million to \$524 million during the six months ended June 30, 2020 from \$224 million during the six months ended June 30, 2019. This favorable change was primarily due to an increase in net income, excluding non-cash expenses and gains, of \$1.42 billion 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 was classified as an operating activity, as this represented an interest payment on the discounted convertible notes), partially offset by an increase in working capital of \$1.31 billion. The increase in working capital was mainly driven by a decrease in deferred revenue in the six months ended June 30, 2020 as compared to an increase in the six months ended June 30, 2019, due to delivery of regulatory credits under a previous arrangement where we had received payment in advance, and a decrease in accounts payable and accrued liabilities in the six months ended June 30, 2020 as compared to an increase in the same period in 2019, from releases of resale value guarantee liabilities and less sales related tax due as a result of quarter-over-quarter changes in deliveries. Additionally, there was a larger increase in inventory from buildup of raw materials, a larger increase in prepaid expenses and other current assets, and a larger increase in operating lease vehicles, as Model 3 direct leasing was introduced in the second quarter of 2019. The increase in working capital was partially offset by an increase in customer deposits in the six months ended June 30, 2020 as compared to a decrease for the same period in 2019.

Cash Flows from Investing Activities

Cash flows from investing activities and their variability across each period related primarily to capital expenditures, which were \$1.00 billion during the six months ended June 30, 2020, mainly for Model Y production at the Fremont Factory and construction of Gigafactory Shanghai and Gigafactory Berlin, and \$530 million during the six months ended June 30, 2019, mainly for Model 3 production. Design, acquisition and installation of solar energy systems amounted to \$46 million and \$43 million for the six months ended June 30, 2020 and 2019, respectively.

Cash Flows from Financing Activities

Cash flows from financing activities during the six months ended June 30, 2020 consisted primarily of \$2.31 billion from our February 2020 public offering of common stock, net of issuance costs, \$724 million of net borrowings under loan agreements entered into by certain Chinese subsidiaries, \$514 million of net borrowings under our vehicle lease-backed loan and security agreements (the "Warehouse Agreements"), and \$217 million of proceeds from exercise of stock options and other stock issuances. These cash inflows were partially offset by \$254 million of payments of the automotive asset-backed notes, \$177 million of payments under the senior secured asset-based revolving credit agreement (the "Credit Agreement"), collateralized lease repayments of \$168 million, and \$154 million principal repayments of our finance leases.

Cash flows provided by financing activities during the six months ended June 30, 2019 consisted primarily of \$1.82 billion from the issuance of 2.00% Convertible Senior Notes due in 2024 ("2024 Notes"), net of transaction costs, and \$847 million from the issuance of common stock, net of underwriting discounts and offering costs, in registered public offerings, \$230 million of net borrowings under the Warehouse Agreements, \$200 million of net borrowings under the Credit Agreement, 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 purchase of convertible note hedges of \$476 million in connection with the offering of the 2024 Notes, and repayments of \$228 million of the automotive asset-backed notes.

Contractual Obligations

Contractual obligations did not materially change during the six months ended June 30, 2020 except for debt activity, as discussed in more detail in Note 10, *Debt*, and the aggregate impact of new and updated supplier arrangements for Gigafactory Shanghai and Gigafactory Berlin during the six months ended June 30, 2020. The following tables sets forth the aggregate impact from these supplier arrangements on our purchase obligations as of June 30, 2020 (in millions):

Six months ending December 31, 2020	\$	557
		108
Total	\$	<u>665</u>

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.

ITEM 3. 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, British pound and Canadian dollar 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 and, in particular, a strengthening of the U.S. dollar have in the past, and may in the future, negatively 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 six months ended June 30, 2020, we recognized a net foreign currency loss of \$38 million in other (expense) income, net, with our largest re-measurement exposures from the U.S. dollar, South Korean won and Mexican peso as our subsidiaries' monetary assets and liabilities are denominated in various local currencies. For the six months ended June 30, 2019, we recognized a net foreign currency gain of \$11 million in other (expense) income, net, with our largest re-measurement exposures from the U.S. dollar, Japanese yen and Chinese yuan.

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 an adverse impact of \$246 million at June 30, 2020 and \$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 six months ended June 30, 2020 and 2019 by \$3 million and \$5 million, respectively.

ITEM 4. 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 June 30, 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.

Changes in Internal Control over Financial Reporting

There were no changes in our internal control over financial reporting, as identified in connection with the evaluation required by Rule 13a-15(d) and Rule 15d-15(d) of the Exchange Act, that occurred during the three months ended June 30, 2020 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II. OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

For a description of our material pending legal proceedings, please see Note 12, *Commitments and Contingencies*, to the consolidated financial statements included elsewhere in this Quarterly Report on Form 10-Q.

In addition, the following matter is being disclosed pursuant to Item 103 of Regulation S-K because it relates to environmental regulations and aggregate civil penalties could potentially exceed \$100,000.

The Bay Area Air Quality Management District (the “BAAQMD”) has issued notices of violation to us relating to air permitting for the Tesla Factory, but has not initiated formal proceedings. We dispute certain of these allegations and are working to resolve them with the BAAQMD. Further, we assert that there has been no related adverse community or environmental impact. While we cannot predict the outcome of this matter, including the final amount of any penalties, it is not expected to have a material adverse impact on our business.

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 Business and Industry

We have been, and may in the future be, adversely affected by the global COVID-19 pandemic, the duration and economic, governmental and social impact of which is difficult to predict, which may significantly harm our business, prospects, financial condition and operating results.

Commencing in the first quarter of 2020, there has been a widespread worldwide impact from the COVID-19 pandemic. We had temporarily suspended operations at each of our manufacturing facilities worldwide at some point during the first half of 2020 as a result of government requirements or to accommodate related challenges for our employees, their families and our suppliers. Certain of our suppliers and partners, including Panasonic, our partner that manufactures lithium-ion battery cells for our products at our Gigafactory Nevada, also experienced such temporary suspensions. We had also instituted temporary labor cost reduction measures by furloughing certain of our hourly employees, reducing most salaried employees' base salaries globally and reducing our bonus and commission structures while our U.S. operations were scaled back. By the end of the second quarter of 2020, we had resumed operations at all of our manufacturing facilities.

Numerous government regulations and public advisories, as well as shifting social behaviors, that have temporarily or sporadically limited or closed non-essential transportation, government functions, business activities and person-to-person interactions remain in place. In some cases, the relaxation of such trends has been followed by a return to stringent restrictions. We cannot predict the duration or direction of such trends, which have also adversely affected and may in the future affect our operations. For example, reduced operations or closures at motor vehicle departments, vehicle auction houses and municipal and utility company inspectors resulted in certain challenges in or postponements for our new vehicle deliveries, used vehicle sales, and energy product deployments in the first half of 2020. We may also be affected by global macroeconomic conditions and changing levels of consumer comfort and spend in the future, which could further impact demand in the worldwide transportation and automotive industries and for construction projects such as the addition of solar energy systems. Likewise, our ability to sustain our production trajectory depends on the ongoing status of various government regulations regarding manufacturing operations, the readiness and solvency of our suppliers and vendors, and a stable and motivated production workforce. Government-imposed travel or visa restrictions may also prevent personnel employed by us or our vendors from traveling to our sites to work on key projects, which may delay their progress. Finally, it is possible that the contingencies generally inherent in the construction of and ramp at new facilities such as Gigafactory Shanghai, Gigafactory Berlin and Gigafactory Texas may be exacerbated by such conditions.

Ultimately, we have always monitored macroeconomic conditions to remain flexible and optimize and evolve our business as appropriate, and we will continue to do so. Because the impact of current conditions on a sustained basis is yet largely unknown, is rapidly evolving, and has been varied across geographic regions, this ongoing assessment will be particularly critical to allow us 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 could be materially harmed.

We have experienced in the past, and may experience in the future, delays or other complications in the design, manufacture, launch, and production ramp of our vehicles, energy products, and product features, or may not realize our manufacturing cost targets, which could harm our brand, business, prospects, financial condition and operating results.

We have previously experienced launch and production ramp delays or other complications in connection with the introduction of new vehicle models and vehicle features. For example, we encountered unanticipated supply chain constraints that led to initial delays in producing Model X and an isolated supplier limitation in the manufacture of Model 3. Similarly, during our initial Model 3 production ramp, we had challenges ramping fully automated processes, such as portions of the battery module assembly line, material flow system and the general assembly line, which we addressed by reducing the levels of automation and introducing semi-automated or manual processes. In addition, we have introduced in the past and may introduce in the future new manufacturing technologies, techniques and processes for our vehicles, such as aluminum spot welding systems and high-speed blow forming of certain difficult to stamp vehicle parts, and unique design features with different manufacturing challenges, such as large display screens, dual motor drivetrain, hardware for our Autopilot and FSD features, falcon-wing doors, and a heat pump and octovalve system for increased power efficiency. There is no guarantee that we will be able to successfully and timely introduce and scale any such new processes or features.

In particular, our future business depends in large part on the high-volume production of Model 3 and Model Y, which we believe are our vehicles with the largest markets. We have limited experience to date in manufacturing Model 3 at high volumes and continuously increasing its production rates, particularly across multiple vehicle manufacturing facilities, which we commenced in the fourth quarter of 2019 with Gigafactory Shanghai coming online. In order to be successful, we will need to implement, maintain and/or ramp efficient and cost-effective manufacturing capabilities, processes and supply chains and achieve the design tolerances, high quality and maximum output rates we have planned, including at Gigafactory Shanghai, and for Model Y, which we commenced manufacturing at the Fremont Factory in the first quarter of 2020. Bottlenecks such as those we have experienced in the past with new product ramps and other unexpected challenges may also arise as we ramp production, and it will be important that we address them promptly while continuing to reduce our manufacturing costs. If we are not successful in doing so, or if we experience issues with our ongoing manufacturing process improvements and cost-down efforts, 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.

Moreover, we will need to hire, train and compensate skilled employees to operate high-volume production facilities to support our vehicle ramp at the Fremont Factory and Gigafactory Shanghai, as well as at Gigafactory Nevada to support the manufacture of battery packs and drive units for certain of our vehicles. Finally, because our vehicle models, in particular Model 3 and Model Y, may share certain parts, suppliers or production facilities with each other, the volume or efficiency of production with respect to one model may impact also the production of other models or lead to bottlenecks that impact the production of all models.

We may also experience similar future delays or other complications in launching and/or ramping production of new vehicles, such as Tesla Semi, Cybertruck and the new Tesla Roadster, our energy storage products and the Solar Roof, as well as 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, including at Gigafactory Shanghai, Gigafactory Berlin and Gigafactory Texas.

Any significant delay or other complication in cost-effectively ramping the production of our current products, or the development, manufacture, launch and production ramp of our future products, features and services, including complications associated with expanding our production capacity and supply chain or obtaining or maintaining related regulatory approvals, could materially damage our brand, business, prospects, financial condition and operating results.

We may be unable to meet our growing product sales, delivery, installation, vehicle servicing and charging plans, or accurately project and manage this growth internationally, which could harm our business and prospects.

Concurrent with developing, launching and ramping our products, our success will depend on our ability to continue to significantly increase their sales, deliveries, installations and servicing worldwide, while allocating our available resources among multiple products simultaneously. As we expand globally, we will also need to ensure we are in compliance with any regulatory requirements applicable to the sale, installation and service of our products, the sale of electricity generated through our solar energy systems, dispatch of electricity from energy storage products and operation of Superchargers in various jurisdictions, which could take considerable time and expense. These plans require significant cash investments and management resources and there is no guarantee that they will ultimately generate additional sales or installations of our products.

We continuously evaluate, and as appropriate evolve, our retail operations and product offerings in order to maximize our reach and optimize our costs, vehicle line-up and model differentiation, and purchasing experience. However, there is no guarantee that each step in our evolving strategy will be perceived as intended by prospective customers accustomed to more traditional sales models. Likewise, while we are pioneering touchless vehicle deliveries and test drives in certain regions to allow prospective customers to experience our vehicles while promoting their comfort and convenience, there is no guarantee that such measures will be effective large-scale substitutes for traditional transactions. In particular, we are targeting with Model 3 and Model Y a global mass demographic with a broad range of potential customers, in which we have 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 sales matched to the specific vehicles that we produce in the same timeframe or that are commensurate with our operations in a given region, which may negatively impact our deliveries and operating results in a particular period. Likewise, as we develop and grow our energy products and services worldwide, our success will depend on our ability to correctly forecast demand in different markets.

Moreover, because we do not have independent dealer networks, we are responsible for delivering all of our vehicles to our customers and meeting their vehicle servicing needs. While we have substantially implemented and improved many aspects of our delivery and service operations, we still have relatively limited experience with, and may face difficulties in, such deliveries and servicing at high volumes, particularly in international markets as we expand. For example, significant transit time may be required to transport vehicles in volume into international markets, and we also saw challenges in initially ramping our logistical channels in China and Europe as we delivered Model 3 there for the first time in the first quarter of 2019. To accommodate growing volumes, we have deployed a number of delivery models, such as deliveries to customers' homes and workplaces, some of which have not been previously tested at scale and in different geographies and may not ultimately be successful. Likewise, because of our unique expertise with our vehicles, we recommend that our vehicles be serviced by our service centers, Mobile Service technicians or certain authorized professionals that we have specifically trained and equipped. If we experience delays in adding such servicing capacity or experience unforeseen issues with the reliability of our vehicles, particular higher-volume and newer additions to our fleet such as Model 3 and Model Y, it could overburden our servicing capabilities and parts inventory. Finally, 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.

We are also expanding our installation capabilities for the Solar Roof as we continue its ramp by training both our own personnel and third party installers. If we are not successful in matching our overall installation capability with production, or if we experience unforeseen delays in the production ramp or inaccurately forecast demand for the Solar Roof, our operating results may be negatively impacted.

There is no assurance that we will be able to ramp our business to meet our sales, delivery, servicing, charging and installation 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. Moreover, we may not be successful in managing our global operations if we are unable to avoid cost overruns and other unexpected operating costs, adapt our products and conduct our operations to meet local requirements and regulations, implement required local infrastructure, systems and processes, and find and hire as needed additional sales, service, electrical installation, construction and administrative personnel. If we fail to manage our growth effectively, it could result in negative publicity and damage to our brand and have a material adverse effect on our business, prospects, financial condition and operating results.

Our future growth and success is dependent upon consumers' willingness to adopt electric vehicles and specifically our vehicles. We operate in the automotive industry, which is generally susceptible to cyclical and volatility.

Our growth is highly dependent upon the worldwide adoption by consumers of alternative fuel vehicles in general and electric vehicles in particular. Although we have successfully grown demand for our vehicles thus far, there is no guarantee of such future demand, or that our vehicles will not compete with one another in the market. Moreover, the target demographics for our vehicles, in particular the mass market demographic for Model 3 and Model Y, are highly competitive. 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, our business, prospects, financial condition and operating results could be harmed.

We have only relatively recently achieved high-volume production of vehicles, and are still at an earlier stage and have limited resources relative to our competitors. Moreover, the market for alternative fuel vehicles is rapidly evolving. As a result, the market for our vehicles could be 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;
- 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;
- government regulations and economic incentives;
- access to charging facilities; and
- concerns about our future viability.

For example, the market price of crude oil has fluctuated widely in 2020 and may continue to do so, and any corresponding changes in the cost of gasoline may impact the market for electric vehicles. In addition, sales of vehicles in the automotive industry tend to be cyclical in many markets, which may expose us to increased volatility, especially as we expand and adjust our operations and retail strategies. Moreover, travel restrictions and social distancing efforts in response to the COVID-19 pandemic may negatively impact the transportation and automotive industries for an unknown, but potentially lengthy, period of time. Specifically, 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.

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 according to our schedule and at prices, quality levels and volumes acceptable to us, or our inability to efficiently manage these components, could have a material adverse effect on our financial condition and operating results.

Our products contain thousands of purchased parts that we source globally from hundreds of direct suppliers. We attempt to mitigate our supply chain risk by entering into long-term agreements where it is practical and beneficial to do so, qualifying and obtaining components from multiple sources where sensible, and maintaining safety stock for key parts and assemblies and die banks for components with lengthy procurement lead times. However, our limited, and in most cases single-source, supply chain exposes us to multiple potential sources of delivery failure or component shortages for our production, such as those which we experienced in 2012 and 2016 in connection with our slower-than-planned Model S and Model X ramps. Furthermore, 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, and other factors beyond our and our suppliers' control could also affect these suppliers' ability to deliver components to us on a timely basis or to remain solvent and operational. The loss of any supplier, particularly a single- or limited-source supplier, or the disruption in the supply of components from our suppliers, could lead to product design changes, production delays of key revenue-generating products, idle manufacturing facilities, and potential loss of access to important technology and parts for producing, servicing and supporting our products, any of which could result in negative publicity, damage to our brand and a material and adverse effect on our business, prospects, financial condition and operating results.

We may also be impacted by changes in our supply chain or production needs. We have experienced in the past, and may experience in the future, cost increases from certain of our suppliers in order to meet our quality targets and development timelines as well as due to our design changes. Likewise, any significant increases in our production, such as for Model 3 and our expectations for Model Y, has required and/or may in the future require us to procure additional components in a short amount of time. Our suppliers may not ultimately be able to sustainably and timely meet our cost, quality and volume needs, requiring us to replace them with other sources. While we believe that we will be able to secure additional or alternate sources of supply for most of our components in a relatively short time frame, there is no assurance that we will be able to do so or develop our own replacements for certain highly customized components. Additionally, we continuously negotiate with existing suppliers to obtain cost reductions and avoid unfavorable changes to terms, seek new and less expensive suppliers for certain parts, and attempt to redesign certain parts to make them less expensive to produce. If we are unsuccessful in our efforts to control and reduce supplier costs, our operating results will suffer.

Outside of the U.S., we have limited manufacturing experience and we may experience issues or delays increasing the level of localized procurement at our Gigafactory Shanghai and in the future at our Gigafactory Berlin. Furthermore, as the scale of our vehicle production increases, we will need to accurately forecast, purchase, warehouse and transport components to our manufacturing facilities and servicing locations internationally and at much higher volumes. 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, we may incur unexpected production disruption, storage, transportation and write-off costs, which could have a material adverse effect on our financial condition and operating results.

Any problems or delays in expanding Gigafactory Nevada or ramping and maintaining operations there could negatively affect the production and profitability of our products, such as Model 3, Model Y and our energy storage products. In addition, the battery cells produced there store large amounts of energy.

To lower the cost of cell production and produce cells in high volume, we have vertically integrated the production of lithium-ion cells at Gigafactory Nevada, where we also manufacture battery packs and drive units for certain vehicles and energy storage products and assemble our Megapack product. Production of lithium-ion cells at Gigafactory Nevada began in 2017, and we have no other direct experience in the production of lithium-ion cells. Given the size and complexity of this undertaking, it is possible that future events could result in issues or delays in further ramping our products and expanding production output at Gigafactory Nevada.

In order to achieve our volume and gross margin targets for our vehicles and energy storage products, we must continue to sustain and ramp significant cell production at Gigafactory Nevada, which, among other things, requires Panasonic to successfully operate and further ramp its cell production lines at significant volumes. 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. 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 components for Model 3 and Model Y, such as battery modules incorporating the lithium-ion cells produced by Panasonic and drive units (including to support Gigafactory Shanghai production), at Gigafactory Nevada. Some of the manufacturing lines for such components took longer than anticipated to ramp to their full capacity. While we have largely overcome this bottleneck after deploying multiple semi-automated lines and improving our original lines, additional bottlenecks may arise as we continue to increase the production rate and introduce new lines. If we or Panasonic are unable to or otherwise do not maintain Gigafactory Nevada production, or if we are unable to cost-effectively ramp output additionally over time as needed or hire and retain a substantial number of highly skilled personnel, our ability to supply battery packs or other components for Model 3, Model Y and our other products could be negatively impacted, which could negatively affect our brand and harm our business, prospects, financial condition and operating results.

In addition, 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. Such disruptions or issues could negatively affect our brand and harm our business, prospects, financial condition and operating results.

Any issues or delays in meeting our projected timelines, costs and production at or funding the ramp of Gigafactory Shanghai, or any difficulties in generating and maintaining local demand for vehicles manufactured there, could adversely impact our business, prospects, operating results and financial condition.

As part of our continuing work to increase production of our vehicles on a sustained basis, and in order to make them affordable in international markets by accessing local supply chains and workforces, we have established Gigafactory Shanghai in China. We are currently manufacturing Model 3 at Gigafactory Shanghai, and we are constructing its next phase to add Model Y manufacturing capacity there. The ramp and further expansion of Gigafactory Shanghai are subject to a number of uncertainties inherent in all new manufacturing operations, including ongoing compliance with regulatory requirements, maintenance of 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. We have limited experience to date with operating manufacturing facilities abroad, and only recently began to sell Model 3 in China. If we experience any issues or delays in meeting our projected timelines, costs, capital efficiency and production capacity for Gigafactory Shanghai, or in maintaining and complying with the terms of local debt financing that we intend will largely fund it, or in generating and maintaining demand locally for the vehicles we manufacture at Gigafactory Shanghai, our business, prospects, operating results and financial condition could be adversely impacted.

In particular, local manufacturing is critical to our expansion and sales in China, which is the largest market for electric vehicles in the world. Our vehicle sales in China have been negatively impacted in the past by certain tariffs on automobiles manufactured in the U.S., such as our vehicles. If we are not able to successfully and timely ramp Gigafactory Shanghai, we may continue to be exposed to the impact of such unfavorable tariffs, duties or costs to our detriment compared to locally-based competitors.

We face risks associated with our international operations, including unfavorable and uncertain regulatory, political, economic, tax and labor conditions, and with establishing ourselves in new markets, all of which could harm our business.

We have a global footprint with domestic and international operations and subsidiaries. Accordingly, we are subject to a variety of legal, political and regulatory requirements and social, environmental and economic conditions over which we have little control. For example, we may be impacted by trade policies, environmental conditions, political uncertainty and economic cycles involving geographic regions where we have significant operations, which are inherently unpredictable. We are subject to a number of risks associated in particular with international business activities that may increase our costs, impact our ability to sell our products and require significant management attention. These risks include conforming our products to various international regulatory and safety requirements as well as charging and other electric infrastructures, organizing local operating entities, difficulty in establishing, staffing and managing foreign operations, challenges in attracting customers, foreign government taxes, regulations and permit requirements, our ability to enforce our contractual rights, trade restrictions, customs regulations, tariffs and price or exchange controls, and preferences of foreign nations for domestically manufactured products.

Increases in costs, disruption of supply or shortage of materials, in particular for lithium-ion cells, could harm our business.

We may experience increases in the cost of or a sustained interruption in the supply or shortage of materials. Any such increase, supply interruption or shortage could materially and negatively impact our business, prospects, financial condition and operating results. We use various materials in our business including aluminum, steel, lithium, nickel, copper and cobalt, as well as lithium-ion cells from suppliers. 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 production of electric vehicles and energy storage products by our competitors, and could adversely affect our business and operating results. For instance, we are exposed to multiple risks relating to lithium-ion cells. These risks include:

- an increase in the cost, or decrease in the available supply, of materials used in the cells;
- disruption in the supply of cells due to quality issues or recalls by battery cell manufacturers or any issues that may arise with respect to cells manufactured at our own facilities; and
- fluctuations in the value of any foreign currencies in which battery cell and related raw material purchases are or may be denominated, such as the Japanese yen, against the U.S. dollar.

Our business is dependent on the continued supply of battery cells for the battery packs used in our vehicles and energy storage products. While we believe several sources of the battery cells are available for such battery packs, and expect to eventually rely substantially on battery cells manufactured at our own facilities, we have to date fully qualified only a very limited number of suppliers for the cells used in such battery packs and have very limited flexibility in changing cell suppliers. Any disruption in the supply of battery cells from such suppliers could disrupt production of our vehicles and of the battery packs we produce for energy products until such time as a different supplier is fully qualified. Furthermore, fluctuations or shortages in petroleum and other economic conditions may cause us to experience significant increases in freight charges and material costs. Substantial increases in the prices for our materials or prices charged to us, such as those charged by battery cell suppliers, would increase our operating costs, and could reduce our margins if we cannot recoup the increased costs through increased vehicle prices. Any attempts to increase product prices in response to increased material costs could result in cancellations of orders and reservations and therefore materially and adversely affect our brand, image, business, prospects and operating results.

If our vehicles or other products that we sell or install fail to perform as expected, our ability to develop, market and sell our products and services could be harmed.

If our vehicles or our energy products contain defects in design and manufacture 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 could be harmed. For example, the operation of our vehicles is highly dependent on software, which is inherently complex and may contain latent defects and errors or be subject to external attacks. Issues experienced by vehicle customers have included those related to the software for the 17-inch display screen, as well as the panoramic roof and the 12-volt battery in the Model S and the seats and doors in the Model X. 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 be to the satisfaction of our customers. While we have performed extensive internal testing on the products we manufacture, we currently have a limited frame of reference by which to evaluate detailed long-term quality, reliability, durability and performance characteristics of our battery packs, powertrains, vehicles and energy storage products. 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.

Any product defects, delays or legal restrictions on product features, or other failure of our products to perform as expected, could harm our reputation and result in delivery delays, product recalls, product liability claims, breach of warranty claims, and significant warranty and other expenses, and could have a material adverse impact on our business, financial condition, operating results and prospects.

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

Although we design our vehicles to be the safest vehicles on the road, product liability claims, even those without merit, could harm our business, prospects, operating results and financial condition. The automobile industry in particular experiences significant product liability claims and we face inherent risk of exposure to 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 crashes resulting in death or personal injury, and such crashes 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 new technologies that we are pioneering, including Autopilot and FSD features in our vehicles. 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 the battery pack 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, which could subject us to lawsuits, product recalls or redesign efforts, all of which would be time consuming and expensive.

Moreover, as our solar energy systems and energy storage products generate and store electricity, they have the potential to cause injury to people or property. A successful product liability claim against us could require us to pay a substantial monetary award. Moreover, a product liability claim could generate substantial negative publicity about our products and business and could have a material adverse effect on our brand, business, prospects and operating results. 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.

The markets in which we operate are highly competitive, and we may not be successful in competing in these industries. We currently face competition from new and established domestic and international competitors and expect to face competition from others in the future, including competition from companies with new technology.

The worldwide automotive market, particularly for alternative fuel vehicles, is highly competitive today and we expect it will become even more so in the future. There is no assurance that our vehicles will be successful in the respective markets in which they compete. 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 alternative fuel vehicle market, including hybrid, plug-in hybrid and fully electric vehicles, as well as the market for self-driving technology and applications. In some cases, such competitors have announced an intention to produce electric vehicles exclusively at some point in the future. Most of our current and potential competitors have significantly greater financial, technical, manufacturing, marketing, vehicle sales resources and networks than we do and may be able to devote greater resources to the design, development, manufacturing, distribution, promotion, sale and support of their products. In particular, some competitors are competing or preparing to compete with us in important and large markets for electric vehicles, such as in China and Europe. Increased competition could result in lower vehicle unit sales, price reductions, revenue shortfalls, loss of customers and loss of market share, which could harm our business, prospects, financial condition and operating results. In addition, 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, including BMW, Ford, Lexus, Mercedes, Volkswagen Group and Volvo.

The solar and energy storage industries are highly competitive. We face competition from other manufacturers, developers, installers and service providers for solar and energy storage 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. Moreover, prices for solar product components and prices per kWh for lithium-ion battery cells have declined and may continue to decline, which may adversely impact our ability to cost-effectively manufacture such components ourselves.

If we are unable to establish and maintain confidence in our long-term business prospects among consumers, analysts and within our industries, or are subject to negative publicity, then our financial condition, operating results, business prospects and access to capital may suffer materially.

Consumers may be less likely to purchase our products if they are not convinced that our business will succeed or that our service and support and other operations will continue in the long term. Similarly, suppliers and other third parties will be less likely to invest time and resources in developing business relationships with us if they are not convinced that our business will succeed over the long term. Accordingly, in order to build and maintain our business, we must maintain confidence among customers, suppliers, analysts, ratings agencies and other parties in our long-term financial viability and business prospects. Maintaining such confidence may be particularly complicated by certain factors including those that are largely outside of our control, such as our limited operating history, customer unfamiliarity with our products, any delays 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, and our quarterly production and sales performance compared with market expectations.

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, could harm our business and make it more difficult to raise additional funds if needed.

If we fail to effectively grow and manage the compliance, residual, financing, and credit risks related to our various financing programs, our business may suffer.

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 the United States, Canada, Germany and the UK, for certain models depending on the country. Such arrangements include 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 solar energy systems, or purchase electricity generated by our systems. 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, either of which may harm our business.

Also, the profitability of any 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, including as we introduce new vehicles and variants and optimize the pricing among them. Such pricing changes may impact the residual values of our vehicles. The vehicle leasing program also relies on our ability to secure adequate financing and/or business partners to fund and grow this program. We expect the availability of leasing and other vehicle financing options will be important for our vehicle customers. If we are unable to adequately fund our leasing program through internal funds, partners or other external financing sources, and compelling alternative financing programs are not available for our customers, 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 greater levels of residual risk resulting from growth.

Moreover, 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, as with residual values for leased vehicles, are subject to similar 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 operating results, profitability and/or liquidity could be negatively impacted.

Finally, our vehicle and solar energy system financing programs and our energy storage sales programs also require us to screen for and manage customer credit risk. In the event of a widespread economic downturn or other catastrophic event, our solar energy, energy storage and/or our vehicle 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 credit losses and/or have to recognize impairment charges with respect to the underlying assets, which may be substantial. Any such credit losses and/or impairment charges could adversely affect our operating results or financial condition.

The unavailability, reduction or elimination of, or unfavorable determinations with respect to, government and economic incentives in the U.S. and abroad supporting the development and adoption of electric vehicles, energy storage products or solar energy could have some impact on demand for our products and services.

We and our customers currently benefit from certain government and economic incentives supporting the development and adoption of electric vehicles. In the U.S. and abroad, such incentives include tax credits or rebates that encourage the purchase of electric vehicles. Specific policies in place around the world include exempting the purchase of electric vehicles from import taxes, value added taxes, or carbon dioxide and weight-based purchase taxes. Such programs could be reduced, eliminated or exhausted. For example, under current regulations, a \$7,500 federal tax credit that was available in the U.S. for the purchase of our vehicles was reduced in phases during 2019 and ended on December 31, 2019. We believe that this sequential phase-out likely pulled forward some vehicle demand into the periods preceding each reduction. Moreover, in July 2018, a previously available incentive for purchases of Model 3 in Ontario, Canada was cancelled and Tesla buyers in Germany lost access to electric vehicle incentives for a short period of time beginning late 2017. In April 2017 and January 2016, respectively, previously

available incentives in Hong Kong and Denmark that favored the purchase of electric vehicles expired, negatively impacting sales. Effective March 2016, California implemented regulations phasing out a \$2,500 cash rebate on qualified electric vehicles for high-income consumers. Such 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 on a particular date 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 an investment tax credit (ITC) for the installation of solar power facilities and energy storage systems that are charged from a co-sited solar power facility; however, the ITC is currently scheduled to decline in phases, from 26% for qualifying solar systems for which construction began by December 31, 2020, to 10% for commercial and utility systems and to 0% for customer-owned residential systems for which construction begins after December 31, 2021. Likewise, in jurisdictions where net energy 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. Several jurisdictions have reduced, altered or eliminated the benefit available under net energy metering, or have proposed to do so. In addition, net energy metering has been contested and may continue to be contested on a nationwide basis in the U.S. before the Federal Energy Regulatory Commission (FERC). Any reductions in or termination of governmental incentives could adversely impact our 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.

Moreover, we and our fund investors claim the ITC and certain state incentives in amounts based on the fair market value of our solar and energy storage systems. Although we obtain independent appraisals to support the claimed fair market values, the relevant governmental authorities have audited such values and in certain cases have determined that they 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.

Any failure by us to comply with the terms of our agreement with the Research Foundation for the State University of New York relating to our Gigafactory New York, could result in negative consequences for our business.

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 in Buffalo, 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, directly employ specified minimum numbers of personnel in the State of New York and 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. In April 2020, the government agency overseeing this agreement issued guidance that all obligations relating to investment and employment targets under certain of its projects, including our obligation to be compliant with our applicable targets under such agreement on April 30, 2020, may be deferred for a one-year period upon such agency's approval of an application for relief by the obligor. 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 such deferral, 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, including with our ramp and manufacture of the Solar Roof, if we fail in any year over the course of the term of the agreement to meet all applicable future obligations, we would be obligated to pay a "program payment" of \$41.2 million to the SUNY Foundation for such year. Any inability on our part to comply with applicable future requirements of this agreement may result in the payment of significant amounts to the SUNY Foundation, the termination of our lease at Gigafactory New York, and/or the need to adjust certain of our operations, in particular our production ramp of the Solar Roof or Supercharger components. Any of the foregoing events could have a material adverse effect on our business, prospects, financial condition and operating results.

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

The loss of the services of any of our key employees could disrupt our operations, delay the development and introduction of our vehicles and services, and negatively impact our business, prospects and operating results. 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 depends upon our ability to attract and retain executive officers and other key technology, sales, marketing, engineering, manufacturing and support personnel, especially to support our high-volume manufacture of vehicles, expansion plans and technological innovation, and any failure or delay in doing so could adversely impact our business, prospects, financial condition and operating results.

Key talent may leave 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, including outside of the U.S., there is increasing competition for individuals with skillsets needed for our business, including specialized knowledge of electric vehicles, software engineering, manufacturing engineering, and other skills such as electrical and building construction expertise. This competition affects our ability to retain and hire key employees. Moreover, we have in the past conducted reductions in force in order to optimize our organizational structure and reduce costs, and certain senior personnel have also departed 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. Our continued success depends upon our continued ability to hire new employees in a timely manner, especially to support our expansion plans, retain current employees, including furloughed employees when our U.S. operations fully resume, and replace departed senior employees with qualified and experienced individuals, which is typically a time-consuming process. Additionally, we 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. Difficulties in retaining or recruiting employees could have an adverse effect on our performance and results.

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 have to periodically seek and obtain approval from our stockholders for future increases to the number of awards that may be granted and shares that may be purchased under our equity incentive and employee stock purchase plans. If we are unable to obtain the requisite stockholder approvals to obtain future increases to the number of awards that may be granted and shares that may be purchased under such plans, and compensate our personnel in accordance with our compensation philosophy, our ability to retain and hire qualified personnel would be negatively impacted.

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 are continuously expanding and improving our information technology systems and use security measures designed to protect our systems against breaches and cyber-attacks. If these efforts are not successful, our business and operations could be disrupted or our intellectual property could be compromised, as a result of which our operating results and reputation could be harmed.

We are continuously expanding and improving our information technology systems, including implementing new internally developed systems and deploying such systems globally, to assist us in the management of our business. In particular, our volume production of multiple vehicles necessitates continued development, maintenance and improvement of our information technology systems in the U.S. and abroad, including at Gigafactory Shanghai, such as systems for product data management, procurement, inventory management, production planning and execution, sales, service and logistics, dealer management, financial, tax and regulatory compliance systems. We also maintain information technology measures designed to protect us against intellectual property theft, data breaches and other cyber-attacks. The implementation, maintenance, segregation and improvement of these systems require significant management time, support and cost. Moreover, there are inherent risks associated with developing, improving and expanding our core systems as well as implementing new systems and updating current systems, including the disruption of our data management, procurement, manufacturing execution, finance, supply chain and sales and service processes. These risks may affect our ability to manage our data and inventory, procure parts or supplies or manufacture, sell, deliver and service vehicles, adequately protect our intellectual property or achieve and maintain compliance with, or realize available benefits under, tax laws and other applicable regulations.

We cannot be sure that these systems or their required functionality will be effectively implemented, maintained or expanded as planned. 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 and harm our business.

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. We have designed, implemented and tested security measures intended to prevent unauthorized access to our information technology networks, our products and their systems. However, hackers 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 via our security vulnerability reporting policy, and we aim to remedy any reported and verified vulnerability. Accordingly, we have received reports of potential vulnerabilities in the past and have attempted to remedy them. However, there can be no assurance that vulnerabilities will not be exploited in the future 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 proceedings. 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," could negatively affect our brand and harm our business, prospects, financial condition and operating results. We have been the subject of such reports in the past.

We are subject to substantial laws and regulations that could impose substantial costs, legal prohibitions or unfavorable changes upon our operations or products, and any failure to comply with these laws and regulations, including as they evolve, could negatively impact our ability to operate our manufacturing facilities and substantially harm our business and operating results.

As a manufacturing company, including with respect to our current facilities such as the Fremont Factory, Gigafactory Nevada, Gigafactory New York and Gigafactory Shanghai and our future facilities at Gigafactory Berlin and Gigafactory Texas, 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 human exposure to hazardous materials and with respect to constructing, expanding and maintaining our facilities. The costs of compliance, including remediating contamination if any is found on our properties and any changes to our operations mandated by new or amended laws, may be significant. We may be required to incur additional costs to comply with any changes to such regulations, and any failures to comply could result in significant expenses, delays or fines. We are subject to laws and regulations applicable to the supply, manufacture, import, sale and service of automobiles internationally. For example, in countries outside of the U.S., we are required to meet standards relating to vehicle safety, fuel economy and emissions, among other things, 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 engaged. We are continuing to develop our FSD technology with the goal of achieving full self-driving capability in the future. There is 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. For example, existing or proposed regulations and policies would permit utilities to limit the amount of electricity generated by our customers with their solar energy systems, charge fees and penalties to our customers relating to the purchase of energy other than from the grid, adjust electricity rate designs such that the price of our solar products may not be competitive with that of electricity from the grid, restrict us and our customers from transacting under our PPAs or qualifying for government incentives and benefits that apply to solar power, and limit or eliminate net energy metering. If such regulations and policies are continued or adopted, or if other 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 could harm our business, prospects, financial condition and results of operations.

Failure to comply with a variety of U.S. and international privacy and consumer protection laws to which we are subject could harm us.

Our privacy notice is posted on our website, and any failure by us or our vendor or other business partners to comply with it 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 has 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. Although we take steps 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 could have negative consequences for our business and future prospects, including possible fines, penalties and damages, reduced customer demand for our vehicles and harm to our reputation and brand.

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 parts suppliers and trucking and freight companies, and work stoppages or strikes organized by such unions could have a material adverse impact on our business, financial condition, or operating results. If a work stoppage occurs, it could delay the manufacture and sale of our products and have a material adverse effect on our business, prospects, operating results, or financial condition.

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

Any product recall with respect to our products may result in adverse publicity, damage our brand, and adversely affect our business, prospects, operating results, and financial condition. For example, certain vehicle recalls that we initiated have resulted from various causes, including a component that could prevent the parking brake from releasing once engaged, a concern with the firmware in the restraints control module in certain right-hand-drive vehicles, industry-wide issues with airbags from a particular supplier, Model X seat components that could cause unintended seat movement during a collision, and concerns of corrosion in Model S and Model X power steering assist motor bolts. Furthermore, testing of our products by government regulators or industry groups may require us to initiate product recalls or may result in negative public perceptions about the safety of our products. In the future, we may at various times, voluntarily or involuntarily, initiate a recall if any of our products or our electric vehicle powertrain components that we have provided to other vehicle OEMs, including any systems or parts sourced from our suppliers, prove to be defective or noncompliant with applicable laws and regulations, such as 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 involve significant expense and could adversely affect our brand image in our target markets, as well as our business, prospects, financial condition and results of operations.

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

We provide a manufacturer's warranty on all new and used Tesla vehicles and production powertrain components and systems we sell. In addition, we also provide warranties on the installation and maintenance of our systems in addition to the components of the energy generation and storage systems we sell. For components not manufactured by us, we pass through to our customers the inverter and panel manufacturers' warranties. Finally, we offer a performance guarantee with our financed solar energy systems that can compensate a customer on an annual basis if their system does not meet the electricity production guarantees set forth in their PPA or lease. Under these performance guarantees, we bear the risk of electricity production shortfalls resulting from an inverter or panel failure. These risks are exacerbated in the event the panel or inverter manufacturers cease operations or fail to honor their warranties.

If our warranty reserves are inadequate to cover future warranty claims on our products, our business, prospects, financial condition, and operating results could be materially and adversely affected. Warranty reserves include our management's best estimate of the projected costs to repair or to replace items under warranty. These estimates 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, 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 could adversely affect our financial condition and operating results.

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 quarterly financial results. If any of this occurs, the trading price of our stock could fall substantially, either suddenly or over time.

Servicing our indebtedness requires a significant amount of cash, and there is no guarantee that we will have sufficient cash flow from our business to pay our substantial indebtedness.

As of June 30, 2020, we and our subsidiaries had outstanding \$13.15 billion in aggregate principal amount of indebtedness (see Note 10, *Debt*, to the consolidated financial statements included elsewhere in this Quarterly Report on Form 10-Q). 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. 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 any of these activities or engage in these activities on desirable terms or at all, which could result in a default on our existing or future indebtedness and have a material adverse effect on our business, results of operations, and financial condition.

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

The terms of certain of our credit facilities, including the 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.

We may need or want to raise additional funds and these funds may not be available to us when we need them. If we cannot raise additional funds when we need or want them, our operations and prospects could be negatively affected.

The design, manufacture, sale, installation, and/or servicing of automobiles, energy storage products and solar products is a capital-intensive business, and the specific timing of cash inflows and outflows may fluctuate substantially from period to period. Until we are consistently generating positive free cash flows, 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 vehicles, energy storage products, and/or solar 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 need sufficient capital to fund ongoing operations, research and development projects for new products, establishment and/or increases of Model 3 and Model Y production capacity at the Fremont Factory and at Gigafactory Shanghai, the continued expansion of Gigafactory Nevada, the construction of Gigafactory Berlin, the manufacturing ramp of the Solar Roof at Gigafactory New York, and the continued expansion of our retail and service locations, body shops, Mobile Service fleet and Supercharger network. 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 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 12, *Commitments and Contingencies*, to the consolidated financial statements included elsewhere in this Quarterly Report on Form 10-Q. 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 DOJ, 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 the Board, 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.

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

We have invested and expect to continue to invest significantly in what we believe is state of the art tooling, machinery, and other manufacturing equipment for our various product lines, and we depreciate the cost of such equipment over their expected useful lives. However, manufacturing technology may evolve rapidly, and we may decide to update our manufacturing process with cutting-edge equipment more quickly than expected. Moreover, we are continually implementing learnings as our engineering and manufacturing expertise and efficiency increase, which 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, our learnings may cause us to 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 could be negatively impacted.

We are exposed to fluctuations in currency exchange rates, which could negatively affect our financial results.

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, British pound and Canadian dollar. 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 Japanese yen and Chinese yuan. 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 could be adversely affected.

We may face regulatory limitations on our ability to sell vehicles directly, which could materially and adversely affect our ability to sell our electric vehicles.

We sell our vehicles directly to consumers using means that we believe will maximize our reach, currently including through our website and our own stores. While we intend to continue to leverage our most effective sales strategies, we may not be able to sell our vehicles through our own stores in each state in the U.S., as some states have laws that may be interpreted to impose limitations on this direct-to-consumer sales model. In some states, we have also opened galleries to educate and inform customers about our products, but such locations do not actually transact in the sale of vehicles. The application of these state laws to our operations continues to be difficult to predict. Laws in some states have limited our ability to obtain dealer licenses from state motor vehicle regulators and may continue to do so.

In addition, decisions by regulators permitting us to sell vehicles 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 designed to prevent our distribution model. 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.

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 could have a negative and material impact our business, prospects, financial condition and results of operations.

We may need to defend ourselves against intellectual property infringement claims, which may be time-consuming and could cause us to incur substantial costs.

Others, including our competitors, 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. 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 were required to take one or more such actions, our business, prospects, operating results, and financial condition could be materially adversely affected. In addition, any litigation or claims, whether or not valid, could result in substantial costs, negative publicity, and diversion of resources and management attention.

Our facilities or 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 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 an intra-day trading high of \$1,794.99 per share and a low of \$211.00 per share over the last 52 weeks. 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 and may continue to 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 and the market price of a particular company's securities, securities class action litigation has often been instituted against these companies. Moreover, stockholder litigation like this has been filed against us in the past. 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.

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, which may include projections regarding sales and production, as well as anticipated future revenues, gross margins, profitability, and cash flows. 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 is not accurate or varies from actual results due to our inability to meet our assumptions 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 subsidiary would dilute the ownership interests of existing stockholders to the extent we deliver shares upon conversion of any of such notes. Such convertible senior notes are convertible at the option of their holders prior to their scheduled terms under certain circumstances. If holders elect to convert their notes, we could be required to deliver to them a significant number of shares of our common stock. Any sales in the public market of the common stock issuable upon such conversion could adversely affect prevailing market prices of our common stock. 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 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 cause or prevent an increase or a decrease in the market price of our common stock or the convertible senior notes.

Elon Musk has pledged shares of our common stock to secure certain bank borrowings. If Mr. Musk were forced to sell these shares in order to satisfy his 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 could contribute to 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 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

None.

ITEM 3. DEFAULT UPON SENIOR SECURITIES

None.

ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

ITEM 5. OTHER INFORMATION

In April 2020, the government agency overseeing that certain Amended and Restated Agreement for Research & Development Alliance on Triex Module Technology, dated September 2, 2014, as amended (the "Gigafactory New York Lease Agreement"), between Silevo, LLC, a wholly-owned subsidiary of Tesla, and the SUNY Foundation, issued guidance that all obligations relating to investment and employment targets under certain of its projects may be deferred for a one-year period upon such agency's approval of an application for relief by the obligor. As we had 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 applied for such deferral with respect to the Gigafactory New York Lease Agreement, and were granted such relief in June 2020.

On July 22, 2020, Silevo, LLC and Tesla Energy Operations, Inc., another wholly-owned subsidiary of Tesla, entered into an Eleventh Amendment to the Gigafactory New York Lease Agreement with the SUNY Foundation (the "Gigafactory New York Lease Amendment"). The Gigafactory New York Lease Amendment, among other things: (i) adds Tesla Energy Operations, Inc. as a party to the Gigafactory New York Lease Agreement, (ii) recognizes and effectuates the previously-granted deferral of the second annual measurement date for our minimum employment and investment requirements under the Gigafactory New York Lease Agreement by one year from April 30, 2020 to April 30, 2021, (iii) memorializes April 30, 2018 as the commencement date of the 10-year measurement period for the minimum employment and investment obligations under the Gigafactory New York Lease Agreement, and (iv) modifies the scope of personnel and investments that qualify for such minimum employment and investment obligations.

The foregoing summary is qualified in its entirety by reference to the text of the Gigafactory New York Lease Amendment, which is filed as Exhibit 10.6 to this Quarterly Report on Form 10-Q and is incorporated herein by reference.

ITEM 6. EXHIBITS

See Index to Exhibits at the end of this Quarterly Report on Form 10-Q for the information required by this Item.

INDEX TO EXHIBITS

Exhibit Number	Exhibit Description	Incorporated by Reference				Filed Herewith
		Form	File No.	Exhibit	Filing Date	
10.1†	Second Lease Amendment, entered into on June 9, 2020, by and between Tesla, Inc. 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.	—	—	—	—	X
10.2†	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.	—	—	—	—	X
10.3†	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.	—	—	—	—	X
10.4	Indemnification Agreement, effective as of June 23, 2020, between Registrant and Elon R. Musk.	—	—	—	—	X
10.5†	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.	—	—	—	—	X
10.6	Eleventh Amendment to Amended and Restated Agreement for Research & 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.	—	—	—	—	X
31.1	Rule 13a-14(a) / 15(d)-14(a) Certification of Principal Executive Officer	—	—	—	—	X
31.2	Rule 13a-14(a) / 15(d)-14(a) Certification of Principal Financial Officer	—	—	—	—	X
32.1*	Section 1350 Certifications	—	—	—	—	

Exhibit Number	Exhibit Description	Incorporated by Reference				Filed Herewith
		Form	File No.	Exhibit	Filing Date	
101.INS	Inline XBRL Instance Document	—	—	—	—	X
101.SCH	Inline XBRL Taxonomy Extension Schema Document	—	—	—	—	X
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)					

† Portions of this exhibit have been redacted in compliance with Regulation S-K Item 601(b)(10).

* Furnished herewith

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: July 28, 2020

/s/ Zachary J. Kirkhorn
Zachary J. Kirkhorn
Chief Financial Officer
(Principal Financial Officer and
Duly Authorized Officer)

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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 indicate where omissions have been made.

Exhibit 10.1



SECOND LEASE AMENDMENT

This Second Lease Amendment (“Second Amendment”) is entered into effective as of April 1, 2020, by and between Tesla, Inc. (“Tesla”) and Panasonic Energy of North America, a division of Panasonic Corporation of North America (“PENA”), with respect to the Amended and Restated Factory Lease dated January 1, 2017 (the “Factory Lease”). Terms used herein with initial capitalization have the meanings specified where used or in the Gigafactory Contract. For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

- 1. For the period of [***] through [***], PENA shall pay for its usage of [***] at the rates set forth in the first table of Appendix C: Utility Rates to the Factory Lease (the “Appendix C-1 Table”).
- 2. On or before [***], the Parties will discuss in good faith and mutually agree whether [***] set forth in the second table of Appendix C: Utility Rates (“Appendix C-2 Table”) will apply [***] to [***].
- 3. On or before [***], the Parties will discuss in good faith and mutually agree whether [***] set forth in the second table of Appendix C: Utility Rates (“Appendix C-2 Table”) will apply [***] to [***].
- 4. This Second Amendment, together with the Factory Lease and all documents referenced or incorporated therein, constitutes the entire agreement between the Parties with respect to its subject matter and supersedes all prior agreements and understandings, both oral and written, between the Parties with respect to its subject matter. No subsequent terms, conditions, understandings, or agreements purporting to modify the terms of this Amendment will be binding unless in writing and signed by both Parties. This Amendment 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.

IN WITNESS WHEREOF, the Parties have executed this Second Amendment by persons duly authorized below:

Tesla, Inc.
By: /s/ Karn Budhiraj
Printed: Karn Budhiraj
Title: VP, Global Supply Management
Date: 9 June 2020

Panasonic Energy of North America
a division of Panasonic Corporation of North America
By: /s/ Thomas G. Korte
Printed: Thomas G. Korte
Title: Senior Vice President of Operations of Panasonic Corporation of North America and Chief Financial Officer of Panasonic’s US Company
Date: Jun 5, 2020

AMENDED AND RESTATED GENERAL TERMS AND CONDITIONS FOR GIGAFACTORY

These Amended and Restated General Terms and Conditions for Gigafactory ("Amended GTC") are entered into effective as of January 1, 2020 ("Amendment Effective Date") by and between Tesla, Inc., a Delaware corporation with offices at 3500 Deer Creek Road, Palo Alto, California, 94304, USA, and Tesla Motors Netherlands B.V., a Dutch corporation with offices at Burgemeester Stramanweg 122, 1101 EN Amsterdam, the Netherlands (collectively, "Tesla"), on the one hand, and Panasonic Corporation ("Panasonic Corp.") and Panasonic Corporation of North America, by and through its division Panasonic Energy of North America ("PNA") (collectively, "Seller"), on the other hand. Each Tesla and Seller entity is referred to herein as a "Party" and such entities are collectively referred to herein as the "Parties." This Amended GTC shall, as of the Amendment Effective Date, amend and restate in entirety the General Terms and Conditions dated October 1, 2014 by and between the Parties (as amended, the "2014 GTC"); provided, however, that any provisions related to termination of the 2014 GTC, such as those set forth in Section 13.4 (Obligations Upon Termination), shall not apply in connection with the execution of this Amended GTC, and the 2014 GTC shall control with respect to all investments made by Seller in Seller's Property and Seller's manufacture, supply and/or provision of Goods prior to the Amendment Effective Date. For avoidance of doubt, claims arising under the 2014 GTC shall continue to be governed by, and subject to, the 2014 GTC.

PURPOSE

Tesla desires to engage Seller to develop, supply, and support products for use in Tesla Products at the manufacturing facility owned by Tesla in Sparks, Nevada (the "Factory"). This Amended GTC shall govern the relationship of the Parties as of the Amendment Effective Date.

1. Production Planning and Order Process.

1.1 Production Planning.

- (a) Each month during the Term, Tesla will provide a rolling monthly forecast of its anticipated requirements for Goods for the following periods of time: (i) for the next [***] for each forecast provided until Seller has invested in Seller's Property required for Seller's manufacture, supply and/or provision of Goods at the Factory in volumes up to an annual aggregate energy capacity of thirty-five gigawatt-hours (35 GWh); and (ii) for the next [***] for each forecast provided thereafter. Tesla's forecast is non-binding and provided for planning purposes only. At a monthly meeting led by Tesla ("Production Meeting"), the Parties shall review in good faith Tesla's forecast, the supply chain and other requirements to manufacture per Tesla's forecast, any potential or actual constraints on Seller's ability to manufacture Goods in accordance with Tesla's forecast, and other business- and production-related issues. The Parties may also mutually agree to invite sub-suppliers that are co-located at the Factory to attend the Production Meeting. The Parties will then establish a production plan and/or update the existing production plan for manufacture and delivery of Goods based on the applicable Lead Time(s). Seller shall not withhold, condition or delay its consent to Tesla's proposed production plan if Seller is capable of meeting Tesla's forecast, based on such factors as supply chain constraints, labor constraints, and the performance capability of the Property. The agreed plan is the "Production Plan." The Parties may agree in writing to adjust the Production Plan at any time. Seller shall deliver the Goods that fall within the forecasted volumes in the Production Plan, at prices set in accordance with the then-current production pricing agreement (the "Pricing Agreement").
- (b) At the Production Meeting, the Parties shall also discuss in good faith (i) Seller's progress in achieving the operational targets set forth in the Contract(s) and the Production Plan, (ii) Seller's proposed procurement, transportation, installation, or configuration at the Factory of Seller's Property in connection with the Contract(s) and the Production Plan, and (iii) additional topics proposed by Tesla and/or Seller. Seller acknowledges that all investments by or for Seller in Seller's Property for the manufacture, supply and/or provision of Goods at the Factory will be at Seller's sole risk and expense, except to the extent expressly agreed otherwise in a separate written agreement that is signed by a Vice-President or higher for both Parties (e.g. in the Factory Lease, a change order, the Pricing Agreement, or an investment letter agreement).

- (c) Except as otherwise agreed in writing by Tesla and Seller, the Parties shall, for the purpose of exploring the cost effectiveness of the Goods, simplifying logistics, reducing Lead Time, and other agreed reasons, use Commercially Reasonable Efforts to cause Seller's sub-suppliers required for production of Goods at the Factory to establish operations at the Factory on or around the mutually-agreed timing. For the avoidance of doubt, Tesla acknowledges that Seller cannot guarantee that its sub-suppliers will agree to establish operations at the Factory.

1.2 Offer.

- (a) The Authorized Purchasers will issue one or more Purchase Orders in accordance with the approved Production Plan for Tesla's anticipated needs as follows: (i) for Goods over a defined period of time, which may include defined periods of time as set forth in the Pricing Agreement (each such order is a "Production Order"); and/or (ii) for Goods, including development parts (each such order is a "Discrete Order").
- (b) Quantities referenced in any Production Order represent Tesla's estimate of its anticipated needs for Goods during the timeframe referenced in such Production Order and are provided for Seller's planning purposes only. Tesla's liability for purchase of quantities referenced in such Production Orders is limited as set forth in Section 1.5 and elsewhere in this Amended GTC. By accepting a Production Order, Seller agrees it is willing and able to provide all quantities referenced in such Production Order during the period referenced therein.
- (c) Authorized Purchasers may issue Releases against a Production Order to Seller, specifying quantities and delivery dates for Products referenced in such Purchase Order. Each Release may be issued on a rolling basis. Each Release is binding to the extent set forth in Section 1.5. Releases may be issued via an electronic data interface.
- (d) Tesla intends to issue one or more Purchase Order(s) and/or Release(s) on a rolling basis [***]. Purchase Orders accepted by Seller are binding on Tesla to the extent set forth in Section 1.5.

1.3 Acceptance.

- (a) Purchase Orders. Seller shall accept or reject each Purchase Order as follows: (i) [***] after receipt of a Production Order which conforms to the Production Plan; and (ii) [***] after receipt of either a Discrete Order or a Production Order which does not conform to the Production Plan. If Seller cannot meet the terms set forth in a Purchase Order, Seller will inform Tesla and propose alternative terms. If Tesla accepts such alternative terms, Tesla shall issue a revised Purchase Order that includes such alternative terms. Alternative terms are expressly rejected unless incorporated into a Purchase Order. Notwithstanding the foregoing, Seller may only reject a Production Order to the extent it fails to conform to the terms of the Production Plan, and Seller shall be deemed to have waived any objections and accepted the Production Order if Seller fails to object in writing within the timeframe specified above. Seller's acceptance of a Purchase Order is referred to as the "Acceptance".
- (b) Releases. Seller shall accept, and shall not reject, each Release to the extent it conforms to this Amended GTC and the Production Order. Seller will be deemed to have waived these objections and accepted a Release if (i) Seller fails to object to the Release in writing within two business days after receipt thereof, or (ii) automatically without a response if the Release is consistent with the then-current Production Plan. If Seller cannot deliver by the date(s) specified in the Release, Seller shall [***] propose a revised date that is at or before the Lead Time from the date of the Release.

- 1.4 Terms of the Contract. Upon Seller's Acceptance, the terms of the relevant Purchase Order, together with the terms in the other relevant Contract Documents, will become a binding contract between Tesla and Seller (each, a "Contract"). Acceptance is expressly limited to the terms provided by the Contract. Terms in any invoice and any other modifications, counterproposals, or counteroffers proposed by Seller to a Purchase Order or Release are expressly rejected and shall not become part of the Contract.

- 1.5 *Purchase Order Liability.* Tesla may, at any time and without any liability to Seller, adjust the volume(s) of Goods under any Contract, up or down, as follows upon written notice: (a) by up to [**] for Goods to be delivered between [**] after the date of Tesla's notice, provided that such timeframe is within the applicable Lead Time and such timeframe shall be increased by the period of time reasonably required for Seller to ship materials from its current offshore suppliers (not to exceed a total of one month) (for example, by giving notice on [**], Tesla may adjust the volume of Goods to be delivered between [**] and [**] by [**]); (b) by up to [**] for Goods to be delivered [**] and [**] weeks after the date of Tesla's notice, provided that such timeframe is within the applicable Lead Time and such timeframe shall be increased by the period of time reasonably required for Seller to ship materials from its current offshore suppliers (not to exceed a total of [**]) (for example, by giving notice on [**], Tesla may adjust the volume of Goods to be delivered between [**] and [**] by [**]); and (c) by any amount, subject only to Seller's actual capacity, labor constraints and supply chain constraints, for Goods to be delivered after the period of time following such notice that is equal to the applicable Lead Time. Seller shall be deemed to automatically consent to any such adjustment pursuant to this Section 1.5 without the need for a written consent.
- 1.6 *Purchase Commitment.* Tesla will commit to purchase all conforming and non-defective Goods during the Term and pursuant to the Production Plan up to an annual aggregate energy capacity of thirty-five gigawatt-hours (35 GWh) provided that: (a) [**]; (b) the Goods [**]; and (c) market conditions support the purchase of Goods in volumes contemplated by the Production Plan, but without limiting Tesla's commitments in written agreements between the Parties for investments in Seller's Property as contemplated in Section 1.1(b).

2. **Goods.**

- 2.1 *Quantity.* Quantities and delivery dates shall be as stated in the applicable Purchase Order or Release accepted by Seller, unless otherwise agreed to in writing by the Parties. If Seller has reason to believe that its ability to deliver any Goods is or may be constrained, Seller shall [**] notify Tesla setting forth the cause for the anticipated delay. Any oral communication shall be [**] confirmed in writing.
- 2.2 *Changes.*
- (a) Seller shall not make any change to: (i) the Goods without Tesla's prior written consent, which Tesla may withhold in its sole but reasonable discretion; (ii) its manufacturing process in a manner that could result in non-conforming or defective Goods or that could impact operations at the Factory of one or more other companies (i.e. Tesla and/or a co-located sub-supplier) without Tesla's prior written consent, which Tesla will not unreasonably withhold; and (iii) its suppliers in a manner that could result in non-conforming or defective Goods or that could impact operations at the Factory of one or more other companies (i.e. Tesla and/or a co-located sub-supplier) without prior written notice to Tesla, provided that (A) Seller shall consider any objections by Tesla in good faith and discuss the proposed change with Tesla in good faith, and (B) Seller shall not make any such change that will, or is reasonably likely to, adversely affect any of the following with respect to the Goods: [**].
- (b) [**]. If [**], Seller shall use Commercially Reasonable Efforts to notify Tesla in writing within [**] after receipt of such request or proposal and prior to making the change if such change will affect cost or timing, and Seller shall also provide the basis for such determination. If Seller proposes a change hereunder, Tesla will [**]. Tesla and Seller will [**] in connection with any change, but [**] shall not [**] due to [**] unless Tesla [**]. For clarification, Seller is not obliged to make such change requested or proposed by Tesla unless [**] or other appropriate [**] in connection with such change is agreed between the Parties in writing.
- 2.3 [**]. Tesla may propose that Seller [**]. In such case, Seller will discuss with Tesla and consider such proposal in good faith.

2.4 *Tesla Responsibilities.*

- (a) In order to facilitate Seller's performance of its obligations under the Contract, Tesla will perform those tasks and fulfill those responsibilities of Tesla (including, as applicable, provision of Tesla-Supplied Items) as expressly set forth in this Amended GTC and/or the Contract ("Tesla Responsibilities"). Seller's performance of its obligations may be dependent in some circumstances on Tesla's timely and effective performance of the Tesla Responsibilities and timely decisions and approvals by Tesla.
- (b) Tesla's failure to perform any of the Tesla Responsibilities (or cause them to be performed) will not constitute grounds for termination by Seller except as provided in Section 13.3 (Termination); provided, however, that Seller's nonperformance of its obligations under this Amended GTC and/or the Contract will be excused if and to the extent (i) such nonperformance results from Tesla's failure to perform any Tesla Responsibilities, and (ii) Seller provides Tesla with reasonable notice of such nonperformance and, if requested by Tesla, uses Commercially Reasonable Efforts to perform notwithstanding Tesla's failure to perform. If Seller's use of Commercially Reasonable Efforts to perform its obligations in such a circumstance would cause Seller to incur significant uncompensated expenses, Seller may notify Tesla. In that case, Seller's obligation to continue its efforts to work around Tesla's failure to perform Tesla Responsibilities will be subject to Tesla agreeing to reimburse Seller for its actual, reasonable and incremental uncompensated expenses. The Parties shall also discuss in good faith Seller's actual and reasonable out-of-pocket costs and expenses caused by Tesla's failure to perform any Tesla Responsibility (e.g. loss of material, increased labor costs) and, subject to Section 12 (Liability), Tesla will be responsible for reimbursing such costs and expenses which Seller cannot mitigate or avoid using Commercially Reasonable Efforts.
- (c) From time to time, Tesla may provide Seller with access to proprietary computer systems and technologies owned and operated by Tesla and/or its Affiliates (the "Systems") to facilitate the performance of Seller's obligations under the Contract. Seller is not obliged to use the Systems unless agreed by Seller in writing. Seller will only use the Systems for the business purposes of Tesla. Tesla may periodically monitor all uses of the Systems as allowed by law and review user access records maintained by Seller. To the maximum extent permitted by applicable Law, Seller's users will have no expectation of privacy in connection with their use of the Systems. Seller shall be solely responsible for obtaining and maintaining the hardware and software it uses which are necessary to properly access the Systems and perform its obligations under the Contract.

2.5 [***] *Cells.*

- (a) The Parties have discussed the production of [***]. When used in conjunction with [***] and demonstrated to Seller's reasonable satisfaction [***], the Parties anticipate that [***] will perform in a similar manner to [***] with respect to [***]. The [***] as of the date of signature of this Amended GTC performs to Seller's reasonable satisfaction.
- (b) For [***] incorporated into [***], Tesla will use [***] demonstrated to Seller's reasonable satisfaction within a reasonable time and scope, unless Seller approves an exception. The Parties will discuss in good faith any requested exceptions. If and to the extent that [***], in the event of [***], and the Parties will promptly engage in a good faith discussion with respect to [***]. Following such good faith discussion, Seller shall the right [***]. Tesla shall be responsible for [***].

3. Delivery.

- 3.1 *Packing and Shipment.* Tesla may specify the method of transportation and the type and number of packing slips and other documents to be provided with each shipment. The Parties shall discuss in good faith and agree on the manner in which Seller will pack and ship Goods, including labeling and hazardous materials instructions. If Tesla has not provided packing or shipping instructions, Seller will pack and ship Goods in accordance with industry standards (with reference to the lithium-ion battery cell industry). If Seller is required to use Tesla's returnable packaging, the Parties will discuss in good faith the responsibility for cleaning and maintaining such returnable packaging.
- 3.2 *Delivery Terms.* Seller will deliver Goods in strict accordance with the Contract terms. Unless otherwise stated in the Contract, Goods will be delivered [**] and title and risk of loss will transfer upon receipt of the Goods by Tesla.
- 3.3 *Time is of the Essence.* TIME IS OF THE ESSENCE AS TO DELIVERY OF ALL GOODS. If Seller does not deliver any Goods in accordance with the Production Plan then, subject to Sections 2.4 (Tesla Responsibilities) and 12.2 (Force Majeure) and except for any other cause attributable to Tesla, Seller shall be in Default. In addition to any other obligations to which Seller shall be subject to under the Contract, if Seller cannot meet the delivery dates and/or quantities of Goods specified in the Contract, Seller will promptly notify Tesla and the Authorized Purchaser and: (a) Seller shall provide substitute goods at the agreed price in the Contract from its operations at the Factory or elsewhere; and (b) if Seller cannot provide substitute goods within a reasonable time, the Authorized Purchaser may cancel any remaining portion(s) of the relevant Purchase Order or Release, as applicable, without liability to Seller, in which case the required volumes set forth in writing between the Parties (e.g. Production Plan) shall be reduced.
- 3.4 *Over-Shipments.* If Seller delivers more Goods than specified in an Order, the Parties shall discuss the over-shipment in good faith and Seller shall, at its sole discretion, either: (a) accept the return of the Goods delivered in excess of the Purchase Order or Release [**] (the "Excess Goods"), or (b) allow the Authorized Purchaser to retain the Excess Goods [**], in which case the Authorized Purchaser may also in its sole discretion reduce the quantities for future deliveries under the Production Plan and under its Purchase Order(s) and Release(s) by the quantity of Excess Goods.
- 3.5 [**]. During the Term, Seller shall not [**] Goods which are manufactured at the Factory, [**] unless: (a) Tesla gives prior written consent, which Tesla may withhold in its sole but reasonable discretion; and (b) [**], as reasonably determined by both Parties based on a good faith discussion, [**]. Prior to [**] under this Section, Tesla shall, as reasonably requested by Seller, provide to Seller the information reasonably required for Seller to comply with sub-paragraph (b) above, including, the [**].

4. Invoicing and Payment.

- 4.1 [**]. Except to the extent expressly otherwise agreed to by the Parties in a Pricing Agreement, Seller shall provide Tesla [**]. Such information shall be deemed to be Seller's Highly Confidential Information under the NDA.
- 4.2 *Pricing.* The pricing and pricing methodology applicable to the Goods shall be set forth in the then-current Pricing Agreement.
- 4.3 *Invoicing.* Invoices will be in the currency specified in the Pricing Agreement, unless otherwise agreed, and will be sent to Tesla's Accounts Payable Department as reasonably directed by Tesla. The invoice will detail the Goods for which payment is being requested, and the applicable Purchase Order number. Charges associated with shipping for which Tesla is responsible will be invoiced separately.

- 4.4 *Payment.* Except as expressly agreed otherwise by the Parties in writing, Tesla will pay, and will cause its Authorized Purchaser(s) to pay, Seller's charges [***] after receipt of each invoice; provided, however, that (i) Tesla or the Authorized Purchaser may withhold payment of any invoiced charges that are disputed in good faith; (ii) payment of any charges shall not be deemed an approval of such charges or acceptance of non-conforming Goods, and Tesla or the Authorized Purchaser may later dispute such charges; and (iii) Tesla's or the Authorized Purchaser's payment of charges shall not relieve Seller of any of its warranties or other obligations under the Contract. If any Authorized Purchaser is repeatedly late or early in making payment, the Parties shall discuss in good faith whether to adjust the then-current payment terms and pricing methodology.
- 4.5 [***]. If any Authorized Purchaser fails to pay undisputed amounts due in a timely manner which are in a material amount, Seller may give notice to Tesla and the Parties shall within a reasonable time discuss in good faith at a meeting with senior representatives of both Parties. If the Authorized Purchaser fails to pay promptly after the meeting, [***] until Tesla or the Authorized Purchaser pays the undisputed amounts in full which are past due.
- 4.6 *Credits; Customs.* Credits or benefits related to taxes and export/import duties resulting from the Contract, including trade credits, export credits or the rights to the refund of duties, taxes, or fees, belong to Tesla unless otherwise prohibited by applicable law. Seller shall retain all information related to the Goods and/or materials therefor (as applicable) as required by United States and any other applicable customs authorities, and shall provide all such information and certificates related to the Goods and/or materials therefor (as applicable) (including NAFTA Certificates of Origin) necessary to permit Tesla to receive these benefits or credits. Seller will provide Tesla with all information and records relating to the Goods necessary for Tesla to: (a) receive these benefits, credits, and rights; (b) fulfill any customs obligations, origin marking or labeling requirements, and certification or local content reporting requirements; (c) claim preferential duty treatment under applicable trade preference regimes; and (d) participate in any duty deferral or free trade zone programs of the country of import. If and to the extent applicable, Seller (or, if applicable, its supplier) will obtain export licenses and authorizations and pay export taxes, duties, and fees related to the Goods and/or materials therefor (as applicable) which are imposed, levied or otherwise payable prior to delivery of such Goods and/or materials (as applicable) to the Authorized Purchaser unless otherwise stated in the Contract, in which case Seller will provide all information and records necessary to enable Tesla to obtain those export licenses or authorizations.
- 4.7 *Taxes.*
- (a) This Section 4.7 sets forth the allocation of responsibility between the Parties for taxes arising out of or in relation to this Amended GTC and each Contract.
- (b) Unless otherwise stated in the Contract, including the then-current Pricing Agreement, the Contract price includes all applicable federal, state, provincial, and local taxes other than sales, value added, or similar turnover taxes or charges. The Goods purchased from Seller are for resale which is exempt from all sales, use, value added or similar taxes, and Seller will not charge sales, use, value added or similar taxes on its invoices to Tesla for Goods provided that Tesla has provided Seller a valid resale certificate for Seller's records. If Seller is required by law to pay or collect from Tesla any taxes or charges, Seller will separately invoice Tesla for such taxes or charges subject to Section 4.6 (Credits).
- (c) Subject to Section 4.8(b) above, each Party will remain responsible for and shall pay (without reimbursement) any and all taxes that are assessed on any goods or services used or consumed by such Party (or its Affiliates) in performing its obligations under the Contract where the tax is imposed on such Party's (or its Affiliates') acquisition or use of the goods or services in the performance of such obligations, and other personal property taxes on property owned or leased by such Party (or its Affiliates) unless otherwise expressly provided in the Contract.

- (d) Each Party shall be responsible for any: (i) taxes on its (or its Affiliates') revenue, net income or gross receipts; (ii) franchise, business and occupational taxes (or similar in nature) on its business activities, and (iii) employer-related taxes with respect to its personnel (e.g. employee taxes, workers compensation and unemployment insurance).
- (e) The Parties agree to cooperate with each other to enable each to more accurately determine its own tax liability and to minimize such liability to the extent legally permissible.

4.8 Nevada Incentives.

- a. "Nevada Incentives" means any tax credits or any exclusion, exemption, abatement, or reimbursement from tax liabilities as described in, collectively, Senate Bill No. 1 of the 28th (2014) Special Session of the Nevada Legislature ("SB No. 1"), Assembly Bill No. 1 of the 28th (2014) Special Session of the Nevada Legislature ("AB No. 1"), Nevada Revised Statutes ("NRS") Chapters 231 and 360, Ordinance 14-260 of Storey County, Nevada referred to as the Economic Diversification District Creation Ordinance, the Incentive Agreement dated October 17, 2014, between the State of Nevada and Tesla, Inc. (the "State Incentive Agreement"), and the Reimbursement Agreement dated October 17, 2014, between Storey County, Nevada, and Tesla, Inc. (the "County Reimbursement Agreement"), and any and all Laws related to the foregoing.
- b. Exhibit 2 (Nevada Incentives) sets forth the Parties' understanding and agreement as to their respective responsibilities in qualifying for, and receiving the benefits of, the Nevada Incentives for purposes of the Gigafactory. If and to the extent that Tesla requests new or different type(s) of data than those described in Exhibit 2 for purposes of the Nevada Incentives, the Parties shall discuss such request in good faith and PNA will not unreasonably withhold, condition, or delay consent to such request. If and to the extent that PNA is required to provide information regarding the wages, salary, benefits, or other compensation offered to one or more specific PNA employees at an individual level (as opposed to an aggregated, summary report) for purposes of the Nevada Incentives, PNA shall only be required to disclose such specific information to the independent CPA engaged by Tesla for purposes of the Nevada Incentives and to disclose only an aggregated, summary report of such information to Tesla.
- c. If and to the extent that a Party does not receive, or alternatively does not receive the benefit of, any Nevada Incentives to which it is entitled and such failure results from the other Party's failure to comply with its obligations under Exhibit 2 (Nevada Incentives) (in Seller's case such obligations are identified with "[**]"), the Parties shall work together in good faith to attempt to cure any deficiency in the requirements to qualify for such Nevada Incentives and, if the Parties are unable to cure such deficiency, the Parties shall discuss [**].

5. Product Warranties.

5.1 Product Warranties.

- (a) Seller represents and warrants to Tesla and the relevant Authorized Purchaser(s) as follows:
 - (i) Upon delivery, the Goods will: (1) be new (and not refurbished), unless expressly approved otherwise in writing by Tesla in each case; (2) be free and clear of any and all liens, security interests, and encumbrances of any nature, with title vesting solely in the Authorized Purchaser; and (3) conform to all applicable Laws of the In-Scope Countries (as may be supplemented per the definition of that term in Section 16.17 below).
 - (ii) Subject to Section 5.1(c) below, the Goods will conform to and comply with the applicable Specifications upon delivery and continuing for the following period of time: (1) for the timeframes of any [**] aspects of such Specifications, and (2) for a period of [**] for other aspects of the Specifications;
 - (iii) Upon delivery and for a period of [**], the Goods will be free from defects in design, workmanship and material as delivered by or for Seller;

- (iv) [**].
- (1) Recognizing the importance to mass market acceptance of EVs of ensuring that battery packs exhibit a [**], which may occur beyond standard warranty periods and beyond the specified cycle and storage life of the cell, the Parties' cell technical teams shall work together in good faith to identify, and ensure that some specific aspects of cell performance related to [**] shall not unacceptably [**] throughout the [**] of the Cell.
 - (2) The [**] of the Cell shall be defined as the earliest of (a) [**] as set forth in the applicable Specification.
 - (3) Unless modified in the applicable Specification, the Parties agree that the following aspects of cell performance are important throughout the [**]:
 - (a) For Goods designed to include a [**], the [**] should function at a cell [**] equal to or less than the [**] operation upon delivery;
 - (b) The [**] pressure equal to or less than the [**] of [**] operation upon delivery;
 - (c) [**] should be equal to or less than the [**] upon delivery;
 - (d) If and to the extent that the Cell is [**] within the Specification: (a) the Cell should not lose [**] as measured by [**] testing conducted in accordance with [**]; and (b) at a [**] rate of [**], the [**] of the Cell should not [**] by [**] or more, where [**] is the [**] measured by Tesla through periodic sample testing of [**];
 - (e) Cell(s) should not develop [**];
 - (f) Cell(s) should not develop [**] that could result in measurable [**] and/or disconnection of [**]; and
 - (g) Additional aspects as may be described in the applicable Specifications.
 - (4) Should the Parties determine that a population of Cells in a particular Cell Model does not meet [**] requirements, the Parties' cell technical teams shall work together in good faith to assess and mitigate the [**] including review of [**], conducting [**], and performing [**]. Mitigations may involve adjustment of [**], implementation of additional [**], or [**].
- (v) Recognizing the importance of limiting [**] among [**] Cells from [**], the Parties' cell technical teams shall work together in good faith to [**] and Seller will use best efforts to avoid [**] that exceeds [**] observed in [**] with respect to [**], and other relevant factors.
- (vi) The foregoing timeframes are, as applicable, the "Warranty Period".
- (b) Tesla hereby acknowledges and agrees that if Goods are not defective and/or comply with the applicable Specifications, it does not mean that a Tesla battery pack, Module and/or Tesla Product cannot be defective for some other reason, including, without limitation, improper design or manufacturing by Tesla or a third party.
 - (c) Exclusions. Tesla understands that the warranties set forth above will not apply under certain circumstances that are within Tesla's control or outside Seller's control after delivery. Accordingly, the warranties in Section 5.1(a) will not apply to damage or Non-Conformities in Goods to the extent caused by any of the following:
 - (i) the design, manufacture and/or function of the overall system, equipment and/or goods of which the Goods are part (e.g. Module, Tesla Product);
 - (ii) accident or act of God;

- (iii) [**];
- (iv) misuse, neglect, abuse, mishandling, misapplication, modification, or alteration by Tesla, the relevant Authorized Purchaser or any third party;
- (v) improper installation, service, operation, storage, shipment, testing, checkout or maintenance by Tesla, the relevant Authorized Purchaser or any third party;
- (vi) failure by Tesla, the relevant Authorized Purchaser or any third party to follow (A) the reasonable instructions, cautions, warnings, and notes set forth in the Specifications, and/or (B) any other reasonable direction from Seller;
- (vii) [**];
- (viii) [**].

5.2 *Inspection.* The Authorized Purchaser will inspect each shipment of Goods within [**] after receipt, using Commercially Reasonable Efforts to evaluate whether the Goods conform to the warranties set forth herein (including [**]) within [**] after receipt. Notwithstanding the foregoing, Seller shall [**], and Tesla will have no obligation to [**].

5.3 *Warranty Procedure.*

- (a) *Notice.* Tesla and the Authorized Purchaser(s) will give written notice to Seller of any claims that one or more Cells fail to conform to any warranty in Section 5.1 above (each such failure is a "Non-Conformity"). The date of such notice is referred to herein as the "Warranty Notice Date."
- (b) *Supporting Information.* If requested by Seller, the Authorized Purchaser will provide all available information regarding the alleged Non-Conformity in the Goods, which may include as applicable: [**] if available, but the inability to provide a serial number for certain Goods does not invalidate warranty coverage. Tesla will use Commercially Reasonable Efforts to achieve [**] of Cells through the applicable Tesla Products. If requested and where appropriate (as discussed by the Parties' cell technical teams), Tesla shall [**] a reasonable quantity of [**] and relevant [**] from a [**] before delivering it to Seller.
- (c) *Warranty Claim Validation.*
 - (i) Seller may require return of a reasonable quantity of Cells and/or inspect Cells which are subject to a warranty claim in order to validate the basis for such claim. Seller may decline warranty coverage for any Cells which are disassembled by Tesla or anyone acting on Tesla's behalf if Seller has not consented to such disassembly.
 - (ii) Tesla shall use Commercially Reasonable Efforts to support Seller's validation of the basis for a warranty claim hereunder, and the Parties shall discuss the warranty claim in good faith.
 - (iii) In the event of a disagreement or dispute as to the basis for a warranty claim with respect to Cells, the Parties will designate by mutual agreement a third party that will make the technical determination of the existence of a basis for the warranty claim and whether such claim is based on a breach of one or more warranties in Section 5.1 above.
 - (iv) Cell(s) will be a "Non-Conforming Item(s)" if and to the extent that the Cell(s) fail to conform to one or more applicable warranties. Tesla and Seller will work together in good faith to evaluate, [**], whether the Cell(s) meet all applicable warranties. If the results of any such evaluation are inconclusive, the Parties shall [**].

- (d) *Remedies.* Seller shall, within a reasonable time and unless agreed otherwise in writing by the Parties, provide the following in connection with a warranty claim hereunder with respect to Non-Conforming Items:
- (i) For Cells which have [**] and are subject to a claim under one or more of the warranties in Section 5.1 above, Seller will provide [**] for each such Cell and [**] of the Non-Conforming Item and for [**] of the replacement Cell.
 - (ii) For Cells which have [**] and do not meet one or more of the warranties in Sections 5.1(a)(i), 5.1(a)(ii), or 5.1(a)(iii) above:
 - (1) For [**] Cells: Seller will promptly pay Tesla an amount equal to [**] (collectively, the "Warranty Costs"); and
 - (2) For [**] Cells: for each Good, provide [**].
 - (iii) For Cells which have [**] and do not meet one or more of the warranties in Sections 5.1(a)(i), 5.1(a)(ii), or 5.1(a)(iii) above:
 - (1) For [**] Cells: Seller will promptly pay Tesla an amount equal to [**] to compensate Tesla for the corresponding Warranty Costs; and
 - (2) For [**] Cells: for each Good which has a Non-Conformity, [**].
 - (iv) Notwithstanding the foregoing, if and to the extent that Warranty Costs pertain to [**], Seller's financial responsibility shall be [**]. The Parties' technical teams shall discuss in good faith any such circumstances and evaluate the extent to which damages pertaining to [**].
 - (v) Notwithstanding the foregoing, if and to the extent that Warranty Costs pertain to a [**] issue as contemplated in Section 5.1(a)(iv) above, the remedies contemplated in this Section 5.3(d) shall apply but Seller's financial responsibility shall be [**] as agreed by the Parties following a good faith discussion.
 - (vi) The payments and remedies contemplated above in this Section 5.3(d) with respect to [**] Cells shall - subject to Section 7 (Indemnification) below with respect to Claims by an unaffiliated third party, and any available equitable remedies - be Tesla's sole remedy for each corresponding warranty claim hereunder.
 - (vii) The payments and remedies contemplated above in this Section 5.3(d) shall be subject to [**] in Section 12.1(b) below.
- (e) *Destruction, Recycling.* If Seller instructs Tesla in writing to destroy and/or recycle any Cells which are subject to a warranty claim hereunder (whether or not such claim is valid) and except as expressly agreed otherwise in writing by both Parties (e.g. in a signed agreement), Seller [**].
- (f) *Recalls, Service Actions.*
- (i) In addition to complying with its other obligations hereunder (including Sections 5.8 (Corrective Actions) and 5.3(d) (Remedies) above), Seller will also be liable for, and will reimburse Tesla for, [**] to the extent:
 - (1) [**]; or
 - (2) [**].

- (ii) Tesla will [**] notify Seller in writing of each Service Action and will use Commercially Reasonable Efforts to limit the number of Tesla Products without [**] of Cells. Tesla will also notify Seller of Losses for which Tesla seeks reimbursement and provide documentation regarding such Losses, and the Parties shall discuss such Losses in good faith. For the avoidance of doubt, Seller shall have the right to perform an investigation of the Cells involved and the Losses incurred in connection with the Service Action, and Seller will only be responsible for [**]. In no event will Seller be liable for [**].
- 5.4 *Future Performance.* All representations and warranties of Seller extend to future performance of the Goods during the Warranty Period and are not modified, waived or discharged by delivery, inspection, tests, acceptance or payment. Tesla's approval of any design, drawing, material, process or specifications in good faith will not relieve Seller of these representations and warranties. The warranties set forth in this Section 5 shall survive acceptance and payment by Tesla and the termination or expiration of the Contract.
- 5.5 *Application of Warranties.* Seller agrees that the warranties set forth in this Section 5 extend to all Goods, notwithstanding the fact that such Goods delivered to Authorized Purchasers under the Contract may be produced, in whole or in part, by any of Seller's divisions, parent, subsidiaries, Affiliates, or suppliers and, therefore, such warranties shall not be disclaimed or otherwise limited in any way merely due to the fact that any Goods have been produced by any such entity.
- 5.6 ***Disclaimer.* THE WARRANTIES SET FORTH IN THIS AMENDED GTC ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES WITH RESPECT TO THE GOODS, WHETHER ARISING FROM A COURSE OF DEALING, COURSE OF PERFORMANCE OR TRADE USAGE, OR WHETHER ORAL, WRITTEN, EXPRESS, IMPLIED OR STATUTORY, ALL OF WHICH ARE HEREBY WAIVED BY TESLA, AUTHORIZED PURCHASERS AND SELLER. THE EMPLOYEES AND AGENTS OF EACH PARTY ARE NOT AUTHORIZED TO MAKE MODIFICATIONS TO SUCH WARRANTIES, OR ADDITIONAL WARRANTIES BINDING ON SUCH PARTY; ACCORDINGLY, ADDITIONAL STATEMENTS, WHETHER ORAL OR WRITTEN, DO NOT CONSTITUTE WARRANTIES AND SHOULD NOT BE RELIED UPON BY THE OTHER PARTY. FOR THE AVOIDANCE OF DOUBT, TESLA UNDERSTANDS THAT THE GOODS [**] (I) [**], (II) [**], OR (III) [**]. NO ACTION, SUIT OR ARBITRATION SHALL BE BROUGHT ON AN ALLEGED BREACH OF THE WARRANTIES SET FORTH IN THIS AMENDED GTC MORE THAN [**] FOLLOWING THE EXPIRATION OF THE APPLICABLE WARRANTY PERIOD.**
- 5.7 *Quality Plan Requirements and Approval.*
- (a) Seller will: (i) manufacture and supply Goods in accordance with a mutually-agreed quality plan ("Quality Plan") which is developed during the design development process, during the Production Part Approval Process (PPAP), and/or as listed in the applicable Specifications; and (ii) provide, maintain and enforce in accordance with the Quality Requirements industry-standard measures necessary to secure the quality of Goods and the manufacturing processes thereof, including without limitation, quality control standards, inspection standards and specifications. Only after the Quality Plan for the Goods is approved by Tesla shall the Goods be allowed to be shipped for use in Tesla Products. Seller shall submit a mutually-agreed quantity of samples of a standard production run of Goods to Tesla per a mutually-agreed Quality Plan. The responsibility for the cost and expense of such samples will be determined by the mutual agreement between the Parties.
- (b) As part of the Quality Plan and during PPAP, the Parties intend to include [**] in the Specification for each Good as related to [**].

- (c) Seller shall also provide Tesla with the following: (i) for any process change subsequent to the initial PPAP, a Process Change Request ("PCR") explaining the requested change and a report summarizing Seller's testing and validation processes for the requested change; and (ii) a mutually-agreed quantity of samples of the Goods incorporating the PCR features, produced on mass production equipment. The responsibility for the cost and expense of such samples will be determined by the mutual agreement between the Parties. Only after the PCR is submitted and approved by Tesla shall the Goods be allowed to be shipped for use in Tesla Products.
 - (d) Seller agrees that the Goods shall conform to the Quality Requirements attached hereto as Exhibit 1.
- 5.8 *Corrective Action*. Seller will promptly notify Tesla in writing if Seller becomes aware of any ingredient, component, design or defect in the Goods that is or may become harmful to persons or property or fails to meet the Specifications or other requirements of the Contract. Seller will promptly develop, document and implement corrective actions in accordance with all mutually-agreed quality control policies and standards, including by: (a) promptly investigating and reporting on the root cause of the problem; (b) remedying the cause of the problem for future production and resuming performance in accordance with the Contract; (c) implementing and notifying Tesla of measures taken by Seller to prevent recurrences if the problem is otherwise likely to recur; and (d) making written recommendations to Tesla for improvements in procedures.

6. Representations and Warranties.

- 6.1 *General*. Each Party represents and warrants that it (and its Affiliates to the extent applicable): (a) will perform all of its obligations under this Amended GTC and the Contract in a professional and workmanlike manner, consistent with industry standards and in accordance with all of the terms of this Amended GTC and the Contract; and (b) has the right and ability to enter into, perform the obligations under and agree to the covenants contained in this Amended GTC and each Contract. Seller further represents that: (c) [***]. Tesla further represents that: (d) each obligation of any Tesla entity under a Contract is binding on all Tesla entities which are Parties to this Amended GTC as if each such Tesla entity had agreed to the obligation.
- 6.2 *Operations*. Seller represents and warrants as follows: (a) if and to the extent relevant to the Contract and applicable to Seller, comply with all of the following: industry-standard and/or mutually-agreed supplier quality and development process program requirements, quality control and safety standards, and procedures and inspection systems, including Exhibit 1, the Global Automotive Declarable Substance List ("GADSL"), and as applicable EU Directives 2002/95/EC (Restriction on Hazardous Substances or "RoHS") and 2006/66/EC (re: batteries and accumulators and waste batteries and accumulators), as each may be amended from time to time; (b) Seller will provide an accurate and complete International Material Data System ("IMDS") submission for each non-prototype Good; (c) Seller will provide all information reasonably required for Tesla to comply with its legal obligations, such as the California Transparency in Supply Chains Act of 2010 and (if and to the extent applicable to the Goods) Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (commonly referred to as the conflict minerals provision), as each may be amended from time to time; and (d) 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 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"). Tesla shall notify Seller at least [***] in advance of any material changes to Tesla's Conduct Policies, unless more notice is reasonably necessary in order for Seller to comply with any such change in Tesla's Conduct Policies. Upon request by Tesla, Seller shall provide evidence of its compliance with each of the foregoing and as reasonably requested by Tesla for purposes of Tesla's compliance with its legal obligations.

6.3 Compliance with Laws and Tesla Policies.

- (a) Each Party represents and warrants that it will, at its cost and expense, obtain all necessary regulatory approvals, licenses, and permits (collectively, “Permits”) applicable to its business and comply with all Laws applicable to its business or the performance of its obligations under this Amended GTC and each Contract, as such Laws may be revised from time to time. Seller will provide Tesla with accurate material safety data sheets regarding the Goods and, if requested by Tesla, submit to Tesla evidence of such compliance. Each Party will also provide the other Party with all information reasonably required in order for the other Party to comply with Laws applicable to it.
- (b) To the extent not prohibited by Law, each Party represents and warrants that it will promptly notify the other Party in writing of any investigation or inquiry into whether such Party (or any of its subcontractors) is charged with failing to comply with any Laws that may or will impact, or are otherwise applicable to, such Party’s performance under this Amended GTC and/or the Contract.
- (c) Seller represents and warrants that it will comply with any Tesla policies, standards, rules, and procedures (collectively, “Tesla Policies”) applicable to performance of Seller’s obligations under the Contract and/or to the Factory which are disclosed to Seller in writing and approved by Seller, as such Tesla Policies may be revised from time to time subject to Seller’s approval, and Seller shall not unreasonably withhold, condition, or delay its approval for any such Tesla Policy or any changes thereto.

6.4 Debarment.

- (a) During the Term, Seller represents and warrants as follows:
 - (i) Seller and each of its Affiliates relevant to or involved in the performance of obligations hereunder shall not be debarred, suspended, excluded or disqualified from doing business with the United States Government or listed on the Excluded Parties List System maintained by the General Services Administration of the United States Government (found at www.epls.gov);
 - (ii) Seller and, unless Seller is a listed entity in a stock exchange market in the US or Japan (or any country with similar listing requirements), each person or entity owning an interest in Seller shall not be at any time during the term of the Contract, and each has never been, a Person with which U.S. Persons are prohibited from transacting business of the type contemplated by the Contract or with which U.S. Persons must either limit their interactions to types approved by the Office of Foreign Assets Control, Department of the Treasury (“OFAC”), whether by Law, executive order, trade embargo, economic sanction, lists published by OFAC, or otherwise (such Persons are “Specially Designated Nationals and Blocked Persons”);
 - (iii) none of the funds or other assets of Seller constitute property of, or are beneficially owned, directly or indirectly, by any Embargoed Person to Seller’s knowledge based on reasonable due diligence;
 - (iv) unless Seller is a listed entity in a stock exchange market in the US or Japan (or any country with similar listing requirements), no Embargoed Person has any interest of any nature, direct or indirect, in Seller to Seller’s knowledge based on reasonable due diligence;
 - (v) none of the funds of Seller have been derived from any unlawful activity with the result that either business with Seller is prohibited by Law or the Contract is in violation of Law;
 - (vi) Seller has implemented procedures, and will consistently apply those procedures, to ensure, using best efforts, the foregoing representations and warranties remain true and correct at all times;

- (vii) Seller will not knowingly (based on reasonable due diligence) use funds from any "Prohibited Person" (as such term is defined in the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism) to make any payment due to Tesla under this Amended GTC, the Factory Lease, or any Contract Document, and shall take such measures as are necessary to ensure that any funds used to pay amounts due to Tesla hereunder are derived (i) from transactions that do not violate United States Law and, to the extent such funds originate outside the United States, do not violate the Laws of the jurisdiction in which they originated, and (ii) from permissible sources under United States Law and, to the extent such funds originate outside the United States, under the Laws of the jurisdiction in which they originated; and
- (viii) Seller: (i) to its knowledge (based on reasonable due diligence) is not under investigation by any governmental authority for, nor has it been charged with, or convicted of, money laundering, drug trafficking, terrorist-related activities, any crimes which in the United States would be predicate crimes to money laundering, or any violation of any Anti-Money Laundering Laws; (ii) has not been assessed civil or criminal penalties under any Anti-Money Laundering Laws; or (iii) has not had any of its funds seized or forfeited in any action under any Anti Money Laundering Laws.
- (b) Seller agrees to immediately notify Tesla in writing in the event Seller breaches any of the preceding representations and warranties or has reason to believe that it will become in breach of any of the preceding representations and warranties.
- (c) A breach of any representation or warranty under this Section shall be deemed a Default under the Contract for which Tesla may immediately terminate the Contract without being required to provide notice or permit Seller to cure such Default.

7. **Indemnification.**

7.1 *Indemnification by Seller.*

- (a) Seller agrees to indemnify, defend and hold harmless Tesla, its Affiliates, and their respective directors, officers, employers and agents (collectively "Tesla Indemnitees") from and against any and all costs, fees, penalties, expenses, third-party damages, attorneys' fees and all other liabilities to any third party whatsoever ("Losses"), arising out of any Claim against any Tesla Indemnitee which arises from or relates to any actual or alleged:
 - (i) except to the extent that the Claim pertains to Tesla Products and/or Modules, infringement of any Intellectual Property Right relating to Goods or any portion thereof, on its own or in combination with other goods or services; or
 - (ii) challenge to Tesla's sole right, title and interest in the Factory, Goods or the Tesla Property, or right to possession of Tesla Property, in each case brought by any third party supplier to Seller or agent to Seller, including toolmakers, subcontractors, and lending institutions; or
 - (iii) Personal injury (including death) or property damage to the extent caused by a defect in design, workmanship and material (during or after the Warranty Period) and/or non-conformity (with reference to the applicable Specifications within the Warranty Period) in one or more Goods; provided, however, that:
 - (1) the foregoing obligation shall not apply to the extent that: (A) Tesla was aware of or, in the exercise of reasonable care, should have been aware of the existence of such defect and/or non-conformity; (B) the Losses were caused by the Tesla Products, including but not limited to Tesla's battery packs, Modules (including circuit and equipment matching issues), and their respective assembly, manufacture or placement, sale, use, operation, storage, and/or transportation; and/or (C) the Losses were caused by [***] if (y) such [***] was caused by [***]; or (z) such [***] occurred more than [***] after the delivery of such affected Goods to the Authorized Purchaser; and

(2) to the extent permitted by Law, the liabilities of Seller pursuant to this Section 7.1(a)(iii) will not [**].

(b) [**].

(c) Seller agrees to indemnify and hold harmless the Tesla Indemnitees from and against any and all Losses arising out of any Claim against any Tesla Indemnitee which arises from or relates to any breach of Section 6.3 (Compliance with Laws and Tesla Policies) and/or Section 6.4 (Debarment), subject to [**].

7.2 *Indemnification by Tesla.*

(a) Tesla agrees to indemnify, defend and hold harmless Seller, its Affiliates, and their respective directors, officers, employers and agents (collectively "Seller Indemnitees") from and against any and all Losses arising out of any Claim against any Seller Indemnitee which arises from or relates to any actual or alleged:

(i) infringement of any Intellectual Property Right to the extent caused by Tesla Products and/or Modules in which the Goods are used;

(ii) challenge to Seller's sole right, title and interest in materials, work-in-process, Goods or Seller Property, or right to possession of Seller Property, in each case brought by any third party supplier to Tesla or agent to Tesla, including toolmakers, subcontractors, and lending institutions; or

(iii) Either (i) defects or quality issues with respect to Tesla Products (including but not limited to Tesla's battery packs and Modules, including circuit and equipment matching issues, and their respective assembly, manufacture or placement, sale, use, operation, storage, and/or transportation) or (ii) [**] if (A) such [**] is caused [**]; or (B) such [**] occurred more than [**] after the delivery of such affected Goods to the Authorized Purchaser; provided, however, that: (1) the [**]; and (2) to the maximum extent permitted by Law, [**].

(b) [**].

(c) Tesla agrees to indemnify and hold harmless the Seller Indemnitees from and against any and all Losses arising out of any Claim against any Seller Indemnitee which arises from or relates to any breach of Section 6.3(a) (Compliance with Laws), subject to [**].

(d) In the event of a Claim that arises from or relates to [**] in a Tesla Product (an "[**] Claim"), the Parties agree as follows:

(i) The Parties shall discuss and evaluate the [**] Claim in good faith.

(ii) After such good faith discussion, if and to the extent that the Parties agree that (i) the Losses arising out of the [**] Claim [**] and (ii) the Losses arise from either (a) [**], or (b) [**], then Tesla will indemnify, defend, and hold harmless the Seller Indemnitees from and against such Losses.

(iii) The obligation in this Section 7.2(d) applies only to the extent permitted by Law and is subject to [**].

7.3 *Procedure.* The Party seeking indemnification by the other Party under this Section 7 (the "Indemnified Party") will give prompt written notice of the Claim for which indemnification is sought. Failure to give notice will not diminish the indemnifying Party's obligation under this Section if it has or receives knowledge of the existence of the Claim by any other means or if the failure does not materially prejudice its ability to defend the Claim. The indemnifying Party may select legal counsel to represent the indemnified Party (said counsel to be reasonably satisfactory to the indemnified Party) and otherwise control the defense and, subject to the other terms of this Section 7.3, resolution of the Claim. If the indemnifying Party elects to control the defense of such Claim, the indemnified Party may at its option participate in the defense of any Claim with its own counsel at its own expense; provided that such indemnified Party shall not resolve the Claim without the prior written consent of the indemnifying Party.

If the Claim is one that cannot by its nature be defended solely by the indemnifying Party, then the indemnified Party will make available information and assistance as the indemnifying Party may reasonably request, at the indemnifying Party's expense. The indemnifying Party may not, without the prior written consent of the indemnified Party, (i) consent to the entry of any judgment or enter into any settlement that provides for injunctive or other non-monetary relief affecting any indemnified Party, or (ii) consent to the entry of any judgment or enter into any settlement unless such judgment or settlement provides for an unconditional and full release of the indemnified Party and does not diminish any of such Party's rights under this Amended GTC and/or the Contract or result in additional fees or charges to the indemnified Party. The indemnified Party may not make any party admissions in respect of a Claim if the indemnifying Party elects to control the defense of the Claim. For avoidance of doubt, the indemnifying Party may invoke any applicable statutes of limitations in conducting the defense of any such Claim.

7.4 **Limitations.** To the maximum extent permitted by applicable law and subject to [**] (as applicable), the Parties' respective obligations under this Section 7 will apply even if an Indemnified Party's conduct has contributed to the Losses, but the obligation to indemnify will not apply to the extent that Losses were caused by such Indemnified Party. Each Party's obligation to defend and indemnify under this Section 7 will also apply regardless of whether the Claim arises in tort, negligence, contract, warranty, strict liability or otherwise.

7.5 **Infringement Claims.** If any Goods become, or in Seller's reasonable opinion is likely to become, the subject of an infringement or misappropriation Claim, Seller will promptly notify Tesla (the "**Infringement Notice**") and, at Seller's expense and in addition to indemnifying Tesla Indemnitees as provided in this Section 7 (Indemnification) and to the other rights Tesla may have under this Amended GTC: (a) promptly secure the right to continue manufacturing and selling the Goods; or (b) if this cannot be accomplished with Commercially Reasonable Efforts, then replace or modify the Goods to make it non-infringing or without misappropriation; provided, however, that any such replacement or modification may not degrade the performance or quality of the Goods or disrupt Tesla's business operations; or (c) if neither of the foregoing can be accomplished by Seller with Commercially Reasonable Efforts, then, no earlier than [**] after the date of Seller's Infringement Notice, [**]. During the foregoing [**] period of time and unless prohibited by Law, Seller shall not suspend delivery of Goods in accordance with the Production Plan and Seller shall not [**] as the direct result of such infringement or misappropriation Claim. If Seller chooses to stop selling Goods to Tesla pursuant to this Section (but not if Seller is prohibited by Law from selling such Goods), Seller will be deemed to be in Default and Tesla may exercise its termination and other rights and remedies.

8. **Confidentiality.** The non-disclosure agreement between the Parties dated January 1, 2017 ("**NDA**") sets forth the Parties' respective confidentiality obligations hereunder. The NDA is hereby incorporated by reference in this Amended GTC and the Contract, and the terms and conditions of the NDA will continue in force throughout the Term.

9. **Property.**

9.1 **Property.** The tooling, jigs, dies, gauges, fixtures, molds, patterns, other equipment (collectively, the "**Tooling**"), as well as the supplies, materials, and other tangible property that are or will be used by Seller to manufacture, store, and transport Goods, or used to develop or make Goods for Tesla (such Tooling, supplies, materials and other tangible property shall collectively be referred to as the "**Property**") will be owned by Tesla if Tesla has [**] ("**Tesla Property**"); provided, however, that Property will not be deemed to be Tesla Property if Tesla has [**]. "**Seller's Property**" means all Property which (a) is owned and/or used by Seller in connection with this Amended GTC and/or the Contract(s) and (b) is not Tesla Property. Seller will not purchase on the account of or charge Tesla for any Tesla Property except as authorized in a Purchase Order. Title to Tesla Property shall transfer to Tesla upon Tesla's payment in full for such Property.

- (a) Seller will assign to Tesla contract rights or claims in which Seller has an interest with respect to Tesla Property and execute bills of sale, financing statements, or other documents requested by Tesla or required to evidence Tesla's ownership of Tesla Property.
 - (b) Seller will have no interest in Tesla Property paid for by Tesla except as an at-will bailee. To the extent permitted by law, Seller waives any lien or similar right it may have with respect to Tesla Property. Tesla is responsible for personal property taxes assessed against Tesla Property.
- 9.2 Operations and Maintenance. Seller will: (a) subject to Section 1.1(b) above, [***], procure, transport, install and configure at the Factory the Seller's Property as reasonably required to deliver Goods in accordance with the Contract and the Production Plan (e.g., as required for [***]); (b) [***] maintain all Seller's Property used by Seller in good condition and repair, normal wear and tear excepted; (c) furnish, maintain in good condition, replace and improve all Seller's Property reasonably required to deliver Goods in accordance with the Contract and the Production Plan; and (d) at Tesla's request and expense, mark Tesla Property as belonging to Tesla. Further, (e) all replacement parts, additions, improvements, and accessories to Tesla Tooling will become part of Tesla Tooling; and (f) Tesla will, [***], be responsible for procuring, maintaining in good condition, replacing and improving all Tesla Property which Tesla is expressly required to provide hereunder as a Tesla Responsibility, if any, in order to enable Seller to perform its obligations under the Contract and the Production Plan.
- 9.3 Tesla's Rights of Possession, Equitable Relief. Tesla has the right to the sole, unencumbered, unqualified, and absolute possession of Tesla Property at any time, as elected by Tesla and Seller will [***] release to Tesla upon request, and Tesla may retake immediate possession of Tesla Property at any time with or without cause and without payment of any kind unless otherwise provided in the Contract. Tesla will be responsible for transportation costs with respect to Tesla Property.
- 9.4 Waiver of Liens. As a continuing condition of Seller's possession or use of Tesla Property, Seller shall ensure that no third party obtains any lien or other right in Tesla Property and hereby waives and relinquishes, and agrees to obtain from any third parties who might claim any such lien (including without limitation mechanic's liens) or right, their written waiver and relinquishment of all rights, if any, to any lien or other right of retention whatsoever with respect to Tesla Property.

10. Intellectual Property.

- 10.1 Covenant Not to Sue. Seller and its Affiliates covenant not to bring, assist others in bringing, or otherwise assert against Tesla and/or its Affiliates, and their respective successors and assigns, any claim for infringement of any of Seller's and/or any of its Affiliates' Intellectual Property Right incorporated in the Goods arising from any of the following: [***]. For the avoidance of doubt, the foregoing covenant extends to any application of one or more Goods if, at the time of sale of one or more Good(s) to Tesla, (a) Seller knows that Tesla and/or its Affiliates plans to use such Good(s) in such application or (b) the application by Tesla and/or its Affiliates is publicly available and/or disclosed.
- 10.2 Independent Efforts and Similar Goods. Provided there is no infringement of the other Party's Intellectual Property Rights, nothing in this Amended GTC or the Contract will impair either Party's right to develop, manufacture, purchase, use, sell or market, directly or indirectly, alone or with others, products or services competitive with those offered by the other Party.
- 10.3 No Implied Rights. Except for the rights expressly transferred in this Amended GTC or the Contract, nothing therein will operate to transfer any interest in Intellectual Property Rights by implication, estoppel or otherwise.

11. Factory Colocation.

- 11.1 Factory Lease. As contemplated in the Amended and Restated Factory Lease dated January 1, 2018 by and between Tesla, Inc. and PNA (as amended, the "Factory Lease"), Seller will co-locate at the Gigafactory for production of Goods hereunder.

11.2 *Seller Personnel.*

- (a) Responsibility for Seller Personnel. Seller will manage, supervise and provide direction to Seller Personnel and cause them to comply with the obligations and restrictions applicable to Seller under these Amended GTC and/or Contract. Each Party is responsible for the acts and omissions of its own personnel under or relating to these Amended GTC and/or the Contract. Seller is responsible for validating the identity of and ensuring that Seller Personnel assigned to perform work hereunder (i) have the legal right to work in the country(ies) in which they are assigned to work, and (ii) conform to all reasonable and applicable Tesla Policies disclosed to Seller and approved by Seller (such approval not to be unreasonably withheld, conditioned or delayed) with respect to personal and professional conduct at the Factory (including adherence to general safety, behavior, and security practices). From time to time, the Parties may also, in conjunction with the Production Meeting, consult in good faith regarding staffing requirements for Seller Personnel at the Factory.
- (b) Background Checks. Prior to assigning any Seller Personnel to work at the Factory, Seller shall perform a background check of each person or, in the case of employees or agents of a subcontractor, Seller shall cause the subcontractor to conduct such a background check. Such background checks may have been performed as part of Seller's standard pre-employment screening process and will include the following, at a minimum but only to the extent permitted by applicable Law: (i) social security verification (for US employees); and (ii) felony and misdemeanor criminal checks. To the extent permitted by applicable Law, Tesla may require Seller to provide written evidence of the background checks on Seller Personnel at any time. Unless prohibited by Law, neither Party may assign any person to perform work at the Factory who was convicted of any criminal offense involving dishonesty, a breach of trust, money laundering, or who has been convicted of a felony crime within the last seven years without the other Party's prior written consent.

11.3 *Extension of Lease.* Following expiration or termination of the Amended GTC, Seller shall be entitled to extend the duration of the Factory Lease as follows:

- (a) If Tesla terminates this Amended GTC for Seller's Default or the Factory Lease for Tenant's Lease Default, Seller may continue its lease rights [**]. Seller shall [**] and Seller shall [**].
- (b) If (i) this Amended GTC expire or (ii) in the event of a termination of this Amended GTC and/or the Factory Lease for force majeure by either Party or termination for a Change of Control Event affecting the other Party, Seller may continue its lease rights [**]. Seller shall [**] and the Parties shall negotiate in good faith a potential extension of the Factory Lease. In case of termination for force majeure or for Change of Control by either Party, Tesla shall be responsible [**]; provided, however, that Tesla will have sole financial responsibility with respect to any Tesla-Supplied Items and/or Utilities which were installed by Tesla. The Parties shall also, in connection with any such expiration or termination, discuss in good faith [**] - and, in the [**], such discussion shall include the impact on [**]. In the case of expiration (but not termination for force majeure or for Change of Control), [**] provided that (i) Seller has used [**], (ii) the amount(s) [**]; provided, however, that such Tesla's approval shall not be unreasonably withheld, delayed or conditioned, and (iii) Tesla shall not be responsible for any such [**]. Tesla will provide an estimated cost or profit for [**], and Seller will [**]. Seller shall have financial responsibility for [**]; provided, however, that Tesla [**]. If Seller chooses to [**], Seller shall [**]. If Seller chooses to [**], Tesla shall [**], and if the [**], Tesla will [**]. If Seller [**], Seller will be deemed to have [**] and Tesla will [**] in its sole discretion and at Tesla's [**]. For avoidance of doubt, Seller shall have [**]. In no event shall Tesla [**]. Except as set forth in this paragraph, each Party shall be responsible for its own costs and expenses related to such expiration or termination.
- (c) If Seller terminates this Amended GTC for Tesla's Default or the Factory Lease for Tesla's Lease Default, Seller may: (i) elect to continue its lease rights for the [**] without [**] and Seller may [**] and, if applicable, [**]; and (ii) [**].

- (d) If Seller terminates this Amended GTC and the Contract(s) due to a Change of Control Event with respect to Tesla, Seller may, in its sole discretion and in addition to the remedies contemplated in Section 11.3(b), choose to continue its lease rights [**].

12. Liability.

12.1 Limitations of Liability and Exclusions.

- (a) Except as provided in Section 12.1(e), Tesla's liability to Seller under this Amended GTC and all Contracts (including termination, expiration or cancellation) shall not exceed the following:
- (i) with respect to each investment by or for Seller in Seller's Property as contemplated in Section 1.1(b) above and in the then-current Pricing Agreement, the [**] pursuant to this Amended GTC and the then-current Pricing Agreement;
 - (ii) with respect to Goods or other items delivered by Seller pursuant to a Contract, [**] in accordance with the applicable Contract;
 - (iii) with respect to amounts for which Tesla is expressly responsible pursuant to this Amended GTC - including Sections 2.4 (Tesla Responsibilities), 11.3 (Extension of Lease), and 13.4 (Obligations Upon Termination) if and to the extent applicable - and/or other relevant agreements between the Parties in connection with this Amended GTC (e.g., Factory Lease) if and to the extent applicable, the [**];
 - (iv) with respect to Claims which are [**]; and
 - (v) for other damages which are recoverable pursuant to this Amended GTC and/or a Contract due to one or more events giving rise to liability in a rolling period of [**].
- (b) Except as provided in Section 12.1(e), Seller's total liability to Tesla under this Amended GTC and/or any Contract shall not exceed the following: (i) for Claims which are [**]; and (ii) for one or more events giving rise to liability in a rolling period of [**], or (B) [**].
- (c) Except as provided in Section 12.1(e) and notwithstanding anything to the contrary in Sections 12.1(a) or 12.1(b) above, each Party shall be liable if it [**]; provided, however, that such liability shall not exceed [**].
- (d) Except as provided in Section 12.1(e) and to the extent permitted by applicable law, neither Party will be liable to the other Party for any anticipated profits, loss of revenue or savings, loss of goodwill, depreciation cost due to reduced production capacity, cost of capital, production downtime costs, interest, penalties or incidental, special, indirect, consequential, punitive, multiple, or exemplary damages or liabilities in connection with this Amended GTC and/or any Contract, whether for breach of contract, late payment, property damage, personal injury, illness, or death or otherwise, even if such Party was advised or was aware of the possibility of such damages or liabilities.
- (e) The limitations and exclusions of liability set forth in Sections 12.1(a), 12.1(b), 12.1(c) and 12.1(d) will not apply with respect to damages attributable to: (i) a Party's intentional torts, unlawful conduct, willful misconduct, or gross negligence; or (ii) Losses related to [**]. Further, the exclusions of liability set forth in Section 12.1(d) will not apply with respect to damages attributable to: (iii) Losses related to Claims that are [**].
- (f) The Parties acknowledge and agree that the following will be considered direct damages and that neither Party will assert that they are types of damages that are excluded under Section 12.1(d) to the extent they result from the failure of a Party (or entities or persons for whom a Party is responsible) to perform in accordance with this Amended GTC and/or the Contract:
- (i) costs and expenses for which a Party is expressly responsible under this Amended GTC or a Contract, including costs and expenses related to [**] and Tesla's obligations to pay [**] paid by Seller [**];

- (ii) the actual and reasonable damages, losses, costs and expenses incurred by Tesla as a direct result of Seller's Default pursuant to Section 3.3 (Time is of the Essence);
 - (iii) actual and reasonable damages, losses, costs and expenses incurred by Tesla as contemplated in [**];
 - (iv) payments, fines, penalties or interest imposed by a governmental body or regulatory entity, to the extent caused by the other Party, the other Party's Affiliates, or their respective agents and subcontractors;
 - (v) actual and reasonable damages, losses, costs and expenses as a direct result of Seller's failure to comply with its obligations under [**], but only to the extent that [**];
 - (vi) amounts for which a Party is expressly responsible pursuant to this Amended GTC (including Sections 2.4 (Tesla Responsibilities), 11.3 (Extension of Lease), and 13.4 (Obligations Upon Termination)), the then-current Pricing Agreement, the Factory Lease, and/or each Contract;
 - (vii) damages in tort attributable to the "simple" or "ordinary" negligence of a Party, its employees and/or agents in a manner related to this Amended GTC, a Contract and/or the Factory;
 - (viii) actual and reasonable costs and expenses [**], to the extent caused by the other Party, its employees and/or agents or, if [**] using Commercially Reasonable Efforts, damages in an amount equal [**];
 - (ix) actual and reasonable damages for personal injury, illness and/or death with respect to a Party's employees or agents to the extent caused by the other Party's failure to maintain adequate health and safety conditions at the Factory;
 - (x) actual and reasonable damages and liability incurred by a Party with respect to environmental conditions or issues (including actual and reasonable costs of remediation, if applicable), either (A) to the extent caused by the other Party and/or (B) to the extent such conditions or issues are the legal responsibility of the other Party; and
 - (xi) subject to Section 12.1(a)(v) above, the actual and reasonable damages, losses, costs and expenses explicitly described in Section 2.5(b) above and incurred by Seller as a direct result of Tesla's Default pursuant to Section 2.5(b) ([**]).
- (g) Each Party shall use Commercially Reasonable Efforts to mitigate the damages incurred in connection with any breach by the other Party.
- (h) Subject to Sections 5.3(d) (Remedies) and 5.3(f) (Recalls; Service Actions) and subject to the limitations and exclusions set forth in this Section 12.1, all remedies provided in this Amended GTC and/or the Contract are cumulative and in addition to and not in lieu of any other remedies available to a Party under this Amended GTC and/or the Contract, at law, or in equity.

12.2 *Force Majeure*. "Force Majeure Event" means [**] that delays or prevents the Party from performing its obligations under this Amended GTC and/or the Contract, provided that (a) the non-performing Party is without fault in causing or failing to prevent the event, and (b) the event cannot be circumvented through the use of commercially reasonable alternative sources, work-around plans or other means. The affected Party will promptly notify the other Party of any Force Majeure Event and of its plans and efforts to implement a work-around, in which case the affected Party will be excused from further performance of the affected obligations as long as the Force Majeure Event continues. The affected Party will continue to use Commercially Reasonable Efforts to perform to the extent possible and will comply with any applicable and agreed disaster recovery obligations. The affected Party will notify the other Party promptly when the Force Majeure Event has abated. If a Force Majeure Event prevents performance for [**], then the unaffected Party may terminate this Amended GTC and the Contract(s) as of a date specified by such Party in a written notice of termination to the affected Party, in which case (i) Tesla will pay Seller's charges for Goods delivered in accordance with [**], but (ii) Tesla will not be liable for any costs pertaining to [**] and (iii) neither Party will be liable to the other Party for payment of [**], except as may be expressly permitted under Section 11.3(b). If a Force Majeure Event prevents performance by Seller and results in a backlog of unfulfilled orders for Goods, Seller shall, as directed by Tesla, [**] within the [**] period.

13. Term and Termination.

- 13.1 *Initial Term and Renewal.* This Amended GTC will be effective as of the Amendment Effective Date and continue through the date that occurs ten (10) years after Seller achieves the Production Run Rate (the “Term”). Beginning five (5) years after the Start of Production and at least once per year during the Term, the Parties will discuss in good faith the possibility of extending the Term. The “Production Run Rate” will be deemed to occur on the first day of the month following the month in which Seller produces battery cells at the Factory [***].
- 13.2 *Termination, Generally.* This Amended GTC and the Contract may only be terminated as provided in this Section 13 (Term and Termination). Termination by a Party will be without prejudice to any other rights and remedies available to a Party. Neither Party will be obliged to pay any termination charges or demobilization fees to the other Party in connection with any termination, except as may be expressly set forth in this Amended GTC and/or the applicable Contract.
- 13.3 *Termination.* Subject to Sections 2.4 (Tesla Responsibilities) of this Amended GTC, the Party who is not in Default may terminate this Amended GTC and/or the Contract as follows: (a) if the other Party breaches a material obligation under this Amended GTC, the Factory Lease, and/or the Contract and fails to cure the breach within [***] after receipt of notice of such breach expressly stating the non-breaching Party’s intent to terminate (“Notice of Termination”) or, if the breach cannot reasonably be cured within such [***] period, [***] after receipt of Notice of Termination; (b) if the other Party becomes a debtor in a bankruptcy, insolvency, receivership, or similar proceeding commenced by a third party that is not dismissed within a reasonable time after commencement; or (c) [***] upon Notice of Termination in the event of an incurable material breach, including (i) a Party’s repudiation of this Amended GTC and/or the Contract, (ii) in case of Section 6.4 (Debarment), or (iii) if the other Party makes an assignment for the benefit of creditors in violation of this Amended GTC and/or the Contract or voluntarily institutes proceedings in bankruptcy or insolvency. Each of the foregoing types of breach shall be deemed to be a “Default.” The Parties may also terminate: (d) as provided in Section 12.2 (Force Majeure); or (e) for convenience (i.e. without cause) upon prior written notice to the other Party if such other Party experiences a Change of Control Event, but only if both: (i) the Change of Control Event will, or is reasonably likely to, materially and adversely affect the terminating Party’s interests pertinent to this Amended GTC and the Contract(s), and (ii) the terminating Party terminates within [***] after such Change of Control Event. (f) Subject to Section 11.3 (Extension of Lease) of this Amended GTC, this Amended GTC and all Contracts shall automatically expire without any further action by the Parties upon expiration of the Factory Lease. The Party that issues the Notice of Termination may approve a longer cure period in its sole discretion.
- 13.4 *Obligations Upon Termination.* Following any termination pursuant to Section 13.3 above and in addition to any actions or payments expressly required by this Amended GTC and/or the applicable Contract:
- (a) Seller shall:
- (i) immediately cease all work under the Contract, unless and to the extent that Tesla requests that Seller complete the manufacture of Goods using materials and components which were previously acquired by Seller within the applicable Lead Time to meet its obligations under the affected Contract(s) and which Seller cannot, using Commercially Reasonable Efforts, [***] in a manner that results in [***] with respect to such materials and components;
 - (ii) transfer title and deliver to Tesla all finished Goods completed prior to the termination date pursuant to a Purchase Order or Release, provided that Seller may in its sole but reasonable discretion change the payment terms for such Goods if Seller has terminated for Tesla’s Default;
 - (iii) without limiting Seller’s right to damages for Tesla’s Default, [***];

- (iv) cooperate with Tesla in minimizing costs and losses related to the termination (including, without limitation, by returning the materials for a refund or credit or otherwise using or selling to any of Seller's other customers);
 - (v) upon termination of the Factory Lease, comply with the obligations described in the Factory Lease and in Section 11.3 above with respect to [**]; and
 - (vi) in case of Tesla's termination for Seller's Default and if requested by Tesla, but subject to Seller's actual capacity, labor constraints and supply chain constraints, issue a final Purchase Order for a quantity of Goods at volumes not in excess of [**] of purchases by Tesla over [**] preceding termination and on the [**], and Seller shall not reject such Purchase Order.
- (b) Tesla will, after exercising any setoff rights permitted by Law, pay to Seller the following amounts, without duplication and in accordance with the then-current payment terms between Tesla and Seller:
- (i) The purchase price for all conforming Goods received by Tesla prior to the termination date or delivered following the termination date pursuant to this Section 13.4;
 - (ii) [**], unless Tesla has terminated for either (A) Seller's Default or (B) a Change of Control Event with respect to Seller; and
 - (iii) [**] paid by Seller for [**] at the Factory for which [**]; provided, however, that Tesla shall not have any obligation to [**] such amounts if Tesla terminates (A) for Seller's Default, (B) as permitted under Section 12.2 (Force Majeure) (unless expressly agreed otherwise in writing by Tesla pursuant to the good faith negotiation contemplated in Section 11.3(b) above), or (C) for a Change of Control Event with respect to Seller; and
 - (iv) Any costs and/or expenses that Tesla is obligated to pay pursuant to Section 11.3 (Extension of Lease).
- (c) Notwithstanding any other provisions herein to the contrary but subject to Section 12 (Liability), in case of a Party's termination due to Change of Control with respect to the other Party, the Party exercising such termination right shall be entitled to recover a termination charge equal to the following: (i) in [**] of the Term, one billion, five hundred million dollars (\$1.5 billion USD); (ii) in [**] of the Term, one billion (\$1.0 billion USD); and (iii) thereafter during the Term, seven-hundred fifty million dollars (\$750 million USD).

14. Insurance. During the Term of this Amended GTC, Seller shall obtain and maintain at its own cost and expense (and shall cause each subcontractor to maintain) policies for the types and amounts of insurance that are required under applicable Law.

15. Dispute Resolution.

- 15.1 *Governing Law.* This Amended GTC and each Contract will be interpreted and construed in accordance with the substantive Laws of California and the United States generally applicable therein, without regard to any provisions of its choice of law rules that would result in a different outcome. The UN Convention on Contracts for the International Sale of Goods will not apply to the Contract.
- 15.2 *Informal Dispute Resolution.* In the event any disputes, differences or controversies arise between the Parties, out of or in relation to or in connection with the provisions of this Amended GTC and/or the Contract, the Parties shall thoroughly explore all possibilities for an amicable settlement.
- 15.3 *Arbitration.* Any dispute arising out of or relating to this Amended GTC and/or a Contract that is not resolved through negotiation shall be settled exclusively by final and binding arbitration conducted in accordance with the then-current Commercial Arbitration Rules of the Judicial Arbitration and Mediation Services/Endispute ("JAMS"). The existence, content and result of the arbitration shall be held in confidence by the Parties, their representatives, any other participants, and the arbitrator. The arbitration will be conducted by a single arbitrator selected by agreement of the Parties or, failing such agreement,

appointed in accordance with the JAMS rules. The arbitrator shall be experienced in agreements for capital equipment. Any demand for arbitration and any counterclaim will specify in reasonable detail the facts and legal grounds forming the basis for the claimant's request for relief and will include a statement of the total amount of damages claimed, if any, and any other remedy sought by the claimant. The arbitration will be conducted in the English language in San Francisco, California. Each Party will bear its own expenses in the arbitration and will share equally the costs of the arbitration; provided, however, that the arbitrator may, in their discretion, award reasonable costs and fees to the prevailing Party. The arbitrator will have full power and authority to determine issues of arbitrability and to interpret or construe the applicable provisions of the Contract and/or this Amended GTC and to fashion appropriate remedies for breaches of the Contract and/or this Amended GTC (including interim or permanent injunctive relief); provided that the arbitrator will not have any right or authority: (i) in excess of the authority of a court having jurisdiction over the Parties and the dispute would have absent this arbitration agreement; (ii) to award damages in excess of the types and limitation of damages found in the Contract and/or this Amended GTC; or (iii) to modify the terms of either the Contract or this Amended GTC. The award of the arbitrator will be issued within thirty (30) days of the completion of the hearing, shall be in writing, and shall state the reasoning on which the award is based. Judgment upon the award rendered in the arbitration may be entered in any court of competent jurisdiction. Each Party will have the right to apply at any time to a judicial authority for appropriate injunctive relief (or other interim or conservatory measures), and by doing so will not be deemed to have breached its agreement to arbitrate or to have impaired the powers reserved to the arbitrator. The Parties further consent to the jurisdiction of any state or federal court with subject matter jurisdiction located within a district that encompasses assets of a Party against whom a judgment (or award) has been rendered for the enforcement of the judgment (or award) against the assets of such Party.

15.4 *Continued Performance.* Each Party agrees to continue performing its obligations under this Amended GTC and each Contract while a dispute is being resolved unless and until such obligations are terminated by the termination or expiration thereof.

16. Miscellaneous.

16.1 Assignment and Subcontracting.

- (a) Without prior written consent of the other Party, neither Party may assign this Amended GTC or any Contract or subcontract or delegate the performance of its duties thereunder, and any attempt to do so shall be void; provided, however, that (i) each Party may, without requiring the other Party's consent or meeting any other condition, add an Affiliate which operates in the Factory as a co-party to this Amended GTC and/or any Contract, and (ii) Tesla may, upon the written notice to Seller, assign any or all of its rights, benefits or remedies under any Contract to an Affiliate which assumes all of Tesla's obligations under the Contract, provided that Tesla remains responsible for (1) payment if the Affiliate fails to pay in accordance with the Contract, (2) performance of Tesla Responsibilities applicable to the Contract, if any, if the Affiliate fails to perform such Tesla Responsibilities and (3) Tesla's indemnification obligations provided in Section 7.2.
- (b) If Seller intends that all or part of the manufacture of Goods will be subcontracted to a third-party subcontractor, Seller will: (i) be solely responsible for payments to the subcontractor; (ii) include in its purchase order or any other contract with the subcontractor a waiver of subcontractor liens to the maximum extent permitted by applicable law; (iii) before permitting any subcontractor to use Tesla Property and/or access the Facility, obtain Tesla's prior written consent; (iv) provide notice to Tesla at each Production Meeting of [***]; and (v) [***] in connection with this Amended GTC and/or a Contract as reasonably requested by Tesla within a reasonable time after receipt of Tesla's notice and following a good faith discussion. Tesla has no obligation with respect to Seller's subcontractor other than payment to Seller of the agreed price of the conforming Goods delivered to Authorized Purchasers pursuant to their Purchase Order(s) accepted by Seller except as provided in [***].

- (c) Any subcontracting, assignment or delegation by Seller does not relieve Seller of any responsibility under the Contract, and Seller remains responsible to the same extent as if the subcontracted, assigned or delegated responsibilities were retained by Seller.
 - (d) In the event of a Change of Control Event affecting a Party, the person or entity which acquires Control of the Party shall be subject to the terms and conditions of, and shall assume all of the acquired Party's obligations under, this Amended GTC and the affected Contract(s).
 - (e) This Amended GTC and all Contract(s) shall be binding upon the respective successors and permitted assigns of the Parties.
- 16.2 *Audit and Inspection.* Tesla and its authorized representatives shall have the right with reasonable prior written notice from time to time to access Seller's leased areas approved by Seller (such approval will not be unreasonably withheld by Seller) and, subject to the NDA, verify Seller's compliance with the terms of this Amended GTC and the Contract. Seller will maintain records as reasonably necessary to demonstrate Seller's compliance with the terms of this Amended GTC, the Pricing Agreement, and the Contract, including showing that amounts charged to Tesla are true and correct. Such audit will be made at the agreed date and the normal business hour of Seller at the Factory. Tesla and its representatives may audit Seller's records made within [***] prior to the audit date, to the extent needed to verify compliance with this Amended GTC, the Pricing Agreement, and the Contract, and Seller will make such records available to Tesla and its auditors for examination and copying upon their reasonable request; provided that Seller is not obliged to make available any technical or engineering confidential records, data and/or information owned or controlled by Seller without the prior written agreement between the Parties. Any audit will be conducted at Tesla's expense. Notwithstanding the foregoing and unless approved otherwise by Seller, any audit of Seller's compliance with [***] shall be conducted solely by an authorized third-party representative of Tesla which is bound not to disclose to Tesla the specific [***].
- 16.3 *Conflicts.* In the event of a conflict between or among the documents comprising this Amended GTC and/or a Contract, the following order of precedence will apply (documents listed in descending order of priority): (a) any written agreement signed by authorized representatives of the Parties expressly amending this Amended GTC and/or a Contract Document; (b) a Pricing Agreement signed by the Parties; (c) the applicable Purchase Order accepted by Seller; (d) the Production Plan; (e) any Product-specific exhibits or attachments to this Amended GTC (e.g. cell warranty); (f) this Amended GTC and any exhibits, attachments, schedules and documents included or referenced in this Amended GTC that are not Product-specific attachments or schedules; and (g) any other Contract Document. This Amended GTC shall supersede any standard terms and conditions that are automatically attached to purchase orders issued by Tesla.
- 16.4 *Counterparts.* This Amended GTC may be executed in counterparts, each of which shall be an original and together which shall constitute one and the same instrument.
- 16.5 *Covenant of Good Faith.* Except where an obligation is specifically identified as being in a party's sole discretion, each Party, in its respective dealings with the other Party under or in connection with this Amended GTC and each Contract, shall act in good faith and with fair dealing.
- 16.6 *Electronic Communication.* Subject to Section 2.4(c), Seller will comply with the method of electronic communication reasonable specified by Tesla from time to time, including requirements for electronic funds transfer, purchase order transmission, electronic signature, and communication.
- 16.7 *Entire Agreement.* This Amended GTC, the NDA, the Pricing Agreement, the Contract Documents, and each Contract constitute the entire agreement between the Parties with respect to its subject matter, and supersedes all prior oral or written representations or agreements by the Parties with respect to the subject matter thereof. Except as authorized in Section 2.2, no subsequent terms, conditions, understandings, or agreements purporting to modify the terms of this Amended GTC, the Pricing Agreement, any Contract Documents, or a Contract will be binding unless in writing and signed by a Vice-President or higher for both Tesla and Seller.

- 16.8 *Environmentally Friendly Practices.* In addition to complying with all environmental and safety requirements, to the maximum extent practicable, each Party will use environmentally conscious materials and practices in the development, manufacturing, packaging and delivery of all Goods and/or in connection with the Factory.
- 16.9 *No Third Party Beneficiaries.* This Amended GTC and each Contract are entered into solely between Tesla and Seller and, except for the Parties’ indemnification obligations under Section 7 (Indemnification) and the Authorized Purchasers, will not be deemed to create any rights in any third parties or to create any obligations of either Tesla or Seller to any third parties.
- 16.10 *No Waiver.* The failure of either Party to enforce on a particular occasion any right or remedy provided in this Amended GTC and/or the Contract or by law or in equity will not be deemed a waiver of that right or remedy on a subsequent occasion or a waiver of any other right or remedy.
- 16.11 *Notices.* All formal notices, requests, demands, approvals and communications under this Amended GTC and/or the Contract (other than routine operational communications) (collectively, “Notices”) will be in writing and may be served either (a) in person or (b) by registered or certified mail with proof of delivery, addressed to the Party at the addresses set forth below. Notices given as described in the preceding sentence will be considered received on the day of actual delivery. A Party may change its address or designee for notification purposes by giving the other Party prior written notice of the new address or designee in the manner provided above. The Parties may mutually agree that certain types of routine approvals and notices of a non-legal nature may be given by electronic mail.

In the case of Tesla: Tesla, Inc. 3500 Deer Creek Road, Palo Alto, CA 94304 Attn: Vice President, Global Supply Management	With a copy to: Tesla, Inc. 3500 Deer Creek Road, Palo Alto, CA 94304 Attn: Legal Department
In the case of Seller: SANYO Electric Co., Ltd. Tesla Energy Business Division Attn: Associate Director, Global Sales & Marketing 1-1 Matsushita chou Moriguchi City, Osaka 570-8511, Japan	With a copy to: Panasonic Corporation of North America Legal Department, 12th Floor Two Riverfront Plaza Newark, New Jersey 07102-5490

- 16.12 *Relationship of Parties.* The Parties are independent contractors under this Amended GTC and the Contract and no other relationship is intended, including, without limitation, a partnership, franchise, joint venture, agency, employer/employee, fiduciary, master/servant relationship, or other special relationship. Neither Party shall act in a manner that expresses or implies a relationship other than that of independent contractor, nor bind the other Party.
- 16.13 *Rules of Interpretation.* Section references are to sections of the document in which the reference is contained and will be deemed to refer to and include all subsections of the referenced section. The section headings in this Amended GTC are for reference purposes only and may not be construed to modify or restrict any of the terms of this Amended GTC and/or the Contract. This Amended GTC and each Contract will be deemed to have been written by both Tesla and Seller. Unless the context requires otherwise, (a) “including” (and any of its derivative forms) means including but not limited to, (b) “may” means has the right, but not the obligation to do something and “may not” means does not have the right to do something, (c) the words “will” and “shall” are shall be understood to apply to a mandatory obligation, not a permissive statement, and (d) terms defined in the singular include the plural and vice versa. This Amended GTC and the Contract Documents are written in the English language, and the English text of this Amended GTC and of each Contract shall prevail over any translation hereof.
- 16.14 *Severability.* If for any reason a court of competent jurisdiction finds any provision of this Amended GTC and/or the Contract to be unenforceable, that provision of this Amended GTC and/or the Contract

will be enforced to the maximum extent permissible so as to implement the intent of the Parties, and the remainder of this Amended GTC and/or the Contract will continue in full force and effect.

16.15 *Survival*. Any provision of this Amended GTC and/or of a Contract that contemplates or governs performance or observance subsequent to termination or expiration thereof will survive the expiration or termination thereof for any reason, including without limitation Seller’s obligations, representations and warranties and Tesla’s rights under the Contract with respect to Goods delivered or ordered thereunder.

16.16 *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:

- (a) Seller shall contractually require its suppliers and sub-suppliers to [***] for purposes of production of Goods under this Amended GTC. “Minerals” means any form of cobalt and/or ‘conflict minerals’ (as that term is used in Tesla’s Conduct Policies).
- (b) At least [***] during the Term, Seller shall [***] (collectively, “Minerals Suppliers”). Seller shall conduct each [***] in accordance with [***], including as applicable [***] from [***] and the commitments adopted by the [***], and using [***] with relevant industry experience. The scope and methodology of [***], and shall schedule each [***] to facilitate [***]. Seller will provide Tesla and its independent auditors with a [***]. Seller shall complete each [***] and deliver a [***] during the Term.
- (c) If and to the extent that [***], then the Parties shall promptly discuss in good faith and one of the following shall apply:
 - (i) Seller shall promptly: (a) cause the [***] to [***] and provide evidence to Tesla that [***]; and/or (b) [***] related to this Amended GTC and [***]; or
 - (ii) If Seller is unable to achieve compliance as contemplated in Subsection (i) above, Tesla may require Seller to [***].

16.17 *Defined Terms*. Terms used in this Amended GTC with initial capitalization have the meanings specified where used or in this Section 16.16.

- (a) “Affiliate” means with respect to an entity, any other entity or person Controlling, Controlled by, or under common Control with, such entity.
- (b) “Amendment Effective Date” has the meaning set forth in introduction.
- (c) “Anti-Bribery Laws” means the United States Foreign Corrupt Practices Act of 1977, the United Kingdom Bribery Act of 2010, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (in each case, as amended from time to time) and all other applicable national, regional, provincial, state, municipal or local laws and regulations that prohibit the bribery of, or the providing of unlawful gratuities, facilitation payments or other benefits to, any government official or any other person.
- (d) “Anti-Money Laundering Laws” shall mean all applicable Laws that: (a) limit the use of and/or seek the forfeiture of proceeds from illegal transactions; (b) limit commercial transactions with designated countries or individuals believed to be terrorists, narcotics dealers or otherwise engaged in activities contrary to the interests of the United States; (c) require identification and documentation of the parties with whom a Financial Institution conducts business; or (d) are designed to disrupt the flow of funds to terrorist organizations. Such Laws, regulations and sanctions shall be deemed to include, without limitation, the USA PATRIOT Act of 2001, Pub. L. No. 107-56, the Bank Secrecy Act of 1970, as amended, 31 U.S.C. Section 5311 et seq., the Trading with the Enemy Act, 50 U.S.C. App. Section 1 et seq., the International Emergency Economic Powers Act, 50 U.S.C. Section 1701 et seq., and the

sanction regulations promulgated pursuant thereto by the OFAC, as well as Laws relating to prevention and detection of money laundering in 18 U.S.C. Sections 1956 and 1957.

- (e) “Authorized Purchaser” means Tesla or any Affiliate of Tesla that is authorized by Tesla to purchase Goods on behalf of Tesla and that Tesla notifies in writing to Seller.
- (f) “Cell” means a [***] battery cell manufactured by or for Seller hereunder, and has the same meaning as the term “Good” when used in the Gigafactory Contract Documents.
- (g) [***] means the [***] of one or more Goods which [***] other Goods.
- (h) “Change of Control Event” means a transaction or event involving a Party whereby (i) any other entity, person or “group” (as such term is used in Section 13(d) of the Securities Exchange Act of 1934, as amended) has acquired Control of all or substantially all of the assets, of such Party (or any parent company of such Party), whether directly or indirectly, in a single transaction or series of related transactions, or (ii) such Party (or any parent company of such Party) has consolidated with, or merged with or into, another entity, or sold, assigned, conveyed, transferred, leased or otherwise disposed of all or substantially all of its assets to another person(s) or entity(ies).
- (i) “Claim” means any demand, or any civil, criminal, administrative or investigative claim, action or proceeding (including arbitration) asserted, commenced or threatened against an entity or person by an unaffiliated third party. For the purposes of this definition, an employee of either Party is considered an unaffiliated third party.
- (j) “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.
- (k) “Contract Documents” means the Purchase Order accepted by Seller, the applicable Pricing Agreement (if any), the provisions of this Amended GTC relevant to the obligations under the accepted Purchase Order (e.g., production and delivery of Goods), documents and attachments which are both referenced in any of the foregoing (including Specifications) relevant to the obligations under the accepted Purchase Order (e.g., production and delivery of Goods), and any other additional written agreements which are signed by authorized representatives of the Parties and pertain to the obligations under the accepted Purchase Order (e.g., production and delivery of Goods).
- (l) “Control” means possessing, directly or indirectly, the power to direct or cause the direction of the management, policies or operations of an entity, whether through ownership of voting securities, by contract or otherwise.
- (m) [***] means [***] near the [***].
- (n) “Embargoed Person” means any person, entity or government subject to trade restrictions under U.S. Law, including any Anti-Money Laundering Laws and any Executive Orders or regulations promulgated thereunder, with the result that either business with Seller is prohibited by Law or the Contract is in violation of Law.
- (o) “Energy Products” means storage technology in a stationary installation, not in a mobile or otherwise portable device, in which one or more cells store electric power for an auxiliary component.
- (p) “EP Cells” means, collectively, Goods intended for use in Energy Products and purchased under the Gigafactory Contract.
- (q) “EV Cells” means, collectively, Goods intended for use in vehicles that are Tesla Products and purchased under the Gigafactory Contract.

- (r) “Goods” means all products specifically identified in a statement of work or product specific attachment or amendment to this Amended GTC, and all products that are not so identified, but which are made by or on behalf of Seller at the Factory and offered or sold by Seller to Tesla or any of its Authorized Purchasers. Goods shall include goods made by or on behalf of Seller at the Factory and sold by Seller to any Authorized Purchaser, directly or indirectly including through resellers, distributors, value-added distributors and subassembly manufacturers. “Goods” includes prototype and development parts, pre-production versions of Goods. To the extent that the Goods are Software, references to “sale” or words of similar meaning shall be deemed to refer to a “license” of such Goods consistent with the terms in the Contract. “Goods” shall not include scrap not delivered to Tesla in the form of (i) defective or non-conforming Cells or (ii) any materials or components comprising Cells.
- (s) “In-Scope Countries” means, for each type of Cell, the applicable country of delivery and additional countries as requested by Tesla and approved in writing by Seller. Tesla will give reasonable notice of each country that it wishes to include in this definition with respect to a Cell type, the Parties’ cell technical teams will work together in good faith to evaluate and confirm whether the Cell type(s) can meet the applicable Laws of such country, and Seller shall not be unreasonably withhold, condition, or delay its consent to any such request.
- (t) “Intellectual Property Rights” means all intellectual and industrial property rights recognized in any jurisdiction, including copyrights, mask work rights, moral rights, trade secrets, patent rights, rights in inventions, trademarks, trade names, and service marks (including applications for, and registrations, extensions, renewals, and re-issuances of, the foregoing).
- (u) “Law(s)” means any statute, regulation, ordinance, rule, order, decree or governmental requirement enacted, promulgated or imposed by any governmental authority at any level (e.g., municipal, county, province, state or national). For the avoidance of doubt, the term “Laws” includes any and all applicable Anti-Bribery Laws and any and all applicable Laws with respect to: (i) occupational safety and health; (ii) protection of persons and property from death, injury or damage; (iii) the environment and the use, handling, storage, labeling and disposal of toxic or hazardous materials; and/or (iv) labor and employment.
- (v) “Lead Time” means [***].
- (w) “Module” means smallest replaceable unit in a Tesla battery pack. In the case of the Tesla Roadster, the Module consists of 621 battery cells connected in a series/parallel arrangement.
- (x) “Person” means an individual, corporation, partnership, limited partnership, joint venture, association, joint stock company, trust, trustee, estate, limited liability company, unincorporated organization, real estate investment trust, government or any agency or political subdivision thereof, or any other form of entity.
- (y) “Purchase Order” means a purchase order for Goods issued by Tesla or another Authorized Purchaser (e.g., a Production Order or a Discrete Order).
- (z) “Release” means a written communication issued by Tesla or an Authorized Purchaser that identifies a specific quantity of Goods and associated delivery date by which Seller shall deliver such Goods.
- (aa) “Seller Personnel” means any personnel furnished by Seller or any of its Affiliates and working at the Factory in connection with the Contract, including employees and independent contractors of Seller, its Affiliates and subcontractors.
- (bb) “Seller’s Property” has the meaning given in Section 9.1 of this Amended GTC.

- (cc) “Specifications” means the most current version of all applicable specifications and requirements that are: (i) provided by Tesla (including other documents or requirements specifically incorporated or referenced in this Amended GTC, Purchase Orders, bills of materials, statements of work, project schedules, drawings, and CAD data) and approved in writing by Seller; and/or (ii) provided by Seller (including any samples, drawing, CAD data, spec sheets, or other descriptions or specifications or representations) and either (a) approved of by Tesla in writing or (b) relied upon by Tesla. Notwithstanding anything to the contrary in this Amended GTC, the Parties intend to describe all aspects of the design of the Goods in the applicable Specifications to the extent feasible.
- (dd) “Tesla” means Tesla, Inc. and/or an Affiliate(s) of Tesla.
- (ee) “Tesla Supplier Handbook” means the most current version of the written set of guidelines, standards and requirements provided by Tesla regarding development and production of Goods under this Amended GTC. The Tesla Supplier Handbook may be provided by Tesla electronically or via a web-based portal.
- (ff) “Tesla Product” means any product that is manufactured by or on behalf of Tesla (excluding Goods). Tesla Products may include vehicles, chargers, subassemblies, systems and components.
- (gg) “Tesla-Supplied Items” means, collectively, the raw materials, components, supplies, and/or services to be provided by Tesla in connection with this Amended GTC or Factory Lease (e.g. Utilities) and/or the Contract as a Tesla Responsibility.
- (hh) “US Person” means a United States citizen, entity organized under the Laws of the United States or its territories or entity having its principal place of business within the United States or any of its territories.
- (ii) “Warranty Period” has the meaning given in Section 5.1(a).

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 indicate where omissions have been made.

IN WITNESS WHEREOF, the Parties have executed these Amended and Restated General Terms and Conditions for Gigafactory by persons duly authorized below:

Tesla, Inc.	
By:	<u>/s/ Karn Budhiraj</u>
Printed:	<u>Karn Budhiraj</u>
Title:	<u>VP, Global Supply Chain Management</u>
Date:	<u>9 June 2020</u>

Tesla Motors Netherlands B.V.	
By:	<u>Stephan Werkman</u>
Printed:	<u>Stephan Werkman</u>
Title:	<u>Director</u>
Date:	<u>Jun 10, 2020</u>

Panasonic Corporation	
By:	<u>/s/ Mototsugu Sato</u>
Printed:	<u>Mototsugu Sato</u>
Title:	<u>Representative Director, Executive Vice President</u>
Date:	<u>2020 June 6</u>

Panasonic Corporation of North America, by and through its division Panasonic Energy of North America	
By:	<u>/s/ Thomas G Korte</u>
Printed:	<u>Thomas G. Korte</u>
Title:	<u>Senior Vice President of Operations at Panasonic Corporation of North America, and Chief Financial Officer of Panasonic's US Company</u>
Date:	<u>Jun 5, 2020</u>

Exhibit 1 - Quality Requirements

1. Quality Requirements. All Goods sold to Tesla under the Contract shall be manufactured and provided in accordance with agreed Tesla’s quality control procedures and requirements, including, without limitation, all Tesla quality standards (collectively, the “Quality Requirements”). The Parties shall determine upon the mutual consultation whether the Goods meet the Quality Requirements. Seller shall, in accordance with the Quality Requirements, provide, maintain and enforce all measures necessary to secure the quality of Goods and the manufacturing processes thereof, including without limitation, quality control standards, inspection standards and specifications.
2. PPAP. All cells shall go through a formal Production Part Approval Process (“PPAP”) process prior to use in a Tesla product. The PPAP process requires a review of product and process documents (FMEA, Control Plans, Inspection Standard, IEEE, etc.) and a process audit (as deemed necessary by Tesla Quality Personnel). Seller shall inform Tesla of any process and product changes that occur after completion of the PPAP process.
3. Evidence of Seller’s Quality Assurance; Testing. Upon Tesla’s request and within the scope that the Parties agree, Seller shall deliver to Tesla [**] as will validate compliance with all Quality Requirements. If quality problems based upon the Quality Requirements arise from the Goods, Tesla may, upon prior notice and during normal business hours: [**].
4. Pre-delivery Inspection. Seller shall be responsible for the quality control of the Goods it supplies to Tesla pursuant to the Contract, including, without limitation, reasonable and appropriate inspection and testing of Goods prior to delivery.
5. Tesla Testing. If quality problems based upon the Quality Requirements arise from the Goods, upon receipt of a reasonable request by Tesla, Seller shall promptly conduct required engineering and quality control tests of Goods manufactured pursuant to the Contract, and shall provide Tesla with the results of those tests.
6. This Exhibit 1 does not limit the Parties’ respective rights and obligations under the Contract.

Exhibit 2 - Nevada Incentives

TOPIC	DESCRIPTION	TIMING	PURPOSE	RISKS
<p>Quarterly SB-1 Audit Compliance</p>	<p>***PNA to provide complete and accurate data, only to the Tesla employees and agents expressly identified in writing by Tesla, regarding the following:</p> <ol style="list-style-type: none"> 1. The amount of Capital Investment in the State of Nevada, which will be further categorized by depreciable-life.*** For avoidance of doubt, this chart does not obligate PNA to make any minimum amount of Capital Investments, but [***]. 2. The number of employees engaged in the construction of the Project, and show the total number of construction employees and the percentage of construction employees who are Nevada Residents.*** 3. The number of Qualified Employees at the Project, the average wage paid to Qualified Employees throughout the period, and show the total number of Qualified Employees and the percentage of Qualified Employees who are Nevada Residents. For avoidance of doubt, this chart does not obligate PNA to pay any particular wages or wage levels to its employees.*** <p>If and to the extent that PNA discovers that any of the foregoing data as reported to Tesla was inaccurate or incomplete, PNA will promptly notify Tesla and the Parties will collaboratively assess the impact of such inaccurate or incomplete data on past and future tax incentives from the State of Nevada. Depending on the nature, magnitude, and impact of the inaccurate or incomplete data, Tesla will work with the State of Nevada in a timely manner to remediate the error and to mitigate the potential loss of tax incentives.</p>	<p>Quarterly</p>	<p>To facilitate the SB-1 Compliance requirement</p>	<p>Risk losing all incentives if SB-1 compliance is not met.</p>

TOPIC	DESCRIPTION	TIMING	PURPOSE	RISKS
	<p>Tesla will select and engage independent certified public accountant ("CPA") to perform SB-1 compliance requirements.</p> <p>PNA to collaborate with same independent CPA and to adopt same agreed-upon procedures as determined by Tesla. [**] related to the incentives contemplated herein. [**] provided to PNA by such independent CPA.</p>	As-needed	Pursuant to SB-1, Tesla, as Lead Participant, is required to issue a compliance report (at least on an annual basis) that is certified by an independent CPA.	
	<p>[**]PNA will provide the following to selected independent CPA and comply with mutually-agreed procedures (PNA will not unreasonably object to Tesla's proposed procedures):</p> <ol style="list-style-type: none"> 1. Detailed lists of all pertinent real and personal property, including all Capital Investments incurred by PNA for the Project for each period; 2. Schedule listing all construction employees with respect to the for each period; and 3. Schedule listing all Qualified Employees with respect to the Project Site for each period. <p>PNA will work with Tesla and the independent CPA to ensure that the SB-1 audit compliance process will not identify any material differences between PNA's reported data and the actual data. PNA will also promptly remediate any errors identified by the independent CPA in PNA's reported data and PNA will notify Tesla of PNA's remediation steps and discuss such steps in good faith with Tesla.</p>	Quarterly	To ensure that the SB-1 compliance is satisfied and acceptable to Nevada's Governor Office of Economic Development	

TOPIC	DESCRIPTION	TIMING	PURPOSE	RISKS
Monthly Sales & Use Tax Reimbursement Compliance	[***]. PNA agrees that property purchased for the purposes of cell production at the Gigafactory will be delivered to and used at the Gigafactory site, but equipment may be stored offsite after delivery from time to time if not in use.	Monthly	To ensure that sales/use tax ultimately does not apply to Gigafactory purchases	Risk that the incentives will not apply, subjecting Tesla to unwarranted sales tax expense
	***PNA to provide the following: 1. Copies of all Abatement returns filed for the current period (i.e., returns filed by PNA); 2. Copies of proof of payment associated with each Abatement return; 3. Copies of all vendor invoices supporting the tax amounts reported on each Abatement return, upon request by Tesla or its independent CPA; 4. An Excel schedule summarizing all amounts filed for each Abatement return which lists: Vendor Invoice Number, Vendor Invoice Date, Total Invoice Amount, and Taxable Invoice Amount. It is understood that a delay in providing the information listed above will delay Tesla’s ability to file with Storey County and/or the State of Nevada (as applicable) for the corresponding tax incentives and Tesla may incur a late filing fee or penalty.	Monthly	To facilitate the SUT reimbursement claim process (as Tesla is required to file on behalf of all Participants)	Risk of not receiving (or delayed receipt of) sales tax reimbursement from Storey County
	Tesla will file SUT reimbursement claim on behalf of PNA to Storey County and Tesla will remit any such amounts to PNA in a timely manner.	Monthly	All SUT reimbursement is paid to Tesla. However, Tesla will remit the amounts received of PNA's portion of any reimbursement claim to PNA upon receipt of payment from Storey County	

TOPIC	DESCRIPTION	TIMING	PURPOSE	RISKS
Transferable Tax Credit	PNA agrees that any Transferable Tax Credit incurred by the Project will be entitled to Tesla, as Lead Participant.	N/A	Pursuant to SB-1, transferable tax credit is available to Lead Participant only.	N/A
Cell [***]	[***].	N/A	Due to the benefit of various tax abatements and exemptions, the aforementioned [***].	Risk of inaccurate [***]
NV Incentive - Project Requirement	<p>***PNA agrees to maintain any licenses and permits required to be in good standing in the State of Nevada and/or Storey County.</p> <p>If PNA discovers that it is not in good standing in the State of Nevada and/or Storey County, PNA will promptly remediate the situation with the State of Nevada and/or Storey County and notify Tesla of the situation. Depending on the nature, magnitude, and impact of a failure by PNA to remain in good standing, Tesla will work with the State of Nevada in a timely manner to mitigate the potential loss of tax incentives.</p>	N/A	SB-1 Requirement	Risk losing all incentives.
	[***].	N/A	SB-1 Requirement	Risk losing all incentives.

TOPIC	DESCRIPTION	TIMING	PURPOSE	RISKS
	Any recapture of Abated Taxes or Transferable Tax Credits will be repaid [**].	N/A	To ensure that PNA is not subject to any recapture provisions (which is also already stated in Tesla/State Incentive Agreement)	Tesla is solely responsible for any recapture
	***PNA will maintain copies of all documents, records, and related information pertaining to any data reported to Tesla, the independent CPA, the State of Nevada, and/or Storey County for purposes of the Nevada Incentives, and provide access to the reasonably requested supporting data to Tesla, the State of Nevada, and Storey County upon request for 5 years after the expiration of the Incentive Agreement (June 30, 2039).	N/A	SB-1 Requirement	Risk losing all incentives if supporting documentation is insufficient to support potential audit by GOED or Dept. of Taxation.
	[**].	N/A	SB-1 Requirement	Risk losing all incentives.
	[**].	N/A	SB-1 Requirement	Risk losing all incentives.
Project Governance	Tesla and PNA will meet as needed to discuss the following, but not limited to: 1. business update, including headcount/investment projections; 2. SB-1 compliance; 3. SUT reimbursement.	Quarterly	To ensure that both parties are aligned on Incentive-related matters, and ultimately partnering to ensure all SB-1 requirements are met and to achieve max value of Incentives available under SB-1.	Risk of reporting inefficiencies and delay

Exhibit 10.3

2020 Pricing Agreement (2170 Cells)

PPA Effective Date: 4/1/2020

Seller's Vendor Number with Tesla	133618		
Pricing Validity Period ("Pricing Term")	4/1/2020	through	3/31/2023
Forecasted Volumes during Pricing Term	See Section 8(a) below		
Payment Terms	[**]		

- This 2020 Pricing Agreement (Gigafactory 2170 Cells) (the "PPA") is entered into by the Tesla, Inc. and Tesla Motors Netherlands B.V. (collectively, "Tesla") and Panasonic Corporation ("Panasonic Corp.") and Panasonic Corporation of North America, for and on behalf of its division Panasonic Energy of North America ("PENA") (collectively, "Seller") with respect to certain cylindrical lithium-ion battery cells made by or on behalf of Seller (collectively, "Cells") at Tesla's Gigafactory in Sparks, Nevada (the "Factory"). The Parties shall meet and confer in good faith to finalize an agreed, written Specification for each type of Goods, including the agreed watt-hour (Wh) capacity and size. The price per Cell is referred to as the "Unit Price." Terms used herein with initial capitalization have the meanings given where used or in the Gigafactory Contract.
- Pricing Term.** The Pricing Term for this PPA shall be as set forth in the table above, subject to the following: by giving written notice to the other Party on or prior to June 30, 2021, either Party may elect to terminate this PPA for convenience as of March 31, 2022. In the event that a Party elects to so terminate this PPA, the Parties shall negotiate in good faith terms and conditions for a new pricing agreement.
- Orders.** Tesla and any of its Affiliates may order Goods pursuant to Purchase Orders or Releases issued directly to Seller and each such Purchase Order and Release shall be governed by the Gigafactory Contract. The applicable delivery dates will be specified in Purchase Orders or Releases issued and accepted per Sections 1.2 and 1.3 of the GTC or otherwise agreed per the production planning process in Section 1.1 of the GTC. Seller shall direct all invoices under a Purchase Order to the Tesla entity identified in the Purchase Order or, if applicable, in the applicable Release.
- Volumes.**
 - Volume Commitment.** Subject to Section 4.c (Conditions), Tesla will order and purchase, and Seller will produce and deliver, [**] Base Volume Commitment of Cells in Table 1 below or the volume of Cells that are [**] agreed per Section 4.b below (the "Volume Commitment") as follows:

Table 1 - Base Volume Commitment		
Timeframe		Volume
[***]		[***]
[***]	[***]	[***]
	[***]	[***]
[***]	[***]	[***]
	[***]	[***]

* See Section 4.c.i below

**See Section 4.c.viii below

b. **Production Planning.** The Parties will confirm the Production Plan as follows: during the Transition (defined below), at the beginning of each month; and thereafter, at the beginning of each calendar quarter. To that end, Tesla will provide [**], Seller will provide its [**], and the Parties will discuss in good faith. The Production Plan is intended to cover [**]. This process enables the Parties to adjust volumes under the prior Production Plan and confirm the volumes for the subsequent period of [**]. As noted above, the Volume Commitment will be the [**] the volumes [**] or the volumes described in Section 4.a above, subject to fluctuations within that timeframe as permitted by GTC section 1.5 or by PPA section 4.c.i.

c. **Conditions.**

i. During Transition, if the production volumes by Seller exceed the Volume Commitment, the Volume Commitment shall increase based on actual increase in Seller's production up to [**] Cells. If Transition is delayed past the scheduled timeframe, then: (1) the Volume Commitment during the Transition shall be [**] Cells; and (2) if the delay is due to circumstances beyond the Parties' reasonable control which cannot be mitigated through Commercially Reasonable Efforts, the Parties will discuss in good faith a [**] to the Volume Commitment based on the anticipated production impact with reference to Table 2 below.

[**]	[**]
[**]	[**]
[**]	[**]
[**]	[**]

ii. Tesla's obligations to purchase the Volume Commitment is subject to the conditions set out in Section 1.6 (Purchase Commitment) of the GTC.

iii. Tesla's obligation to purchase the Volume Commitment shall be reduced by the quantity of Cells [**].

iv. Seller's obligation to deliver the Volume Commitment shall be reduced by the quantity of Cells [**].

v. Any forecast volumes in excess of the Volume Commitment is provided for planning purposes only and is not a volume guarantee and neither Tesla nor Seller shall have any liability for such excess volumes except to the extent expressly agreed through the Production Plan.

vi. Tesla's obligation to purchase the Volume Commitment hereunder shall be deemed to be satisfied and shall be reduced, as applicable, to the extent that one or more Authorized Purchasers purchases Goods in connection with this PPA.

vii. If Seller reasonably believes that Tesla will not order and purchase the Volume Commitment, or if Tesla reasonably believes that Seller will not produce and deliver the Volume Commitment, either Party may notify the other in writing and the Parties shall discuss in good faith.

viii. The [**] Base Volume Commitment for [**], respectively, set forth in Table 1 [**] shall apply if [**]; provided, however, that the Base Volume Commitment in [**] is subject to Section 4.d.ii below.

d. **Capital.**

i. Except as otherwise agreed in writing by Tesla (e.g. in the Lease or in a signed change order), Seller shall make all capital and operational investments required for production of Goods for Tesla in accordance with the Production Plan and under this PPA (e.g. equipment, systems, other tangible items, etc.), including equipment and labor for production or for [**]. For purposes of the foregoing clause, Tesla will accept responsibility for [**] is undertaken at Tesla's request and pursuant to a change order that is signed prior to [**].

- ii. The Baseline Prices in Table 3 [**] shall [**].
- iii. If [**], the Volume Commitment [**] per Table 1. To the extent that [**], the Parties shall [**].
- iv. [**] Baseline Price [**] in Table 3 above is [**]. The [**] Baseline Price [**] shall be [**].

b. **Metals Adjustment.** Each month during the Pricing Term starting [**], the Baseline Price shall adjust as follows: the Parties will measure the [**] for [**] per the applicable index or metric for the applicable measurement window in the table 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.

Table 4: Metals Adjustment				
Cell Material	[**]	[**]	[**]	[**]
Index/Metric	[**]	[**]	[**]	[**]
Measurement Window	[**]	[**]	[**]	[**]
Content per Cell: [**] Baseline	[**] per Cell	[**] per Cell	[**] per Cell	[**] per Cell
Content per Cell: [**] Baseline	[**] per Cell	[**] per Cell	[**] per Cell	[**] per Cell
Content per Cell: [**] Baseline	[**] per Cell	[**] per Cell	[**] per Cell	[**] per Cell
[**]	[**]	[**]	[**]	[**]

* The foregoing values shall be set based on [**].

c. **Lithium Adjustment.** Each [**] during the Pricing Term 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 5-A: Lithium Adjustment	
Cell Material	[**]
Index/Metric	[**]
Measurement Window	See Table 5-B below
Content per Cell: [**] Baseline	[**] per Cell
Content per Cell: [**] Baseline	[**] per Cell
Content per Cell: [**] Baseline	[**] per Cell
Commodity Price Baseline	[**]

* The foregoing value shall be set based on [**].

Table 5-B: Measurement Window for Lithium Adjustment and [***)	
Pricing Period	Measurement Window
Calendar Year [***)	[***)
Calendar Year [***)	[***)
Calendar Year [***)	[***)
Calendar Year [***)	[***)

- d. [***)Adjustment. Each [***) during the Pricing Term starting [***)], the Baseline Price shall adjust based on the change in the [***) and [***) for Cell Materials [***) per the [***)]. For example, for Goods scheduled for delivery in [***)], this adjustment shall take place with respect to the exchange rate for [***)]. The baseline exchange rate as of the PPA Effective Date shall be [***)].
- e. Adjustment for Savings. If and to the extent that the Parties realize savings due to [***)], the Parties shall discuss in good faith and may mutually agree on a [***) adjustment to the Baseline Prices for [***) Cells through either a formal signed amendment hereof or a PO that is issued by Tesla and accepted by Seller.
- f. Adjustment for [***)]. The Parties agree that the [***) Baseline Prices set forth above include charges for the [***) related to [***)], as described in Table 6 below. The Parties agree that the [***) Baseline Prices shall [***) in Table 6. Seller shall document and substantiate [***) upon request by Tesla.

Table 6		
[***)	[***)	[***)
[***)	[***)	[***)
[***)	[***)	[***)
[***)	[***)	[***)
[***)	[***)	[***)

- 6. [***) **Transition Costs.**
 - a. Seller has sole financial responsibility for all [***) (collectively, "Transition Costs") for the [***) (the "Transition"), except as expressly stated otherwise below.
 - b. Assumptions. The [***) Baseline Prices assume that [***) during Transition [***) and [***)]. [***)]. The Parties acknowledge that [***) the foregoing assumptions.
 - c. [***)]. [***) means the quantity of Cells [***)]. [***) means [***)]. [***) means [***)], where [***) means [***) in Table 7 below.

Table 7: [***)				
[***)	[***)	[***)	[***)	[***)
[***)	[***)	[***)	[***)	[***)
[***)	[***)	[***)	[***)	[***)
[***)	[***)	[***)	[***)	[***)

- d. [***)]. Seller will [***) as described in the table attached as Exhibit A [***)].

- e. **Monthly Reporting.** At the end of each month through the completion of the Transition, Seller shall review with Tesla's commercial and finance team in person (if possible) the actual and incremental [***] for such month [***].
- f. **One-Time Annual True-Up.** At the completion of the Transition, , the Parties will review [***] related to the Transition [***] and:
 - i. If the actual [***], Seller shall pay Tesla an amount equal to [***];
 - ii. If the actual [***], Tesla shall pay Seller an amount equal to [***];
 - iii. If the actual [***], Seller shall pay Tesla an amount equal to [***];
 - iv. If the actual [***] Tesla shall [***].

7. **Bill of Materials.**

- a. Except as expressly agreed in writing by the Parties and subject to Section 7.b below, Seller shall be responsible (as between the Parties) for [***], and in no event [***] in connection [***].
- b. The Parties may engage in projects with respect to the bill of materials for Cells to improve quality and reduce cost and pricing during the Pricing Term as mutually agreed after a good faith discussion.
- c. As reasonably requested by Seller, Tesla will participate in all supplier and material qualification processes relevant to this PPA and to the cost trajectory and will not unreasonably withhold or delay its participation in such processes.

8. **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. In connection with the sourcing of cobalt and battery cell materials produced with cobalt (e.g. cathode) (collectively, "**Cobalt**") and if applicable conflict minerals, Seller shall (i) comply with the Responsible Minerals Initiative standards ("**RMI Standards**"), (ii) comply with all applicable Laws, (iii) require each supplier and sub-supplier of Cobalt to submit a comprehensive response using the Cobalt Reporting Template, available at <http://www.responsiblemineralsinitiative.org/emerging-risks/cobalt-reporting-template/>, to confirm that such entities comply with the RMI Standards, and (iv) provide copies of all such responses and data to Tesla no later than February 28 of each year through during the Pricing Term.
- c. If and to the extent that Seller discovers that a supplier or sub-supplier fails to comply with an applicable Law, the RMI Standards, or Tesla's Conduct Policies, the Parties shall promptly discuss in good faith how to mitigate the impact on Tesla.

- 9. **Changes.** Section 2.2 (Changes) of the GTC shall govern any Changes, which may include equitable price adjustments or other appropriate adjustments not expressly described in this PPA, agreed by the Parties during the Pricing Term.

10. **Customs, Duties, and Tariffs.** Except as expressly agreed in writing by the Parties: (a) [***]; (b) [***]. The Unit Prices shall not change during the Pricing Term in connection with any change in the amounts of any such duties, tariffs, or other charges; provided, however, that [***].
11. **Miscellaneous.**
 - a. The Parties’ Amended and Restated General Terms and Conditions for Gigafactory dated January 1, 2020 (“Amended and Restated GTC”), including Section 4.1 (Open Book Structure) thereof and Non-Disclosure Agreement for Commercial Agreement, Gigafactory dated July 1, 2019 (“NDA”), are incorporated by reference as integral parts hereof.
 - b. The Amended and Restated GTC, the NDA, this PPA, applicable sections of the Amended and Restated Factory Lease dated January 1, 2017 (“Lease”), and Purchase Orders and Releases issued by or for Tesla hereunder (collectively, “Gigafactory Contract”) constitute the entire agreement between the Parties with respect to the subject matter of this PPA 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.
 - c. In the event of a conflict between or among the document comprising the Gigafactory Contract, the conflict shall be resolved per Section 16.3 (Conflicts) of the GTC. For the avoidance of doubt, (i) this PPA shall control in the event of a conflict between the terms hereof and the terms of the Production Pricing Agreement dated September 30, 2014 (the “2014 PPA”) with respect to the subject matter hereof, and (ii) the signature of this PPA shall not terminate, or be deemed to terminate, the 2014 PPA.
 - 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]

Agreed by authorized representatives of each Party and signed by the Parties as of the PPA Effective Date.

Tesla, Inc.

By: /s/ Karn Budhiraj
Printed: Karn Budhiraj
Title: VP, Global Supply Management
Date: 9 June 2020

Tesla Motors Netherlands B.V.

By: /s/ Stephan Werkman
Printed: Stephan Werkman
Title: Director
Date: 10/06/2020

Panasonic Corporation

By: /s/ Mototsugu Sato
Printed: Mototsugu Sato
Title: Representative Director, Executive Vice President
Date: 2020 June 6

Panasonic Corporation of North America, for and on behalf of its division Panasonic Energy of North America

By: /s/ Thomas G Korte
Printed: Thomas G. Korte
Title: Senior Vice President of Operations at Panasonic Corporation of North America, and Chief Financial Officer of Panasonic's US Company
Date: Jun 5, 2020

Exhibit A: [**]

[**]

Exhibit 10.4

INDEMNIFICATION AGREEMENT

THIS INDEMNIFICATION AGREEMENT (this “Agreement”) is entered into, effective as of June 23, 2020 (the “Effective Date”) by and between Elon R. Musk (the “Indemnitor”) and Tesla, Inc., a Delaware corporation (the “Company”).

WHEREAS, it is essential to the Company to retain and attract as directors and officers the most capable persons available;

WHEREAS, the Indemnitor and the Company recognize the increased risk of litigation and other claims currently being asserted and that may be asserted in the future against directors and officers of corporations;

WHEREAS, the Company has entered and may from time to time enter into indemnification agreements (each, an “Indemnification Agreement”) with its directors, persons holding officerships, and persons holding equivalent positions with the Company’s subsidiaries (each such individual who has executed an Indemnification Agreement prior to a Change in Control (as defined below), an “Indemnitee”) pursuant to which the Company is or will be obligated to indemnify and pay or advance certain Expenses (as defined in the applicable Indemnification Agreement) of each such Indemnitee arising from an Indemnifiable Event (as defined in the applicable Indemnification Agreement) to the maximum extent permitted by law;

WHEREAS, in addition to entering into Indemnification Agreements with Indemnitees, the Company has purchased from time to time in the past directors’ and officers’ liability insurance to indemnify such Indemnitees from certain losses and expenses not otherwise indemnifiable by the Company pursuant to applicable laws;

WHEREAS, the binding quote proposal for directors’ and officers’ liability insurance most recently obtained by the Company in June 2019 would have required the payment of a significant amount of premiums to third parties that the Company deemed at such time to be unreasonably disproportionate to the amount of coverage provided;

WHEREAS, the Company intends to obtain a binding quote proposal for a directors’ and officers’ liability insurance policy with an aggregate “Side A” coverage limit of \$100,000,000 from a reputable insurance broker with nationwide standing, for a term commencing upon the end of the Term (the “2020 Insurance Quote”);

WHEREAS, in recognition of each Indemnitee’s need for substantial protection against personal liability in order to enhance such Indemnitee’s continued and effective service to the Company and/or its subsidiaries as a director and/or officer, including during the pendency of the 2020 Insurance Quote, the Indemnitor, subject to the terms herein, desires to agree, in his individual capacity, to indemnify each Indemnitee for Expenses of such Indemnitee arising from an Indemnifiable Event, and solely to the extent that the Company is unable to do so, in order to provide assurance to the Indemnitees of the availability of funds to make payments that the Indemnitees would, but for such inability of the Company, be entitled to pursuant to the Indemnification Agreements or a directors’ and officers’ liability insurance policy; and

WHEREAS, the Company and its Board of Directors (the "Board") believe it to be in the best interests of the Company and its stockholders to enter into this Agreement pending the 2020 Insurance Quote.

NOW, THEREFORE, in consideration of the above premises and covenants herein and for good and valuable consideration, the sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the parties agree as follows:

1. Certain Definitions.

(a) "Change in Control" shall be deemed to have occurred if (i) any "person" (as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act")), other than a trustee or other fiduciary holding securities under an employee benefit plan of the Company or a corporation owned directly or indirectly by the stockholders of the Company in substantially the same proportions as their ownership of stock of the Company, is or becomes the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Company representing 50% or more of the total voting power represented by the Company's then outstanding voting securities, or (ii) during any period of two consecutive years, individuals who at the beginning of such period constitute the Board and any new director whose election by the Board or nomination for election by the Company's stockholders was approved by a vote of at least two-thirds (2/3) of the directors then still in office who either were directors at the beginning of the period or whose election or nomination for election was previously so approved, cease for any reason to constitute a majority of the Board, or (iii) the stockholders of the Company approve a merger or consolidation of the Company with any other entity, other than a merger or consolidation that would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) at least 80% of the total voting power represented by the voting securities of the Company or such surviving entity outstanding immediately after such merger or consolidation, or (iv) the stockholders of the Company approve a plan of complete liquidation of the Company or an agreement for the sale or disposition by the Company (in one transaction or a series of transactions) of all or substantially all of the Company's assets.

(b) "Proceeding" or "claim" shall mean any threatened, pending, or completed action, suit, or proceeding or any alternative dispute resolution mechanism (including an action by or in the right of the Company), or any inquiry, hearing, or investigation, whether conducted by the Company or any other party, that Indemnitee in good faith believes might lead to the institution of any such action, suit, or proceeding, whether civil, criminal, administrative, investigative, or other.

(c) "Term" shall have the meaning specified in Section 8 herein.

2. Agreement to Indemnify.

(a) General Agreement. Subject to Section 5, in the event an Indemnitee was, is, or becomes a party to or witness or other participant in, or is threatened to be made a party to or witness or other participant in, a Proceeding by reason of (or arising in part out of) an Indemnifiable Event, the Indemnitor shall indemnify Indemnitee from and against any and all Expenses (or portion thereof) arising from any claims made on or after the Effective Date, arising out of Indemnifiable Events that occurred prior to the Effective Date or during the Term, and that are not otherwise

indemnified or indemnifiable by the Company and certified by the Company as such. The parties hereto intend that this Agreement shall provide for indemnification in excess of that expressly permitted by statute, including, without limitation, any indemnification provided or required to be provided by the Company pursuant to an applicable Indemnification Agreement, the Company's Certificate of Incorporation, its Bylaws, vote of its stockholders or disinterested directors, or applicable law.

(b) Claims Made. Notwithstanding anything in this Agreement to the contrary, the Indemnitor shall only be liable under this Agreement to indemnify and make payments in connection with Proceedings first instituted, or claims first made, against an Indemnitee during the Term and in connection with Proceedings first instituted, or claims first made, against an Indemnitee after the Term but that arises out of an Indemnifiable Event that occurred during the Term.

(c) Initiation of Proceeding. Notwithstanding anything in this Agreement to the contrary, no Indemnitee shall be entitled to indemnification pursuant to this Agreement in connection with any Proceeding or part thereof initiated by such Indemnitee against Indemnitor, the Company or any other director or officer of the Company unless (i) the Company has joined in or the Board has consented to the initiation of such Proceeding or part thereof; or (ii) the Proceeding or part thereof is one to enforce indemnification rights under this Agreement.

(d) Expense Advances. Subject to Section 5, if so requested by an Indemnitee prior to it being established that an Indemnitee is entitled to indemnification from the Indemnitor under this Agreement, the Indemnitor shall advance (within thirty business days following such request any and all Expenses incurred by such Indemnitee (an "Expense Advance"), provided that such Expense Advance may be conditioned upon the receipt by the Indemnitor of a written undertaking by such Indemnitee to repay such Expense Advances to the Indemnitor if and to the extent that it is ultimately determined by a court of competent jurisdiction in a final judgment, not subject to appeal, that such Indemnitee is not entitled to be indemnified by the Indemnitor hereunder.

(e) Mandatory Indemnification. Subject to Section 2(a) and Section 5 of this Agreement, notwithstanding any other provision of this Agreement, to the extent that any Indemnitee has been successful on the merits or otherwise in defense of any Proceeding relating in whole or in part to an Indemnifiable Event or in defense of any issue or matter therein, such Indemnitee shall be indemnified by Indemnitor against all Expenses incurred in connection therewith.

(f) Prohibited Indemnification. No indemnification pursuant to this Agreement shall be paid by the Indemnitor on account of any Proceeding in which judgment is rendered against any Indemnitee for an accounting of profits made from the purchase or sale by such Indemnitee of securities of the Company pursuant to the provisions of Section 16(b) of the Exchange Act, or similar provisions of any federal, state, or local laws.

3. Indemnification Payment. Indemnitee shall receive payment of any Expenses as to which such Indemnitee is entitled to indemnification from the Indemnitor in accordance with this Agreement within ten (10) business days after Indemnitee has made a valid written demand on the Indemnitor for indemnification.

4. Notification and Defense of Proceeding. Notwithstanding anything to the contrary in this Agreement, in no event shall the Indemnitor be obligated to indemnify an Indemnitee for any Expenses or make any Expense Advances to such Indemnitee unless such Indemnitee has complied with: (i) in the case of any Expenses or Expense Advances as to which the Company would otherwise be obligated to indemnify such Indemnitee pursuant to the applicable Indemnification Agreement, all provisions in such Indemnification Agreement relating to the notification to the Company of, defense and settlement of any Proceeding relating to such Expenses (the "Notice and Defense Provisions"), and (ii) in the case of all other Expenses or Expense Advances as to which the Indemnitor is obligated to indemnify such Indemnitee hereunder, all Notice and Defense Provisions as if they applied to such Expenses or Expense Advances and replacing the rights and powers of Company with those of the Indemnitor, *mutatis mutandis*.

5. Limits on Indemnification.

(a) Notwithstanding anything to the contrary herein, in no event shall Indemnitor be required to make any payment or advance under this Agreement in excess of \$100,000,000 in the aggregate with all payments and advances made by Indemnitor hereunder, net of any amounts repaid to the Indemnitor other than the fee pursuant to Section 6.

(b) The Indemnitor shall not be liable under this Agreement to make any payment in connection with any claim made against any Indemnitee to the extent Indemnitee has otherwise received payment (under an Indemnification Agreement, any insurance policy, Bylaw, or otherwise) of the amounts otherwise indemnifiable hereunder. Notwithstanding anything to the contrary herein, the Indemnitor may condition the payment of any amount to an Indemnitee under this Agreement on the receipt of a written undertaking from such Indemnitee to repay to the Indemnitor any amounts that are duplicative of any other payment that is ultimately received by such Indemnitee from the Company, any insurance policy or other source of funds or contribution.

6. Obligations of the Company. In exchange for Indemnitor's agreement to indemnify pursuant to this Agreement and the other obligations of Indemnitor set forth herein, the Company agrees to pay Indemnitor a one-time fee of \$972,361 upon the execution of this Agreement. In addition, the Company agrees to use its reasonable best efforts to obtain the 2020 Insurance Quote no later than the last day of the Term. In the event that the amount of such 2020 Insurance Quote multiplied by 0.125 (1/8) is greater than the one-time fee paid by the Company to Indemnitor, the Company shall pay the difference to Indemnitor.

7. Amendment of this Agreement. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by Indemnitor and the Company with the approval of the Board. No waiver of any of the provisions of this Agreement shall be binding unless in the form of a writing signed by the party against whom enforcement of the waiver is sought, and no such waiver shall operate as a waiver of any other provisions hereof (whether or not similar), nor shall such waiver constitute a continuing waiver. Except as specifically provided herein, no failure to exercise or any delay in exercising any right or remedy hereunder shall constitute a waiver thereof.

8. Term. This Agreement shall be effective as of the Effective Date and shall remain in effect until of the 90th day following the Effective Date, unless sooner terminated by the mutual agreement of the Indemnitor and the Company with the approval of the Board (the "Term"). Expiration or termination of this Agreement shall operate prospectively only, so that all provisions of this Agreement shall remain in full force and effect as to any claim asserted against an Indemnitee during the Term, and as to any claim asserted against an Indemnitee after the Term but that arises from an Indemnifiable Event that occurred during the Term.

9. Binding Effect. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors, assigns, spouses, heirs, and personal and legal representatives. The indemnification provided under this Agreement shall continue as to Indemnitee for any action taken or not taken while Indemnitee was serving in an indemnified capacity pertaining to an Indemnifiable Event even though s/he may have ceased to serve in such capacity at the time of any Proceeding.

10. Severability. If any provision (or portion thereof) of this Agreement shall be held by a court of competent jurisdiction to be invalid, void, or otherwise unenforceable, the remaining provisions shall remain enforceable to the fullest extent permitted by law. Furthermore, to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of this Agreement containing any provision held to be invalid, void, or otherwise unenforceable, that is not itself invalid, void, or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, void, or unenforceable.

11. Third-Party Beneficiaries. Each Indemnitee is an express third-party beneficiary of this Agreement, and may specifically enforce the Indemnitor's or the Company's obligations hereunder as though a party hereunder, subject to the limitations specified herein.

12. Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California applicable to contracts made and to be performed in such State without giving effect to its principles of conflicts of laws.

13. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

* * * * *

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Agreement as of the day specified above.

TESLA, INC.
a Delaware corporation

By: /s/ Al Prescott

Name: Al Prescott

Title: Secretary

ELON R. MUSK,
as Indemnitor

/s/ Elon R. Musk

Elon R. Musk

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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 indicate where omissions have been made.

Exhibit 10.5

English Convenience Translation

-Original Agreement has been executed in Mandarin Chinese-

Contract No.: [**]

Working Capital Loan Contract **(Version 2020)**

Important Notice: This Contract is entered into by the Parties in accordance with laws based on equality and free will, and the terms and conditions of this Contract fully reflect the genuine intention of the Parties hereto. In order to protect legal rights and interests of the Borrower, the Lender hereby draws the Borrower's special attention to the terms and conditions of this Contract in relation to each Party's rights and obligations, in particular those in bold.

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 indicate where omissions have been made.

Lender: Industrial and Commercial Bank of China, China (Shanghai) Pilot Free Trade Zone Lingang Special Area Branch

Person-in-charge: Zhan Sheng Contact Person: Ouyang Jing

Domicile (Address): []**

Post Code: []**

Telephone: [] Fax: / Email: [**]**

Borrower: Tesla (Shanghai) Co., Ltd.

Legal Representative: Zhu Xiaotong Contact Person: Xian Yu

Domicile (Address): []**

[] Post Code: [**]**

Telephone: [] Fax: / Email: [**]**

[The Borrower must insert the above information accurately and completely for the timely service of subsequent notices and legal process.]

Upon equal negotiations and mutual agreement, the Lender and the Borrower enter into this Contract in relation to the provision of relevant loan by the Lender to the Borrower.

Part I General Provisions

Clause 1 Purposes

The loans hereunder shall be used for the following purposes. Without written consent of the Lender, the Borrower may not use the loans for any purpose other than those listed below. The Lender may supervise the use of the loan.

The loans hereunder shall be applied to finance:

1. costs and expenses during the production process, including the purchase of raw materials related to the production of vehicles and parts;
2. operating expenses for the production process, including but not limited to the daily operation, wages, taxes, service fees and consulting fees;

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 indicate where omissions have been made.

3. repayment of any intercompany loan (which has already been used) between affiliated companies (including but not limited to the amount borrowed or to be borrowed by the Borrower from its affiliated company), provided that such intercompany loan shall be used for the above purposes and the interest rate of such intercompany loan shall be in compliance with PRC laws; and

4. repayment of any outstanding amount under any trade finance facility.

Clause 2 Facility Amount and Loan Period

2.1 The currency of the loans under this Contract shall be RMB or USD, and the facility amount thereof shall be RMB4,000,000,000.00 (IN WORDS: RMB four billion) (or the equivalent amount drawn in USD) (if there is any inconsistency between the amount in figures and the amount in words, the amount in words shall prevail), whether the loan is drawn in RMB or USD shall be determined according to the Borrower's actual needs.

2.2 The loan period under this Contract shall be 1 year commencing from the first drawdown date hereunder. The final maturity date shall be the date falling one (1) year from the first drawdown date.

2.3 With respect to each loan, the drawdown date shall be the date on which the loan is paid to the loan account, and the maturity date shall be the repayment date set forth in the corresponding drawdown notice; the repayment date of each loan shall be no later than the final maturity date.

Clause 3 Interest Rate, Interest and Fees

3.1 Interest Rate for Loans Drawn in RMB

The rate of interest accrued on each loan drawn in RMB shall be fixed interest rate, which shall be the 1-year (1-year/above-5-year) loan prime rate (LPR) published by the National Interbank Funding Center on 20 April 2020 minus (plus/minus) 35 basis point(s) ("**BP**", one basis point equals 0.01%, similarly hereinafter), i.e. 3.5%/year (tax included (for the avoidance of doubt, excluding foreign taxes, similarly hereinafter)).

3.2 Interest Rate for Loans Drawn in Foreign Currency

The rate of interest accrued on each loan drawn in foreign currency shall be fixed interest rate, which shall be the USD Benchmark Rate plus 80 BPs (tax included). (The USD Benchmark Rate **means, on the two (2) London business days prior to a relevant drawdown date, the one year London Interbank Offered Rate administered by ICE Benchmark Administration Limited (or any other person which takes over the administration of that rate) for USD quoted at 11:00 a.m. (London time) displayed on pages LIBOR01 or LIBOR02 of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate) or on the appropriate page of such other information service which publishes that rate from time to time in place of**

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 indicate where omissions have been made.

Thomson Reuters.) If the USD Benchmark Rate is no longer announced, the Borrower and the Lender shall endeavor to establish an alternate rate of interest to such USD Benchmark Rate that gives due consideration to the then prevailing market convention for determining a rate of interest for the facility in the PRC in USD at such time, and shall enter into an amendment to this Contract to reflect such alternate rate of interest (including any mathematical or other adjustments to the benchmark (if any) incorporated therein), 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 Contract.

3.3 Interest on any amounts outstanding hereunder shall accrue from day to day and be computed on the basis of a 360-day year and the actual number of days elapsed. The Borrower shall repay all outstanding amounts on the final maturity date.

3.4 The default interest for overdue amounts shall accrue on the overdue sum, from its due date up to the date of full payment, at 130% of the interest rate; the default interest for misappropriation shall accrue on the misappropriated amount, from the date of misappropriation until the date such misappropriation is remedied, including by using such misappropriated funds for a purpose set forth in this Contract or repayment by Borrower of such misappropriated funds, at 150% of the interest rate. If a loan is both overdue and misappropriated, the default interest rate accrued thereon shall be the higher of two.

Clause 4 Drawdown

The Borrower may (based on its actual needs) draw one or more advances under the facility before the final maturity date. There is no limitation to the number of drawdowns, but the total outstanding amount shall not exceed the facility amount described in Clause 2.1 above.

Clause 5 Repayment

The Borrower may repay any and all outstanding advances prior to the final maturity date, and the Borrower shall repay all outstanding advances on the final maturity date.

Clause 6 Special Provisions in Relation to Revolving Loan

The loans hereunder may be drawn on a revolving basis. The facility amount as set out in Clause 2 above is the limit of the revolving loan, and the term of the revolving loan shall commence on the effective date of this Contract and end on the final maturity date.

Clause 7 Financial Covenants (optional clause: this Clause is Not Applicable (Applicable/Not Applicable))

Clause 8 Dispute Resolution

Disputes arising out of or in connection with this Contract shall be submitted to the China International Economic and Trade Arbitration Commission, Shanghai Sub-Commission for arbitration, which shall be conducted in accordance with the arbitration rules in force at the time of the application for arbitration, and the number of arbitrators is three (3). In respect of the dispute between the Lender and the Borrower arising out of or in connection with this Contract, the Lender and the Borrower, each as a party, shall appoint one arbitrator respectively, and the third arbitrator shall be jointly appointed by the Lender and the Borrower or appointed by the Chairman with joint authorisation granted by the Lender and the Borrower. The arbitral award shall be final and binding on the Parties.

Clause 9 Miscellaneous

9.1 This Contract is executed in two originals. The Lender and the Borrower shall each keep one original, and each original shall have the same legal effect.

9.2 The following schedules and other schedules as confirmed by both Parties shall constitute an integral part of this Contract and have equal legal effect as this Contract:

- Schedule 1: Form of Drawdown Notice
- Schedule 2: Entrusted Payment Agreement
- Schedule 3: Form of Transfer Certificate

Clause 10 Other Matters Agreed by the Parties

10.1 Stamp Duties and Fees

(1) Stamp duties

All stamp duties in respect of this Contract shall be borne by the Borrower and the Lender respectively pursuant to the laws and regulations.

(2) Costs and expenses

Any costs and expenses (including legal fees, appraiser fees, etc.) incurred in relation to the execution of this Contract and the facility hereunder (including but not limited to the expenses incurred in relation to the preparation, negotiation, printing and enforcement of this facility) shall be borne by each Party respectively.

Part II Specific Provisions

Clause 1 Interest Rate and Interest

1.1 The benchmark interest rate for loans drawn in foreign currency shall be determined in accordance with Clause 3.2 of Part I of this Contract.

1.2 The interest rate accrued on each loan under this Contract shall be a fixed interest rate, fixed at the time of the advance of such loan.

1.3 The Borrower shall repay interest accrued on each loan together with the principal.

1.4 Interest shall accrue on each advance commencing on the date on which such advance is paid to the loan account.

Clause 2 Drawdown and Payments

2.1 Making Advances

The Lender making an advance pursuant to Clause 2.6 (*Conditions Precedent to Each Drawdown*) under Part II of this Contract shall pay the advance denominated in RMB or USD under the facility to the loan account no later than 11:00 a.m. (Beijing time) of the proposed drawdown date specified in the drawdown notice in respect of that advance.

2.2 Payment of Loan

(1) If any single payment amount exceeds RMB 10,000,000 (IN WORDS: RMB ten million) or its equivalent in USD, payment by the Lender upon entrustment shall be applicable. Entrusted payment by the Lender refers to the Lender paying out each advance to the loan account on each drawdown date in accordance with the Borrower's drawdown notice and entrustment of payment, and transferring the relevant advance to the accounts of the Borrower's counterparty on the same day.

In the event of payment by the Lender upon entrustment, the Borrower shall submit the agreements related to the entrusted payment or documents evidencing the loan usage to the Lender before each advance is made, and the Borrower and the Lender shall enter into an entrusted payment agreement substantially in the form and substance set out in Schedule 2 (*Entrusted Payment Agreement*) hereof.

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 indicate where omissions have been made.

(2) In addition to the circumstances stipulated in the first paragraph above, the Borrower may choose to make payment by either independent payment or entrusted payment at its own discretion. Independent payment by the Borrower means that the Lender pays out the advances to the loan account in accordance with the Borrower's drawdown notice and the Borrower independently pays out to the Borrower's counterparties in satisfaction of the usage purposes stipulated herein. The Borrower shall present the relevant payment list evidencing the payment status of each advance on a quarterly basis to the Lender.

(3) If the Borrower has met the conditions precedent to the first drawdown and the conditions precedent to each drawdown under Part II of this Contract, the Lender is obliged to make the advance on the proposed drawdown date.

2.3 Payment by the Borrower

The Borrower shall pay any amount payable under this Contract on its due date no later than 11:00 a.m. (Beijing Time) to the account designated by the Lender at the effective date of this Contract.

2.4 Drawdown Notice

(1) The Borrower may (based on its actual needs) draw one or more advances under the facility before the final maturity date in accordance with the provisions hereof. There is no limitation on the number of drawdowns, but the total outstanding advances shall not exceed the facility amount described in Clause 2.1 under Part I of this Contract.

(2) In connection with a request for an advance, the Borrower shall deliver a drawdown notice to the Lender no later than three (3) business days prior to the proposed drawdown date specified in the drawdown notice.

(3) Each drawdown notice shall satisfy the following requirements: (1) it shall be substantially in the form and substance set out in Schedule 1 (*Form of Drawdown Notice*) hereof; (2) it shall be executed by the authorized signatory of the Borrower (including through handwritten signing or affixing chop of legal representative or affixing signature chop) or by stamping the Borrower's official seal; (3) the proposed drawdown date specified in the drawdown notice shall be a business day; (4) the proposed drawdown amount shall not exceed the facility amount available as of the date of such drawdown notice.

2.5 Conditions Precedent to the First Drawdown

Before the first drawdown, the Borrower shall provide the Lender with the following documents or complete the following matters to the satisfaction of the Lender, and the Lender shall not unreasonably refuse or delay to confirm the satisfaction of each following conditions precedent:

- (1) this original copy of the executed version of this Contract;

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(2) photocopies (stamped with the Borrower's official seal) of the latest business license, the latest articles of association, and the original copy of the board resolutions of the Borrower;

(3) the loan account has been opened;

(4) the Shanghai foreign investment project filing certificate stamped with the Borrower's seal relating to the project obtained by the Borrower (the Project Shanghai Code: 310115MA1H9YGWX20195E2101001);

(5) a photocopy of the evidence that the Borrower has obtained the environment impact assessment filing certificate in relation to the project, stamped with the Borrower's official seal;

(6) a photocopy of the production permit stamped with the Borrower's official seal; and

(7) if the advance will be in the form of an entrusted payment, submitting a scanned copy of the relevant agreement or proof of use of the entrusted payment or photocopies of such evidence stamped with the Borrower's official seal.

2.6 Conditions Precedent to Each Drawdown

The Lender shall confirm that each of the condition precedents set out below have been satisfied (such conditions precedent shall be satisfactory to the Lender provided that such satisfaction shall not be unreasonably withheld or delayed), or the Lender has otherwise waived the condition.

(1) The Lender has received a drawdown notice issued by the Borrower in accordance with the provisions hereof.

(2) On the proposed drawdown date specified in the drawdown notice, each representation of fact made by the Borrower in Clause 7 under Part II of this Contract is true and correct in all material respects with the same effect as though such representation of fact had been made on such drawdown date, it being understood and agreed that any representation of fact 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.

(3) On the proposed drawdown date specified in the drawdown notice, no event of default by the Borrower has occurred and is continuing.

(4) The Borrower has provided the scanned copies of the Environment Influence Assessment Filing Certificate or photocopies of such certificate stamped with the Borrower's official seal.

(5) If the advance will be in the form of an entrustment payment pursuant to Clause 2.2 under Part II of this Contract, the scanned copies of relevant supporting agreements or documents evidencing the loan purpose or photocopies of such evidence stamped with the Borrower's official seal are provided where entrusted payment applies, except where such materials have already been provided.

Clause 3 Repayment and Prepayment

3.1 The Borrower may repay any and all outstanding advances prior to the final maturity date, and the Borrower shall repay all outstanding advances on the final maturity date.

3.2 The Borrower shall notify the Lender in writing (the “**Prepayment Notice**”) no later than three (3) business days prior to the proposed prepayment date. The Borrower shall not pay any penalties or any fees regarding any such prepayment, provided that prepayment of the principal amount shall be made together with the interest accrued on such prepaid principal through the applicable prepayment date. Any repayment amount made prior to the final maturity date could be borrowed again. The amount of each prepayment by the Borrower shall not be less than RMB 10 million, but the foregoing shall not apply if the Borrower prepays all outstanding advances in full. Amounts prepaid shall offset the principal of the outstanding advances in the reverse order.

Clause 4 Revolving Loan

The facility hereunder may be used on a revolving basis, provided that the aggregate amount of the outstanding advances at any time within the loan period shall not exceed the facility amount.

Clause 5 Security (Not Applicable)

Clause 6 Account Management

6.1 The Borrower shall designate its account opened with the Lender (account number: 1001727329300012609) as the collection account, which will be used to collect sales revenue or funds to be used to repay the loan.

6.2 The Lender may monitor the collection account, including but not limited to monitoring and supervising income and expenditure of such account, for which the Borrower shall give assistance.

Clause 7 Representations and Warranties

The Borrower makes the following representations to the Lender on the effective date hereof and on each drawdown date (except for Clause 7.8 (*No Material Default*) and Clause 7.9 (*No Material Litigation and Arbitration*) which shall only be given on the effective date hereof) with reference to the facts and circumstances then subsisting:

7.1 Legal Status

The Borrower is a company duly incorporated and validly existing under the laws and regulations of the PRC.

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 indicate where omissions have been made.

7.2 Power

The Borrower has necessary capacity for civil conduct and capacity for civil rights to own its assets, to carry out its operations and to enter into and perform this Contract.

7.3 Authorization

All necessary internal authorizations for the Borrower to enter into and perform this Contract have been duly obtained, and this Contract has been duly executed by the authorized signatory of the Borrower.

7.4 Legality

Subject to the Legal Restraint, the obligations to be assumed by the Borrower under this Contract constitute the legal, valid and binding obligations of the Borrower.

“Legal Restraint” means (1) the principle that fair compensation may be granted or denied in accordance with the discretion of the court; (2) in relation to bankruptcy, reorganization and other legal events that may generally affect creditors, the laws that enforce the performance of priority obligations; (3) statutory limitation period of legal restrictions; (4) defense for set-off and counterclaims; and (5) any other restriction or reservation under any other generally applicable law set out in the legal opinion, if any, delivered to the Lender under this Contract.

7.5 Breach of Other Documents

The entering into and performance by the Borrower of this Contract do not and will not violate (a) its articles of association, and/or (b) any applicable laws of the PRC.

7.6 Liquidation and Bankruptcy Events

The Borrower has not entered into any liquidation process, nor is there any bankruptcy event.

7.7 Information

All written documents provided by the Borrower are true and valid in all material aspects as of the date of delivery of the same.

7.8 No Material Default

To the Borrower’s knowledge, as of the effective date hereof, there is no material default of the Borrower under any agreement to which it is a party (material is defined as RMB500,000,000 (or its equivalent in other currency)).

7.9 No Material Litigation and Arbitration

To the Borrower’s knowledge, as of the effective date hereof, there is no litigation or arbitration of the Borrower that will produce any Material Adverse Effect (other than those of a frivolous or vexatious nature which the Borrower is contesting in good faith).

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"Material Adverse Effect" means, in the reasonable opinion of the Lender, a material adverse effect on: (i) the ability of the Borrower to perform its payment obligations thereunder, or (ii) the legality, validity or enforceability of this Agreement.

Clause 8 Covenants by the Borrower

The Borrower undertakes with the Lender as follows:

8.1 Compliance with Law

The Borrower shall ensure that any laws, regulations and rules relevant to its business and operation will be complied with in all material respects.

8.2 Supply of Information

The Borrower shall, within one hundred and eighty (180) days after the end of each financial year or such longer period as consented by the Lender (and the Lender shall not unreasonably reject or delay to give such consent), provide the Lender with its audited financial statements (financial year **means a period commencing from and including January 1st and ending on and including December 31st of each calendar year**).

The Borrower shall, within ninety (90) days after the end of each semi-financial year or such longer period as consented by the Lender (and the Lender shall not unreasonably reject or delay to give such consent), provide the Lender with its unaudited financial statements in respect of that semi-financial year.

8.3 Reduction of Registered Capital

There can be no reduction of the registered capital of the Borrower during the loan period without the prior consent of the Lender.

8.4 Negative Pledge

The Borrower shall not create any security interests over any of its inventory or account receivable, except for:

1. any lien arising in the ordinary course of trading, any statutory priority and other security interests arising by operation of laws and regulations,
2. security interests arising in the ordinary course of the business of the Borrower (including but not limited to any priority over goods, materials or equipment (acquired in an arm's length transaction) incurred or constituted by any title retention arrangement in the terms and conditions set out by the supplier or seller in relevant agreements),
3. security interests created according to this Contract-, or

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4. security interests created with the consent of the Lender (such consent shall not be unreasonably withheld or delayed by the Lender).

8.5 Material Default Notification

The Borrower shall notify the Lender of material default under any liability of the Borrower to any third party (material is defined as exceeding the greater of (i) RMB750,000,000 (or its equivalent in other currency) or (ii) 20% of the Borrower's net assets).

"**Net Assets**" means at any time of determination thereof, the owner's equity of the Borrower as set forth in the most recent financial statements of the Borrower deliverable to the Lender pursuant to this Contract.

Clause 9 Undertakings of the Lender

9.1 The Lender shall make advances to the Borrower in accordance with this Contract.

9.2 Confidentiality Obligations of the Lender

The Lender agrees that it will not, and shall procure that its senior managers, directors, employees, affiliates, advisors and agents (the Lender may only disclose relevant information to the said persons when necessary) will not disclose, announce or otherwise publish to any third party any information including but not limited to provisions of this Contract, this loan, the Borrower and its shareholders. The Lender shall especially abide by the followings:

1. The Lender shall ensure that its senior managers, directors, employees, affiliates, advisors and agents will not disclose, announce or otherwise publish (including but not limited to publishing in any social media (including microblog and Wechat)) to any third party any information relating to the transactions contemplated hereunder, and the price information herein shall not be disclosed or otherwise used by the foresaid person.

2. The Lender will not, and shall ensure that its senior managers, directors, employees, affiliates, advisors and agents will not, accept any interview by any media (including but not limited to any social media) in respect of the project or the transactions contemplated hereunder or agree to report the same.

Any confidentiality agreement or agreement relating to information disclosure already signed by each Party before the execution of this Contract shall be still applicable to the confidential information of the Borrower provided by the Borrower or any third party during the negotiation, execution and performance of this Contract. During the tenor of this Contract and until two (2) years or any longer period as may be required by applicable laws and regulations after the termination or expiration of this Agreement, the terms and conditions contained in such confidentiality agreement or agreement relating to information disclosure shall remain valid and effective. In the event of any conflict between such confidentiality agreement or agreement relating to information disclosure and this Contract, the provisions imposing stricter confidentiality obligations on the Lender shall always prevail.

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 indicate where omissions have been made.

However, the following disclosures made by the Lender shall be exempted:

1. information already known to the public (other than by reason of the Lender's breach of this clause);
2. information disclosed in compliance with and to the extent required by competent government or regulatory authority according to laws and regulations, and the relevant disclosure shall be limited to the minimum extent as required by the competent government, regulatory authority and laws and regulations;
3. information disclosed in compliance with the listing rules of the stock exchange where it is listed, and the relevant disclosure shall be limited to the minimum extent as required by the listing rules of the stock exchange where it is listed;
4. information disclosed with the Borrower's prior written consent.

Clause 10 Event of Default

10.1 Only the following events constitute events of default by the Borrower:

1. Payment Default

The Borrower fails to pay any amount due and payable on the final maturity date in accordance with the provisions of this Contract, and fails to remedy such default within twenty (20) days from the final maturity date.

2. Misappropriation

The Borrower misappropriates any advance within the loan period and fails to remedy, including by using such misappropriated funds for a purpose set forth in this Contract or repayment by Borrower of such misappropriated funds, within twenty (20) days upon occurrence of such misappropriation.

3. Misrepresentation

The representations or statements made in Clause 7 under Part II of this Contract by the Borrower are untrue and cause a Material Adverse Effect, and the Borrower fails to remedy such default within forty-five (45) days from the date on which the Lender issues a written notice to the Borrower.

4. Breach of Other Obligation

The Borrower fails to perform the covenants made in Clause 8 under Part II of this Contract or comply with other obligations hereunder and causes a Material Adverse Effect, and fails to remedy such default within forty-five (45) days from the date on which the Lender issues a written notice to the Borrower.

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 indicate where omissions have been made.

5. Bankruptcy Process

The Borrower is insolvent or enters into bankruptcy process and fails to remedy or terminate the bankruptcy process within sixty (60) days upon the occurrence of such events.

6. Enforcement Events

The assets of the Borrower with an aggregate value exceeding the greater of (1) RMB750,000,000 (or its equivalent in another currency) or (2) 20% of the Borrower's Net Assets are enforced, distressed, seized or frozen based on the final judgment of the court, and such actions are not discharged within sixty (60) days.

7. Cross Default

The Borrower fails to pay any uncontested indebtedness with an aggregate value exceeding the greater of (i) RMB750,000,000 (or its equivalent in another currency) or (ii) 20% of the Borrower's Net Assets on the maturity date or upon expiry of the grace period, and fails to remedy within one hundred and eighty (180) days from the date on which the Lender issues a written notice.

10.2 Remedies Available to the Lender

1. During the period when any event of default has occurred and is continuing, the Lender may, after giving written notice to the Borrower, exercise one or more of the following rights in any order:

(1) to grant any waiver or approve any remedy of the relevant event of default;

(2) to declare suspension of all or any part of advances requested in any drawdown notice which have not been drawn;

(3) to cancel all or any part of the facility, and the part so cancelled may not be borrowed again; and

(4) to declare all or any outstanding advances together with all accrued interests, fees (if any) and other amounts hereunder immediately due and payable.

2. Undertakings of the Lender

The Lender agrees not to exercise any of its rights hereunder in a way that would conflict with this Contract.

Clause 11 Transfer of Rights and Obligations

11.1 Transfer by the Lender

If the Lender (the "**Transferring Lender**") intends to transfer all or any of its rights and/or obligations hereunder to one or more financial institutions (the "**Transferee Bank**"), it shall give at least ten (10) business days' prior notice (the "**Transfer Notice**") and obtain the prior written consent of the Borrower. However, no prior written consent is required under the following circumstances: (1) the Transferring Lender transfers all or any rights and/or obligations hereunder to its branches or sub-branches; and (2) an event of default has occurred and is continuing.

11.2 Effecting a Transfer

The transfer made by the Lender in accordance with Clause 11.1 (*Transfer by the Lender*) under Part II of this Contract shall take effect upon the date specified in a duly completed Transfer Certificate in the form and substance set out in Schedule 3 (*Form of Transfer Certificate*) hereof and executed by the Transferring Lender and the Transferee Bank. The execution of a Transfer Certificate shall not be withheld or delayed by the Lender.

11.3 Binding Effect of a Transfer

Any transfer effected and completed in accordance with this Contract shall be binding on each Party to this Contract.

11.4 Consequences of a Transfer

From the date a transfer takes effect, the Transferee Bank becomes the Lender and to the extent of the transfer subject as specified in the Transfer Certificate:

- (1) the Transferring Lender shall no longer enjoy rights and bear liabilities under this Contract in relation to the transfer object; and
- (2) the Transferee Bank shall enjoy all the rights and bear all the obligations under this Contract in relation to the transfer object.

11.5 Limitation of Liabilities of the Transferring Lender

The Transferring Lender shall bear no liability to the Transferee Bank for any of the following:

1. the due execution, genuineness, accuracy, completeness, legality, effectiveness or enforceability of this Contract or any other document in connection herewith;
2. the receivability of any payment due under this Contract; and
3. the accuracy and completeness of the representations of facts made by the other Party to this Contract to any person under or in connection with this Contract.

11.6 Further Limitation of Liabilities of the Transferring Lender

The Transferring Lender is not obliged to:

1. retrieve from any Transferee Bank any right and/or obligation which is already transferred to that Transferee Bank in accordance with provisions of this Contract.
2. indemnify any Transferee Bank against any losses incurred by it as a result of the breach of any obligation by the Borrower under this Contract.

11.7 Change of Lending Office

The Lender may change its lending office by giving the Borrower at least twenty (20) business days' prior notice.

Clause 12 Effectiveness, Amendment and Termination

12.1 This Contract shall take effect upon affixing company seal or contractual seal by both Parties, and shall terminate when the Borrower has fulfilled all the obligations hereunder.

12.2 Any amendment to this Contract shall be agreed by both Parties and be made in writing. The amendment clause or agreement shall be an integral part of this Contract with equal legal effect. The provisions of this Contract which are not amended shall remain effective. The provisions hereof which are to be amended shall remain effective until the relevant amendment takes effect.

12.3 Amendments to and release of this Contract shall not prejudice each Party's right to claim compensation for loss. The dispute resolution provision hereof shall survive the termination of this Contract.

Clause 13 Governing Laws and Dispute Resolution

13.1 Governing Law

This Contract is governed by and shall be construed in accordance with the laws of the PRC (for the purpose of this Contract the laws of the PRC shall not include the laws of Hong Kong Special Administrative Region, Macau Special Administrative Region and Taiwan Region).

13.2 Dispute Resolution

Disputes arising out of or in connection with this Contract shall be submitted to the China International Economic and Trade Arbitration Commission, Shanghai Sub-Commission for arbitration, which shall be conducted in accordance with the arbitration rules in force at the time of the application for arbitration, and the number of arbitrators is three (3). In respect of the dispute between the Lender and the Borrower arising out of or in connection with this Contract, the Lender and the Borrower, each as a party, shall appoint one arbitrator respectively, and the third arbitrator shall be jointly appointed by the Lender and the Borrower or appointed by the Chairman with joint authorisation granted by the Lender and the Borrower. The arbitral award shall be final and binding on both Parties.

Clause 14 Address for Service of Litigation/Arbitration Process

14.1 The Borrower confirms that the address set forth on the first page of this Contract shall be the address for service of the litigation/arbitration process in relation to any dispute hereunder. Such litigation/arbitration process includes without limitation the subpoena, notice of court session, judgment, ruling, mediation agreement and notice of performance within a prescribed time limit.

14.2 The Borrower agrees that the arbitration institution or the court may use the fax and email provided on the first page of this Contract for the service of litigation/arbitration process except for the judgment, ruling and mediation agreement.

14.3 The service provisions above shall apply to each phase of the arbitration or litigation, including the first and second instances, retrial and enforcement. The arbitration institution or the court may directly deliver any instrument by mail to the above address for service of process.

14.4 The Borrower shall ensure that the address, contact person, fax, email and other information set forth herein shall be true and valid. In case of any change to the relevant information, the Borrower shall promptly notify the Lender in writing; otherwise, services to the initial address shall remain effective, and any legal consequences arising therefrom shall be solely borne by the Borrower.

Clause 15 Entire Contract

Part I (*General Provisions*) and Part II (*Specific Provisions*) hereof shall together constitute the entire Working Capital Loan Contract. A term used in both Parts shall have the same meanings. The Borrower shall be bound by the two Parts jointly. In the event of any conflict between Part I and Part II, Part II shall always prevail.

Clause 16 Notices

16.1 Methods of Notices

Any notice, demand or other document from one Party to the other hereto pursuant to the provisions of this Contract shall be made in writing and be delivered to that Party at such correspondence address or email address and marked for the attention of the persons (if any) as that Party may designate from time to time in writing. The initial contact address, telephone number, email address and contact persons designated by each Party are specified on the first page of this Contract.

16.2 Delivery of Notices

Any communication made between the Parties hereto in accordance with the provisions of this Contract shall be deemed as having been received upon satisfaction of the following conditions:

1. if delivered in person, at the time of actual delivery;
2. if transmitted by email, when received in a legible form;
3. if sent by mail, on the fifth (5) business day following the date of posting by registered mail at the correct address.

16.3 Change of Address

The Borrower shall promptly notify the Lender of any change to the correspondence address, telephone number or email address. Any change of the Borrower shall become effective upon notification of the Borrower to the Lender. Upon receipt of such notice, the Lender shall forthwith notify other Parties hereto of any such change.

16.4 Language of Notices

Any notice under or in connection with this Contract shall be prepared and issued in Chinese.

Clause 17 Special Provisions on Value Added Taxes ("VAT")

17.1 Any interests and fees to be paid by the Borrower to the Lender hereunder shall be tax-included.

17.2 If the Borrower requests the Lender to issue any VAT invoice, it shall firstly register its information with the Lender, including its full name, taxpayer's identification number or social credit code, address, telephone number, deposit bank and account number. The Borrower shall ensure that the relevant information provided to the Lender is true, accurate and complete, and it shall provide relevant supporting documents as requested by the Lender according to the specific requirements published by the Lender through notice in its office or announcement on its website.

17.3 If the Borrower is collecting the VAT invoice on its own, it shall provide a power of attorney affixed with its stamp designating the person collecting the invoice and specifying the identity card number and other information of such person to the Lender, and the designated person shall collect the VAT invoice with his/her original identity card. In case of change of designated person, the Borrower shall reissue the power of attorney affixed with its stamp to the Lender. If the Borrower chooses to collect the VAT invoice by mail, it shall also provide correct and valid mailing details. In case of any change in the mailing details, it shall timely notify the Lender in writing.

17.4 If the Lender fails to issue the VAT invoice in a timely manner due to natural disaster, government act, social disruption and other force majeure events or reasons on the part of tax authorities, the Lender has the right to delay issuance of the invoice within a reasonable period without any liability.

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 indicate where omissions have been made.

17.5 If the Borrower fails to receive the corresponding sheet of the VAT invoice or to offset any taxes due to loss of, damage to or overdue declaration of the VAT invoice after such invoice is collected by the Borrower, the Lender is not liable for compensating the relevant financial losses suffered by the Borrower. However, the Lender shall compensate the relevant financial losses suffered by the Borrower if the loss of, damage to or overdue declaration of any invoice is attributable to the Lender.

17.6 If it is necessary to issue red-letter VAT invoices due to reasons such as return of goods sold, suspension of taxable service or error in invoicing, or failure of authentication of both the offsetting sheet and invoice sheet, and if the Borrower is required to submit the Information Sheet for Issuing Red-Letter VAT Invoice to the tax authority according to relevant laws, regulations and policies, the Borrower shall submit the Information Sheet for Issuing Red-Letter VAT Invoice to the tax authority and the Lender will issue a red-letter VAT invoice after the tax authority approves and notifies the Lender.

17.7 During the performance hereof, in case of adjustment of tax rate by the government, the Lender has the right to adjust the price stipulated herein according to such change.

Clause 18 Miscellaneous

18.1 Neither failure to exercise nor delay in exercising on the part of the Lender any right under this Contract shall operate as a waiver, nor shall any single or partial exercise of any right prevent the Lender from any further or otherwise exercise of any other rights.

18.2 If at any time any provision of this Contract is held to be illegal, invalid, or unenforceable in any respect, the legality, validity or enforceability of any other provisions of this Contract shall not be affected or prejudiced.

18.3 The bills and vouchers in respect of the facility hereunder prepared and maintained by the Lender in accordance with its business rules shall constitute the valid evidence of the creditor-debtor relationship between the Borrower and the Lender, and shall be binding on the Borrower.

18.4 During the term of this Contract, if the Lender cannot continue to perform this Contract in part or in whole due to any enactment or amendment of any laws and regulations, state policies or regulatory rules, it shall communicate with the Borrower in a timely manner, cancel the loans undrawn, and take other necessary measures acceptable to both Parties in accordance with relevant provisions.

18.5 In this Contract, (i) any reference to this Contract shall include the amendment or supplement hereto; (ii) the headings are only for the convenience of reference and shall not constitute any construction of this Contract or limitation of the contents thereunder or scope thereof howsoever.

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 indicate where omissions have been made.

18.6 This Contract is made and executed in Chinese; this English version is prepared for reference only; if there is any discrepancy, the Chinese version controls.

The Parties acknowledge that sufficient consultations have been carried out on all the provisions of this Contract by the Borrower and the Lender. The Lender has drawn the Borrower’s special attention to all the provisions in relation to each Party’s rights and obligations, requested the Borrower to fully and accurately understand such provisions, and made clarifications and explanations in respect of relevant provisions at the Borrower’s request. The Borrower has carefully read and fully understood all the provisions hereunder, including those in Part I (*General Provisions*) and Part II (*Specific Provisions*). Each Party’s understanding of each provision hereunder is completely consistent with that of the other, and has no objection against the contents hereof.

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 indicate where omissions have been made.

Lender (Seal): Industrial and Commercial Bank of China, China (Shanghai) Pilot Free Trade Zone Lingang Special Area Branch

Date: May 7, 2020

Borrower (Seal): Tesla (Shanghai) Co., Ltd.

Date: May 7, 2020

I, as the legal representative/authorized representative of the Borrower, hereby acknowledge that the Borrower has made the borrowing from the Lender in accordance with the provisions hereof and fully completed all the procedures necessary for the borrowing, and the seal affixed on this Contract is genuine and valid.

Legal Representative/Authorized Representative of the Borrower (Signature): /s/ XiaoTong Zhu(Seal)

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 indicate where omissions have been made.

Schedules Listed Below Omitted Pursuant to Regulation S-K Item 601(a)(5)

Schedule 1: Form of Drawdown Notice

Schedule 3: Form of Transfer Agreement

SCHEDULE 2

Ref. No.: [**]

Entrusted Payment Agreement

Principal (Party A): Tesla (Shanghai) Co., Ltd.

Address: No.5000 Jiangshan Road, China (Shanghai) Pilot Free Trade Zone Lingang Special Area

Legal Representative: Xiaotong Zhu

Agent (Party B): Industrial and Commercial Bank of China, China (Shanghai) Pilot Free Trade Zone Lingang Special Area Branch

Address: No.555 South Xinyuan Road, Pudong New Area, Shanghai

Person-in-charge: Zhan Sheng

Whereas:

(1) Party A and Party B have entered into the Working Capital Loan Contract (contract no.: [**], "Finance Contract"), by which Party B extends a facility to Party A.

(2) In accordance with the relevant regulatory rules and Party B's management requirements, entrusted payment shall be applicable if the payment amount meets certain conditions or Party A agrees to adopt payment by Party B upon entrustment. Entrusted payment refers to the Lender paying out an advance to the accounts of the Borrower's counterparty for the relevant loan purpose in accordance with the Borrower's drawdown notice and entrustment of payment.

In order to specify the entrusted payment of financing amounts, Party A and Party B enter into this Agreement upon equal negotiations.

Clause 1 Condition for Entrusted Payment

If any single payment amount under the Finance Contract by Party A exceeds RMB 10,000,000, entrusted payment shall be applicable.

Clause 2 Authorization and Entrustment

In respect of an advance that meets the conditions for entrusted payment herein, Party A authorizes and entrusts Party B to pay out such advance to the designated loan account of Party A, and transfer the relevant advance to the accounts of the Borrower's counterparty for the loan purpose as agreed under the Finance Contract. Party A shall provide Party B with payment voucher and other relevant materials upon Party B's request.

The loans under the Finance Contract shall be applied to finance:

1. costs and expenses during the production process, including the purchase of raw materials related to the production of vehicles and parts;
2. operating expenses for the production process, including but not limited to the daily operation, wages, taxes, service fees and consulting fees;
3. repayment of any intercompany loan (which has already been used) between affiliated companies (including but not limited to the amount borrowed or to be borrowed by Party A from its affiliated company), provided that such intercompany loan shall be used for the above purposes and the interest rate of such intercompany loan shall be in compliance with PRC laws; and
4. repayment of any outstanding amount under any trade finance facility.

Clause 3 Entrusted Payment

(1) In the event of entrusted payment, Party A shall open or designate a special account with Party B for the use of entrusted payment.

(2) In the event of entrusted payment, Party A shall provide Party B with the information about its loan account and the accounts of its counterparties, and relevant supporting materials evidencing the loan purpose when each advance is made. Party A shall undertake that all materials provided to Party B are true, complete and valid.

(3) In the event of entrusted payment, Party B will only conduct a formality examination of, among others, the information about Party A's counterparties and the supporting documents evidencing the loan purpose provided by Party A. If the materials provided by Party A are not true, accurate or complete, Party B shall inform Party A of all the materials to be supplemented within one (1) business day after receipt of the above materials.

(4) If Party B finds any inconsistency or other defects in the supporting documents evidencing the loan purpose and other relevant materials provided by Party A upon examination, Party B has the right to request Party A to supplement, replace, explain or resubmit the relevant materials. Party B has the right to reject relevant advance and payment until Party A submits the materials to the satisfaction of Party B; provided that Party B shall not unreasonably refuse or delay to confirm the satisfaction of such materials.

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 indicate where omissions have been made.

(5) Depending on the loan purposes of Party A, if necessary, Party B may reasonably request Party A, independent intermediaries and other relevant parties to provide a joint verification form and other relevant supporting documents, and then by relying on such materials, Party B will make the advance and payment. Party B shall inform Party A of such request as early as possible so that Party A has sufficient time to prepare for such matters.

(6) If Party B, upon examination, thinks that the materials provided by Party A conform to the loan purposes as agreed herein and that the drawdown meets the conditions precedent under the Finance Contract, Party B shall firstly transfer the advance to Party A's loan account and then, according to the needs and the relevant business vouchers provided by Party A, transfer the relevant advance to the accounts of Party A's counterparties.

Clause 4 Account Freezing or Suspension

If Party B is unable to timely pay any amount as entrusted by Party A due to the freezing or attachment of Party A's loan account or the accounts of Party A's counterparties by any competent authority, Party B shall assume no liability and Party A's repayment obligations already incurred under the Finance Contract shall not be affected.

Clause 5 Supervision and Inspection of Independent Payment

In the event of independent payment by Party A of the advances under the Finance Contract, Party A undertakes to accept and actively cooperate with the reasonable inspection and supervision by Party B of the utilization of the loans, including the purpose thereof, by means of account analysis, inspection of certificates, on-site investigation and otherwise, and to regularly report the utilization of the loans as required by the Finance Contract.

Clause 6 Force Majeure and Accident

Party B shall not be liable for its failure to timely make advances and payments due to war, natural disaster or other force majeure events that are unforeseeable, unavoidable and insurmountable, or due to failure of Party B's system or communication or other accidents, provided that Party B shall immediately give a notice to and communicate with Party A about loss reduction. Party B shall compensate for any loss suffered by Party A due to Party B's delay in notification.

Clause 7 Effectiveness and Termination

This Agreement shall take effect upon affixing company seal or contractual seal by both Parties, and shall terminate when Party A has drawn all loans under the Finance Contract (including the cancellation by Party B of all undrawn amounts under the Finance Contract in accordance with provisions thereof) and Party B has completed the entrusted payment.

Clause 8 Miscellaneous

This Agreement shall be a schedule to and have the same legal effect as the Finance Contract. For any matter not covered herein, the Finance Contract shall apply.

Party A: Tesla (Shanghai) Co., Ltd.

(Seal)

/s/ Xiaotong Zhu (Seal)

Date: May 7, 2020

Party B: Industrial and Commercial Bank of China,

China (Shanghai) Pilot Free Trade Zone Lingang Special Area Branch

(Seal)

/s/ Jing Ouyang (Seal)

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Exhibit 10.6

ELEVENTH AMENDMENT TO AMENDED AND RESTATED AGREEMENT FOR RESEARCH & DEVELOPMENT ALLIANCE ON TRIEX MODULE TECHNOLOGY

This ELEVENTH AMENDMENT TO AMENDED AND RESTATED AGREEMENT FOR RESEARCH & DEVELOPMENT ALLIANCE ON TRIEX MODULE TECHNOLOGY (this "Eleventh Amendment") is effective as of July 22, 2020 (the "Effective Date") and is by and among THE RESEARCH FOUNDATION FOR THE STATE UNIVERSITY OF NEW YORK ("FOUNDATION"), a non-profit educational corporation existing under the laws of the State of New York, having an office located at 257 Fuller Road, Albany, New York 12203, on behalf of the Colleges of Nanoscale Science and Engineering of the State University of New York Polytechnic Institute SILEVO, LLC (as successor in interest of SILEVO INC.) ("SILEVO"), a Delaware limited liability company with offices at 47700 Kato Road, Fremont, California 94538 and TESLA ENERGY OPERATIONS, INC. ("TEO"), a Delaware corporation with offices at 47700 Kato Road, Fremont, California 94538. FOUNDATION, SILEVO and TEO are each referred to herein sometimes individually as a "Party" or, collectively, as "Parties."

RECITALS

1.1 FOUNDATION and SILEVO entered into that certain Amended and Restated Agreement for Research & Development Alliance on Triex Module Technology effective as of September 2, 2014, as amended by a First Amendment thereto effective as of October 31, 2014, a Second Amendment thereto effective as of December 15, 2014, a Third Amendment thereto effective as of February 12, 2015, a Fourth Amendment thereto effective as of March 30, 2015, a Fifth Amendment thereto effective as of June 30, 2015, a Sixth Amendment thereto effective as of September 1, 2015, a Seventh Amendment thereto effective as of October 9, 2015, an Eighth Amendment thereto effective as of October 26, 2015 (the "Eighth Amendment"), a Ninth Amendment thereto effective as of December 9, 2015 (the "Ninth Amendment"), and a Tenth Amendment thereto effective as of March 31, 2017 (as amended, the "Agreement").

1.2 TEO acquired SILEVO in 2014 and FOUNDATION and SILEVO now wish for TEO to become a party to the Agreement by executing this Amendment.

1.3 FOUNDATION, SILEVO, and TEO wish to amend the Agreement as more particularly set forth herein.

THEREFORE, in consideration of the mutual promises and covenants contained in this Amendment and other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, and intending to be legally bound hereby, the Parties agree as follows as of the Effective Date.

1. Section 2.1 of the Agreement is deleted in its entirety and replaced with the following:

"Affiliate means an entity that Controls, is Controlled by, or is under common Control with, another entity, but only during the period that such control exists. For purposes of this Agreement, FOUNDATION's Affiliates shall be deemed to include Fort Schuyler Management Corporation ("FSMC"), New York Center for Research, Economic Advancement, Technology, Engineering and Science Corp., d/b/a NY CREATES, New York State Urban Development Corporation, d/b/a Empire State Development, SUNY Polytechnic Institute Foundation, Inc., SUNY Polytechnic Institute, the State of New York, and the State University of New York. For purposes of this Agreement, SILEVO's Affiliates shall be deemed to include, without limitation, TEO fka SolarCity Corporation, and Tesla, Inc.

2. A new Section 4.1(i) of the Agreement is hereby added as follows:

"On or prior to May 31 of each year (the "Reporting Date") during the term of the Agreement until 2029, SILEVO shall annually report to FOUNDATION and Empire State Development on behalf

of SILEVO, its Affiliates, and each Collocated Entity (as defined in Section 4.3(a)(2) of the Agreement), concerning compliance with the Investment & Spending requirements contained in Section 4.3 of the Agreement and the Employment Targets contained in Section 4.4 of the Agreement using a form substantially similar to Exhibit 2 to this Amendment. Separate reports shall be submitted for: (i) SILEVO and its Affiliates; (ii) each Collocated Entity; and (iii) each Employment Contractor whose employees are being reported pursuant to Section 4.4 (each, a "Reporting Entity"), in accordance with Exhibit 2.

Subject to SILEVO's reasonable confidentiality requirements, SILEVO shall also provide to FOUNDATION, or make available for inspection by FOUNDATION, or to Empire State Development as directed by FOUNDATION, copies of documentation as reasonably required by FOUNDATION to validate the accuracy of each report, which may include for each Reporting Entity the subject entity's Form NYS-45 ATT and New York Multiple Worksite Report (if applicable). Without limitation, the foregoing report shall include aggregate, cumulative totals with sufficient detail to illustrate SILEVO's compliance with the foregoing contractual requirements.

For purposes of the Agreement, including Section 4.3 and Exhibits A and G, cumulative investments shall include all amounts spent or incurred by or for SILEVO on or after January 1, 2015.

3. Section 4.3 (SILEVO Investment & Spending) of the Agreement is deleted in its entirety and replaced with the following:

"(a) In accordance with and subject to the terms set forth in this Agreement, including Exhibit A, providing FOUNDATION performs its obligations as required hereunder: (i) SILEVO commits to invest and spend in the Manufacturing Operation at a level that ensures competitive product costs as determined by the market place for a minimum of five (5) years from the date of Manufacturing Facility Completion; (ii) SILEVO will be responsible for and pay all costs associated with operation of the Manufacturing Facility during the Term after the date of Manufacturing Facility Completion; and (iii) SILEVO will spend or incur approximately \$5 Billion in combined capital, operational expenses, and other costs in New York State (which, for the avoidance of doubt, shall include amounts spent or incurred by SILEVO for consumables and raw materials consumed or used by SILEVO at the Manufacturing Facility or other manufacturing facility in the State of New York and amounts spent on employment, labor, and services), including at its next generation manufacturing, business, and related operation in Western New York, during the ten (10) year period commencing on the date of Manufacturing Facility Completion.

(b) From time to time, SILEVO, TEO, and/or their respective Affiliates (as applicable, the "Sublessor") may contract with or permit one or more entities to perform Manufacturing Operations and related business functions at the Manufacturing Facility, including the right to sublet space within the Manufacturing Facility to such entities under terms consistent with the lease by and between the FSMC and Silevo, LLC dated April 30, 2018 with respect to the Manufacturing Facility (each such entity is referred to herein as a "Collocated Entity") and subject to the approval of the FOUNDATION.

(c) The approval of a Collocated Entity by the FOUNDATION will not be unreasonably withheld, conditioned, or delayed. Without limiting the generality of the foregoing, the Parties agree that the FOUNDATION may withhold approval of a particular proposed sublease with a Collocated Entity if and to the extent that the proposed sublease or other agreement with the proposed Collocated Entity permits or could otherwise result in the Silevo or TEO financially benefitting from rent received from the proposed Collocated Entity in any form with respect to the Manufacturing Facility or any Manufacturing Equipment owned by the FOUNDATION. In addition, the Parties agree that in determining whether to approve a Collocated Entity, FOUNDATION shall be permitted to consider whether the addition of the Collocated Entity would

result in more than half of the persons employed at the Manufacturing Facility being employed by Collocated Entities.

(d) Any and all investments, costs, expenses, and other spending by SILEVO, TEO, any Affiliate of SILEVO and/or TEO, or any Collocated Entity shall count towards the investment and spending requirements set forth in this Section, Section 4.1(a), Exhibit A, and Exhibit G unless said expense is an Ineligible Expense as defined in this Section. Without limitation, the foregoing includes all direct and indirect costs and expenses incurred or accrued on operations, equipment and other tangible assets used for Manufacturing Operations or the Program but shall not include any employment costs incurred outside of New York State or the cost of equipment or other tangible assets that are not physically located or used in New York (the "Program Related Costs"). SILEVO and TEO agree that neither they nor any of their respective Affiliates shall sublet or otherwise make space in the Manufacturing Facility available in exchange for rent in any form.

(e) Ineligible Expense means: (i) any expense to the extent paid or reimbursed by the FOUNDATION or its Affiliates; or (ii) any expense that is not incurred or accrued either in New York State or elsewhere for business operations in New York State; or (iii) any expense by a Collocated Entity that is not incurred or accrued either at or for the Manufacturing Facility."

4 Section 4.4 (SILEVO Employment Targets) of the Agreement is amended to include new Subsections (e) and (f) and (g) as follows:

"(e) Any and all individuals employed by or for SILEVO, TEO, any Affiliate of SILEVO and/or TEO, or any Collocated Entity, including individuals as contemplated below for each such subject entity, shall count towards the employment targets and requirements set forth in this Section, Section 4.1(a), Exhibit A, and Exhibit G provided such employees are Full-Time Employees and are not an Ineligible Employee as defined in this Section.

(f) Full-Time Employee shall mean:

(i) a full-time employee on the payroll of the subject entity, who has worked in the State of New York for a minimum of thirty (30) hours per week for not less than four (4) consecutive weeks as of the Reporting Date, and who is entitled to receive the usual and customary fringe benefits extended by the subject entity to other full-time employees with comparable rank and duties; or

(ii) two part-time employees on the payroll of the subject entity, who have worked in the State of New York for a combined minimum of thirty (30) hours per week (i.e. the hours for both employees exceed that threshold collectively) for not less than four (4) consecutive weeks as of the Reporting Date and who are entitled to receive the usual and customary fringe benefits extended by the subject entity to other part-time employees with comparable rank and duties; or

(iii) a full-time independent contractor or self-employed individual that performs responsibilities in furtherance of the Program that would otherwise be performed by an employee of Silevo or its Affiliates who is not on the subject entity's payroll but who has worked in New York State for the subject entity for a minimum of thirty (30) hours per week for not less than four (4) consecutive weeks as of the Reporting Date providing services pursuant to a contract signed with either the individual or their direct employer; or

(iv) two part-time independent contractors or self-employed individuals that perform responsibilities in furtherance of the Program that would otherwise be performed by an employee of Silevo or its Affiliates who are not on the subject entity's payroll but who have worked in New York State for the subject entity for a combined minimum of thirty (30) hours per week for not less than four (4) consecutive weeks as of the Reporting Date

providing services pursuant to a contract signed with either the individual or their direct employer.

(g) Ineligible Employee means: (i) any employee of a Collocated Entity that does not perform work related to the Program; or (ii) an employee or position of a Collocated Entity that was transferred to the Manufacturing Facility from another location in New York State unless the employee or position was (a) "at-risk" of elimination or of leaving New York State on or prior to such transfer, as demonstrated by SILEVO, or (b) backfilled by the Collocated Entity at another location in New York State after such transfer; or (iii) any employee or position of a Collocated Entity that is not employed at the Manufacturing Facility."

5. A new last sentence of the first paragraph of Section 5.1(c) of the Agreement is hereby added as follows:

"Notwithstanding anything herein to the contrary, the FOUNDATION shall apply any unused portion of the FOUNDATION's financial commitments under the Agreement (the "UNUSED FUNDS") for any of the following purposes as previously agreed to by the Parties or as directed by SILEVO: (i) purchase, commission, modify, and improve Manufacturing Equipment for the Manufacturing Facility; (ii) to make additions, modifications, or improvements to the Manufacturing Facility; (iii) to take such other actions related to the Manufacturing Facility or Manufacturing Equipment as may be agreed by the Parties; or (iv) for other purposes related to the Project with the FOUNDATION's consent, which shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, any UNUSED FUNDS must be (a) for a capital, facility, or equipment use or purpose related to either the Manufacturing Facility or Manufacturing Equipment, and (b) consistent with applicable laws and subject to the terms and conditions of the Grant Disbursement Agreement(s) between FSMC and Empire State Development, if any, as provided in writing to SILEVO on the Effective Date."

6. A new second paragraph of Section 5.1(c) of the Agreement is hereby added as follows:

"The UNUSED FUNDS as of the Effective Date of this Amendment are an amount equal to \$28,880,339.51. Upon expenditure of the remaining balance of the UNUSED FUNDS, the FOUNDATION will have fully satisfied its obligations under Sections 4.1(c), 5.1(a), 5.1(b), and 5.1(c) of the Agreement and will have for the purposes of the Agreement met its commitment to contribute \$750 million for the project. The FOUNDATION, Affiliates or their contractors, as applicable retain their warranty support and other obligations with respect to such construction work, including the open punch-list items set forth in the Final Base Build Punch-List attached hereto as Exhibit 1. Any expenses to be paid with UNUSED FUNDS must be incurred and payment must be requested by SILEVO prior to December 31, 2021 (the "Expenditure Date"), and FOUNDATION shall, or shall cause its Affiliate to, promptly pay such amounts to SILEVO. Notwithstanding the foregoing, if and to the extent that the FOUNDATION or its Affiliate does not promptly pay any of the UNUSED FUNDS to SILEVO or as directed by SILEVO due to an encumbrance or claim arising from potential liabilities associated with any contract(s) entered by or for the FOUNDATION or its Affiliates under this Agreement, the Expenditure Date shall be extended by a period of one month for each month or portion thereof that such funds are encumbered and therefore unavailable to SILEVO to pay for project related purposes."

7. Section 4.1(b) of the Agreement is hereby deleted and is replaced with the following

"Manufacturing Facility Completion means April 30, 2018."

Exhibit G is deleted in entirety and replaced with revised Exhibit G attached hereto.

9. TEO shall be a Party to the Agreement as of the date last signed below, and references to "SILEVO" throughout the Agreement shall be deemed to refer collectively to SILEVO and TEO.

10. Section 18.2 is amended to include the following at the end of the Section:

“In the case of TEO:

Tesla Energy Operations, Inc.
47700 Kato Road
Fremont, California 94538
Attn: Chief Technology Officer

With a concurrent paper copy and a concurrent electronic copy via e-mail to:

Tesla Energy Operations, Inc.
901 Page Avenue
Fremont, CA 94538
Attn: Legal Department
E-mail: LegalUS@tesla.com

In case of FOUNDATION, including annual reports:

The Research Foundation for the State University of New York
P.O. Box 9
Albany NY 12201-0009

With a concurrent paper copy and a concurrent electronic copy via e-mail to:

Fort Schuyler Management Corporation
257 Fuller Road
Albany, NY 12203
Attn: President
E-mail: DGrose@sunypoly.edu

With a concurrent paper copy and a concurrent electronic copy via e-mail to:

Empire State Development
Portfolio Management Department
633 Third Avenue - 35th Floor
New York, New York 10017-6754
E-mail: Robert.Kwon@esd.ny.gov”

11. Section 2.9 is deleted in entirety and replaced with the following:

“Manufacturing Operations means the activities of SILEVO, TEO, any of their respective Affiliates, and/or Collocated Entities in connection with the research, development, evaluation, testing, manufacture, repair (except for general consumer vehicle repair), and/or re-manufacture of

solar, stationary storage, electric vehicle, semiconductor, sustainable energy, sustainable transportation, and/or any related products and components produced by any such entity, including any and all subcomponents and materials for any such products or components and any ancillary administrative activities, including without limitation such costs required to achieve Full Production Output as defined in Section 4.1(b)."

12. The Parties desire to foster additional research, development, technology, and development jobs at, and in connection with, the Manufacturing Facility. Accordingly, the Parties will attempt to solicit additional third parties to collocate at the Manufacturing Facility for purposes of Manufacturing Operations, and SILEVO, TEO, and any of their respective Affiliates shall investigate opportunities to collaborate with local and regional higher education institutions, including State University of New York (SUNY) institutions, with the goals to foster student study, training, and hiring in fields relevant to sustainable energy or transportation. The title of the document is amended to be "Amended and Restated Agreement for Research & Development Alliance" as of the Effective Date of this Amendment.

(c) The FOUNDATION may designate any Affiliate to provide any and all consents or approvals required in the Agreement. FOUNDATION may assign this Agreement to any Affiliate with SILEVO's consent, which shall not be unreasonably withheld, conditioned, or delayed.

13. Section 3.2(a) is deleted in entirety and replaced with the following:

"(a) Establish a mutually-beneficial joint effort focused on the US-based manufacture, expansion, and commercialization of the products of SILEVO, TEO, and any of their respective Affiliates and related research and development."

Pursuant to an extension granted by ESD on or about June 10, 2020 to the required job and investment milestones required pursuant the Agreement as a result of the COVID-19 outbreak, the employment and investment commitments contained in Exhibit G are hereby deferred for one year. As such, and notwithstanding anything contained in this Agreement to the contrary, the Parties agree that the Second Anniversary Milestone contained in Section 4.4 of the Agreement, as amended, and Exhibit G shall be April 30, 2021. Each subsequent Anniversary Date shall be extended accordingly.

15. Unless otherwise expressly amended by this Eleventh Amendment, the terms and conditions of the Agreement shall remain in full force and effect. In the event of any conflicts or inconsistencies between the provisions contained in this Eleventh Amendment and the provisions contained in the Agreement (excluding the amendments made to it by this Eleventh Amendment), the provisions contained in this Eleventh Amendment shall govern and prevail.

16. This Eleventh Amendment may be executed in counterparts, each of which shall be deemed to be an original, all of which together shall constitute one and the same instrument. To facilitate delivery of this Eleventh Amendment, the Parties may exchange executed counterparts by facsimile or e-mail in portable document format (pdf.)

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed and delivered by their duly authorized representatives as of the Effective Date.

The Research Foundation for the State University of New York

By: /s/ Scott Bateman
Printed: Scott Bateman
Title: RP Operations Manager
Date: 7/22/2020

Tesla Energy Operations, Inc.

By: /s/ Yaron Klein
Printed: Yaron Klein
Title: Treasurer
Date: July 22, 2020

Silevo, LLC

By: /s/ Emmanuelle Stewart
Printed: Emmanuelle Stewart
Title: Secretary
Date: July 22, 2020

Exhibit 1 Final Base Build Warranty List

Date	Area/ Rooms	Equipment Tag	Passed on	Tests/LPC/NY State Meeting Minutes and Status Updates	STATUS
Tuesday, October 24, 2017	Chemical Offload Docks	CRC	CRCs on both chemical and DIW docks are cracking and lifting off concrete	10/24/17 - Dan M walked down docks with LPC-Brad F. Plan to be onsite next week to address 1/10/18: LPC to come back out in the spring to correct 3/8/2019: Large CRC patches blown off in recent wind storm	OPEN
Monday, March 11, 2019	Cell Manufacturing	MAH units	Mezzanine 3 RAH102 - 48 and 52 missing sprinkler coverage - found during annual inspection.	3/11/2019: notified FSVC of gap on 2/11/2019; no action to date - funding in question	Completed
Friday, March 1, 2019	Cell Manufacturing	AWD drain from nitric CTS	AWD drain line from CTS to gravity drain leaking and dissolving - polypropylene (MOC) determined to be incompatible with 69% nitric acid.	3/8/2019: piping to be replaced. Expecting reimbursement from NYS.	OPEN
Friday, March 1, 2019	Cell Manufacturing	CHFWD	CHFWD leaking	3/8/2019: O-rings in valves determined to be incompatible material. Spec called out for EPDM seals, RKM was installed both are incompatible with chemistry in drain. FFKM(Kalrez/Chemraz) o-rings required. Material on order and is being replaced. Expecting reimbursement from NYS. 2/13/2020 Completed o-ring replacement for waste drain valves on CLN201 - CLN 204. High point vents and flange gaskets as well as the connection point to the gravity drain still need to be completed.	OPEN
Thursday, February 21, 2019	Cell Manufacturing	CWD	Numerous leaks on the piping for the caustic waste drain. Material of construction is suspect	3/8/2019: CPVC has been determined to be incompatible with TS42 (POR chemistry) and not able to handle the POR temperature of 185 F. "1000' of pipe to be replaced with Nicle 1200. 2/21/2019 - CPVC is rated for 180F, both operates at 185 F. Over time the flexing due to temperature variations and cracking the couplings and valves. Design engineer to review base build specs and process to determine material compatibility.	OPEN

Exhibit 2
Annual Report

The following report sets out the report of the Reporting Entities named below with respect to the investment, spending, and employment requirements of the Amended and Restated Agreement for Research & Development Alliance on Triex Technology dated September 2, 2014.

Reporting Entities	Legal Name(s)	Silevo LLC and Affiliates
	Federal Employer Identification Number(s) (EIN)	See attached list
	Program Year	__ Anniversary of April 30, 2018, the date of Manufacturing Facility Completion
	Reports Required by Law	Did the Reporting Entities file the NYS-45 form, including cover page and NYS-45-ATT, and, if applicable, the Multiple Worksite Report form (BLS 3020 for NYS; "MWR") for the last four calendar quarters? <input type="checkbox"/> Yes <input type="checkbox"/> No
	Explanation (if needed)	If the answer to the question above is No or if the employment figures on such reports differ materially from those reported below, please explain: Click here to enter text.

Investments & Spending (USD)	Description	May 1, 20__ - April 30, 20__	Cumulative as of April 30, 20__
	Click here to enter text.	\$ _____	\$ _____
	Totals	\$ _____	\$ _____

		As of April 30, 20__	Description
			__ full-time jobs __ part-time jobs
New York Jobs (total current)	Buffalo Jobs - at Manufacturing Facility		
		__ full-time jobs __ part-time jobs	Click here to enter text.
New York Jobs (total current)	Buffalo Jobs - Excluding Manufacturing Facility		
		__ full-time jobs __ part-time jobs	Click here to enter text.
New York Jobs (total current)	New York State Jobs - Excluding Buffalo Jobs		

The foregoing report is true and correct to the best of my knowledge.

Signature: [Click or tap to enter a date.](#)

Name (Print): [Click here to enter text.](#) Title: [Click here to enter text.](#)

Exhibit 3**EXHIBIT G: INVESTMENT AND JOB MILESTONES**

1. Subject to Section 2 of this Exhibit G, commencing on the date of the first anniversary of April 30, 2018 (the date on which Manufacturing Facility Completion was achieved), for each Program Year, if SILEVO fails to achieve the Investment and Job Milestones, SILEVO shall pay the Program Payment for the Program year on or before the Milestone Payment Due Date, as specified in Schedule A below.

Schedule A

Program Year	Program Payment Due Dates	Program Payment Due	SILEVO Cumulative Investment (as described in Section 4.3 of the Agreement) Milestone	SILEVO Cumulative Job (as described in Section 4.4 of the Agreement) Milestone
1	First Anniversary of the Manufacturing Completion Date	\$41.2 Million	\$130,000,000	500
2	Second Anniversary of the Manufacturing Completion Date	\$41.2 Million	\$472,000,000	1,460
3	Third Anniversary of the Manufacturing Completion Date	\$41.2 Million	\$928,000,000	2,000
4	Fourth Anniversary of the Manufacturing Completion Date	\$41.2 Million	\$1,478,000,000	2,500
5	Fifth Anniversary of the Manufacturing Completion Date	\$41.2 Million	\$2,056,000,000	3,460
6	Sixth Anniversary of the Manufacturing Completion Date	\$41.2 Million	\$2,625,000,000	3,460
7	Seventh Anniversary of the Manufacturing Completion Date	\$41.2 Million	\$3,208,000,000	3,460
8	Eighth Anniversary of the Manufacturing Completion Date	\$41.2 Million	\$3,793,000,000	3,460
9	Ninth Anniversary of the Manufacturing Completion Date	\$41.2 Million	\$4,391,000,000	3,460
10	Tenth Anniversary of the Manufacturing Completion Date	\$41.2 Million	\$5,000,000,000	3,460

If, with respect to a Program Year above in Schedule A, SILEVO satisfies the Investment Milestone and Job Milestone set forth in Schedule A on or before the applicable Program Payment Due Date in that

Program Year, then SILEVO is not required to pay the Program Payment Due for the Program Year on such Program Payment Date. Notwithstanding anything contained herein the contrary, SILEVO shall be required to meet the Cumulative Job Milestone in each Program Year regardless of whether it has met the Cumulative Job Milestone in any other Program Year.

The SILEVO Cumulative Investment Milestones set forth in Schedule A refer to cumulative investments, spend, costs, and expenses incurred in or related to the State of New York as permitted in the Agreement. If and to the extent that SILEVO meets the Cumulative Investment Milestone requirements for a particular Program Year, SILEVO shall be deemed to have met the Cumulative Investment Milestone for all applicable Program Years under the Agreement where the Cumulative Investment equals or exceeds the Cumulative Investment Milestone for that Program Year. For example, if SILEVO's cumulative investment in Year 2 equals \$5,000,000,000, then SILEVO shall have met the SILEVO Cumulative Investment Milestones for Years 2 through and including Year 10.

The SILEVO Cumulative Job Milestones set forth in Schedule A refer to the number of Full-Time Employees as permitted under the Agreement in each Program Year and are not in addition to the previous Program Year. For example, if SILEVO's Cumulative Job Milestone in Year 2 equals 2,000, then SILEVO shall have met the SILEVO Cumulative Job Milestone for Year 2 only and the Cumulative Job Milestone for Year 3 shall remain at 2,000.

If any of the following events of default occur, all Program Payments in Schedule A shall be become due and payable immediately, without demand or notice:

- a. the failure of SILEVO to pay in full a Program Payment payable by SILEVO to FOUNDATION in accordance with Sections 1 and 2 of this Exhibit G on or before the applicable Program Payment Due Date, which payment remains unpaid for ten (10) business days after delivery of written notice of such failure to SILEVO;
- b. the filing of bankruptcy proceedings involving SILEVO as a debtor (which is not dismissed within ninety (90) days of filing);
- c. the appointment of a receiver for SILEVO;
- d. the making of a general assignment for the benefit of SILEVO's creditors;
- e. the termination of the Agreement due to SILEVO's default thereunder.

The terms and conditions contained in this Exhibit G shall survive the termination of the Agreement.

Exhibit 31.1

CERTIFICATIONS

I, Elon Musk, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q 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.

CERTIFICATIONS

I, Zachary J. Kirkhorn, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q 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: July 28, 2020

/s/ Zachary J. Kirkhorn
Zachary J. Kirkhorn
Chief Financial Officer
(Principal Financial Officer)

SECTION 1350 CERTIFICATIONS

I, Elon Musk, certify, pursuant to 18 U.S.C. Section 1350, that, to my knowledge, the Quarterly Report of Tesla, Inc. on Form 10-Q for the quarterly period ended June 30, 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-Q fairly presents, in all material respects, the financial condition and results of operations of Tesla, Inc.

Date: July 28, 2020

/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 Quarterly Report of Tesla, Inc. on Form 10-Q for the quarterly period ended June 30, 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-Q fairly presents, in all material respects, the financial condition and results of operations of Tesla, Inc.

Date: July 28, 2020

/s/ Zachary J. Kirkhorn
Zachary J. Kirkhorn
Chief Financial Officer
(Principal Financial Officer)